

DRAFT—NO LEGAL VALUE

Zoning Board of Adjustment Meeting

September 24, 2018

Members present: Susan Arnold, Charles Burnham, Jean Chartrand Ewen, and Ashley Rowe, designated voting Alternate member. Scott Hodgdon, designated voting Alternate member, arrived at the conclusion of Case Number #406.

The meeting was called to order at 7:05 PM by Susan Arnold, Acting Chair. 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 September 12, 2018. Scott Whitehouse, interested party for Case Number #406 was present. Robert Donle, Tobin Farwell, Drew Musto, and Greg Messenger, interested parties for Cases Number #407 and #408 were present. Don Clifford was also present.

Case Number #406

Petitioner: The Town of Strafford Fire and Rescue is requesting a Variance to Article 1.4.1, Sections B and C of the Zoning and Land Use Ordinances in order to construct an addition to the Crown Point Fire Station to accommodate updated equipment as voted at the March 17, 2018 Town Meeting. The new 36 foot by 42 foot addition will come up to twelve feet closer to the front boundary than the existing non-conforming building and will come within approximately ten feet of the northwesterly side boundary, which is up to thirty feet closer to the front boundary and up to fifteen feet closer to the side boundary than current ordinances require. (475 First Crown Point Road, Tax Map 19, Lot 48A)

Scott Whitehouse, Strafford Fire Chief, petitioner, was present. There were no abutters present. Mr. Whitehouse was advised that he could request a postponement until his application could be heard by a full five-member Board; although four members present is enough to constitute a quorum, the petitioners would have the option of postponing discussion until they could be heard by a full five member Board in order to avoid any potential tie vote. Mr. Whitehouse agreed to be heard by a four-member Board.

Scott Whitehouse then presented the application. He advised that the original idea had been to tear down the existing Crown Point fire station and ask for additional land from one of the abutters. However they realized that they had been looking at the wrong dimensions and that the lot is actually 50 feet by 100 feet. They have worked through the different suggestions for expansion, and have now decided to request to go forward with an addition to the northwesterly side of the existing station. The addition will include two bays and allow for a bath, shower and decontamination area for the firefighters, using the existing space. The new bays would come within 10 feet of the northwesterly boundary with the Carlson property, as they believe that the stone wall carries the boundary line. Because the lot is 100 feet in width, they would still have some parking area around and in front of the building.

Board members had no immediate questions and there were no abutters present. Greg Messenger, whose family property is across the road, indicated that he has no objections. It was noted that the Robidas family, who are abutters to the southeast, had contacted the office for information on the project but are not here this evening. Ashley Rowe asked if the setback from the road was the 20 feet measurement indicated on the plan and asked if they will have adequate room between the new addition and the road. He said that his only concern was for safety pulling the fire apparatus in and out of the building, but he noted that if the Fire Chief is okay, he is satisfied. Mr. Whitehouse indicated that he had measured out the truck lengths with chalk. It was agreed that the road is straight and flat in this area and that the trucks would be visible to motorists. Mr. Whitehouse also noted that it is department policy to have the lights on the trucks working when the vehicles are backing or when they are out for maintenance, which will increase visibility. Susan Arnold noted that in many ways this project is increasing safety for the community.

There was no further discussion and the Acting Chair closed the public hearing. Jean Ewen then made the following motion which was seconded by both Ashley Rowe and Charlie Burnham.

To accept and approve the request for Variance to allow the construction of an addition to the Crown Point Fire Station in order to accommodate updated equipment as voted at the March 17, 2018 Town Meeting. The new 36 foot by 42 foot addition will come up to twelve feet closer to the front boundary than the existing non-conforming building and will come within approximately ten feet of the northwesterly side boundary, which is up to thirty feet closer to the front boundary and up to fifteen feet closer to the side boundary than current ordinances require because the project is increasing safety for the community

Mr. Whitehouse was advised about the 30 day appeal period. Susan Arnold addressed Mr. Whitehouse and noted that the Board appreciates Fire and Rescue bringing the application to the Board, and noted that it is good for all of us to live under the same rules.

Case Number #407

Tobin Farwell, Farwell Engineering Services is requesting a Special Exception under Article 1.7.1 of the Zoning and Land Use Ordinances in order to reconstruct and reconfigure an existing non-conforming structure located on shore of Bow Lake. The new 28 foot by 34 foot 2-bedroom 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)

Tobin Farwell, petitioner, was present accompanied by Rob Donle. Drew Musto, an abutter, was present. Greg Messenger, Road Agent, was also present.

Board members agreed that the two applications are linked, and suggested that Mr. Farwell begin with the application for the house. Tobin Farwell then presented the application to the Board. The property includes lots on both sides of Brown's Pasture Road. They are requesting a Special Exception for the removal and reconstruction of the existing non-conforming home on the lake lot. They feel that they are meeting the criteria for Special Exception because the home will be more conforming than the original. They are moving the house back to 45.3 feet from the lake; the deck will be 35.3 feet from the lake, which is up to 4.3 feet farther from the lake than the existing camp and small deck. They are holding the side setback on the easterly side and are increasing the setback on the westerly side to 13.2 feet from the existing 9.9 feet. They meet required setbacks to Brown's Pasture Road. He noted that the area is tight and that they are close to the abutting structure to the west, but that there is a vegetated buffer between them. He noted that the reconstruction will require a new septic disposal system, and that NH DES Shoreland Program approval will also be required. He advised that they plan to maximize the septic setback from the lake by putting the septic system across the road on the currently vacant second lot. They plan to maintain the house as two bedrooms, and are currently working with an architect. He submitted copies of the current sketches. In answer to a question from the Board, Mr. Farwell indicated that the intent was to convert the structure to year-round use.

Jean Ewen then asked how much larger the proposed structure would be than the original. Mr. Farwell indicated that the existing structure was 849 square feet with a 78 square foot deck. The proposed structure would be 952 square feet with a 280 square foot deck and would have a second floor. Board members noted the "shed to be relocated" and asked where. Mr. Farwell noted that the Desmonds, abutters to the west, have sheds on the property line, which complicates things. Drew Musto, an abutter, asked how tall the new house would be. Tobin Farwell replied that it would comply with zoning; noting that the existing is a one-story camp and the proposed would be two stories. The camp currently uses lake water; they are proposing to put in a well. Ashley Rowe asked if they need to combine the two lots in order to meet lot

loading requirements for the septic, and Mr. Farwell indicated that this is true. The proposed garage on the second lot would have no bedrooms, he noted. Don Clifford asked if they are proposing to put the septic across the road, and it was noted that this is the plan. Susan Arnold, noting that the two projects are intertwined, proposed that the Board should now open the public hearing on the second application.

Case Number #408

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 advised that they are proposing to put a garage and septic system leach field on this lot. The septic tank and pump chamber would be on the house lot. The proposing to sleeve the pipes under Brown's Pasture Road. They are proposing to dig a trench about 2 feet deep to lay the pipe, which would be sealed on both ends. Don Clifford asked if there was any way to bore horizontally without digging up the road, noting his concern for the road. Mr. Farwell said that horizontal boring would not be possible, and said that laying pipe under the road "is done all the time". He said that it would not cause a problem or heaving in the road because everything drains back to the pump chamber. Greg Messenger, the Road Agent, said that it has been allowed before, but said that it needs to be on the plan to alert both himself and Scott Whitehouse before any work is done. He agreed that there have been problems with Brown's Pasture Road, but said that he wasn't sure if they had had difficulties in this section since they replaced the culvert. Jean Ewen said that it should be on the plan that if something does happen to the road as a result of this project, it should be on the homeowner, not the town, for repairs. Mr. Farwell said that a note could be put on the plan stating that "replacement costs are to be borne by the homeowner".

Mr. Farwell then turned to the proposed garage. He noted that there is a building envelope on the back lot that meets requirements, but that they want more room for the leach field in case they need to rebuild the field in the future. 33 feet would allow enough room for a vehicle while also reducing the impervious surface by shortening the driveway area, which would address DES Shoreland Program concerns. Both lots fall within the Shoreland zone and the project will need Shoreland permits. The garage would have storage above but no living space; however, they would be a bathroom. If it is only a toilet, it does not add flow to the system requirements, he noted. Mr. Farwell suggested that they would be willing to note on the plans that there would be no living space in the garage and would essentially merge the two lots. In response to questions about the design of the system to incorporate the toilet, Mr. Farwell indicated that there would be one sleeve pipe under the road with two lines in the sleeve—one from the toilet to the pump chamber and one from the pump chamber to the leach field. Greg Messenger asked about a clean-out access for the lines, and Mr. Farwell indicated that one is required for every 100 feet. Board members looked at the septic plan, and it was noted that there is no location for the septic on the house lot because of the neighbor's well radius. They are proposing a new well for this house down by the lake, away from the septic systems. Drew Musto asked how tall the garage would be. Mr. Farwell said that he imagined that it would be 25 feet or less. Don Clifford asked if they are asking for a full 2 stories, or just storage space over a one-story garage. Mr. Farwell indicated that it would be essentially one and a half stories, due to the pitch of the roof. Drew Musto asked about how the septic system would fit into the slope of the hill. Mr. Farwell said that the septic would be about a 10 foot by 30 foot area; on the uphill side it would notch into the slope and the downhill side will require fill. The garage itself would be level with the road. The existing camp uses lake water and has an old septic system that does not have modern state approvals.

Board members asked why a toilet was needed in the garage and discussed how the two applications are intertwined. Several possible conditions of approval were noted, including a septic design that requires no town variance and no waivers from NH DES. Ashley Rowe noted that if DES grants waivers, they will not allow year-round use. Board members then reviewed the Special Exception checklist for Case 407. Jean Ewen noted that the proposed new house is not more nonconforming to the setback, but noted that the square footage area of nonconformity is increasing due to the increase in the footprint. Board members

then discussed the question of whether or not the proposal might be increasing the non-conformity because there is a significant increase in the area of the proposed structure within the setback lines. Ashley Rowe suggested that the issue is setbacks, and noted that there is no added non-conformity to setbacks. Scott Hodgdon noted that two corners are better and two corners are worse due to the proposal to square off the structure. Charles Burnham noted the increase in the back corner and suggested that a variance might be needed. There was extensive discussion. Susan Arnold then summarized the discussion regarding the criteria for Special Exception. Item 1 regarding increased non-conformity seems to be both better and worse. Item 2 regarding whether or not the project is adversely impacting the area would seem to be addressed by several of the proposed conditions of approval, especially the septic approval and the note that the homeowner would be responsible for issues with the road. Item 3 regarding use is no problem because the proposed use is residential. Item 4 regarding the septic system would be contingent upon receiving state septic design approval. Jean Ewen asked Mr. Donle if he had just purchased the property, and he indicated that he had. Discussion then moved to whether the expansion of the footprint would require a Variance rather than Special Exception. Board members agreed that if this is so, it could not be heard this evening because the Variance request had not been noticed. Jean Ewen asked about the trees on the lot. Mr. Donle advised that they hope to take down as few as possible. Susan Arnold suggested that the Board put off a decision and ask for a legal opinion on the question of whether or not the increase in area would make the proposal more non-conforming, and thus whether the proposal should be a request for Special Exception or Variance. Board members agreed that as the Board sees more of these applications, it is important to be clear and set a line establishing what would be considered more non-conforming.

Discussion then returned to Case 408 and the request for Variance. The worst encroachment proposed is the 33 foot setback from the front boundary, which would require a 7 foot variance. Susan Arnold advised that the Board is very interested in making sure that there is never additional living space in the garage, and noted that she would prefer no toilet. Board members agreed. Tobin Farwell said that if the Board is firm on the 'no toilet' condition, they will not request the variance, as they are able to put both the septic and garage on the lot without a variance, although it would restrict future work on the septic system in case of problems. He suggested that if they put the septic system on the back lot, it would be a requirement of the septic easement that there never be a second dwelling on the lot. Ashley Rowe suggested that a deed restriction should be recorded. Don Clifford and Drew Musto both noted the tendency for garages to turn into living space over time. Susan Arnold noted the current impasse; the applicant has said that they will build the garage without the variance if the Board imposes the conditions, and the Board would like to place conditions on the back lot to keep it from being developed as living space.

Board members then addressed the question of how to proceed with the second application. Charlie Burnham said that he thought that it would make sense to look at the whole package at the next meeting, as it gives the owners some time to think. Tobin Farwell asked for some direction from the Board. Susan Arnold suggested that the two applications and properties are an integrated package. Discussion of the proposed toilet in the garage followed, with concern expressed that putting a toilet in the garage could be an opening for the development of living space in the future. Mr. Farwell said that he thought that the town would be more concerned with impervious surface and again said that the point of the variance application was to allow room to work on the septic field in the future. Jean Ewen asked if there was a problem with the idea of a deed restriction. It was agreed that the two applications are separate but related to the goal of putting a larger home on the front lot. Board members agreed that they would like to know everything that will happen before they approve the smaller piece, which is the garage.

Susan Arnold suggested that the applicant come back with a state septic approval. She noted also that if the house is not enlarged the way that they want, there is the question of how this will impact the garage application. If legal review suggests that the house requires a variance, then the house is likely to be tied to the leach field. It was agreed that the Board would talk to counsel and let the applicant know the response from counsel. Ms. Arnold suggested that the Board would be interested in knowing that the state would approve the proposed septic system as well. Rob Donle asked for clarification of the issue regarding special exception versus variance, and Board members noted the expansion of the footprint on the back corner within the setback area. Don Clifford asked why they are applying for a variance for the garage if they can build without one. Drew Musto asked if the garage was a necessity. Board members agreed that hardship is an issue, but agreed that the variance application gives an opportunity for more protection.

Ashley Rowe noted that the state requires construction detail for septic review. It was agreed to postpone further consideration of both Cases 407 and 408 to the October meeting.

Board members then briefly reviewed a letter received from Denise Van Geyte regarding the decision of the Board on Case #406, an application for Special Exception to allow living space in her home to be designated as an accessory dwelling unit. One of the conditions of approval was for Ms. Van Geyte to demonstrate that her septic system can serve the 4.5 bedroom capacity of the home plus the ADU, or to provide plans for a new system meeting the required capacity. Ms. Van Geyte has forwarded a letter from Michael Groover, her septic system designer. Mr. Groover indicated that the existing system is oversized and that it would be technically possible to add additional pipes to the existing septic system to allow for the increased capacity, but he advised that the lot itself does not meet lot loading requirements for a 4.5 bedroom system. Ashley Rowe noted that the state would not allow Ms. Van Geyte to replace her septic system to meet the required capacity, and said that she could only sell the home as a 3-bedroom. It was agreed that Mr. Groover's letter is a statement of fact. Ms. Van Geyte would be able to request a variance to the ADU requirements, but it was agreed that it would be misleading if a variance was granted as the septic capacity issue would not be addressed. There are two issues; are they upgrading the system, and can they meet state requirements for a system serving the capacity of the home plus the ADU. Board members agreed to send a letter to Ms. Van Geyte advising her that the lot loading capacity issue must be addressed in order for her to meet the conditions of approval and encouraging her to work toward a solution.

Board members agreed to send a question to the town attorneys regarding Case Number 407. It was noted that the proposal is to double the square footage of the structure within the setbacks even though the footprint is not coming closer to boundaries than the original, and the question is whether that means that the structure would be more non-conforming. Board members would like advice on the question of what 'more non-conforming' means.

Board members then tentatively set the next meeting for Monday, October 15, at 7PM. If all of the proposed applications are received, it was suggested that the Board open the meeting by 6:30 PM due to the long agenda. 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 9:00 PM.