Minutes of the
Zoning Board of Adjustment
Meeting of November 5, 2019

A meeting of the Zoning Board of Adjustment was held on November 5, 2019 in the Knightly Meeting Room of the Municipal Office Building, Geremonty Drive, Salem, NH.

PRESENT: Bernard Campbell, Chair; Bonnie Wright, Vice-Chair; George Perry, Secretary; Jeff Hatch; Mike Smith; Thomas Raskow, Alternate; David Bruce, Alternate; and Ross Moldoff, Planning Director.

The meeting was called to order at 7:00 p.m. Chairman Campbell introduced the board members and explained how the meeting will proceed. The ZBA is a quasijudicial board, and all testimony should be truthful and accurate. Per the Statute, all the board members have visited all the sites.

REVIEW OF MINUTES

1. October 1, 2019 – Regular Meeting

MOTION by Mrs. Wright to accept the minutes of the October 1, 2019 meeting as printed.
SECOND by Mr. Hatch.

VOTE ON MOTION: 4 – 0 – 1 (Mr. Perry abstained.)

PETITION # 1 – Map 102, Lot 8376
Jessica and Anthony Boggiatto hereby request a Variance from Article III, Section 490-301C(1), and ask that said terms of the Zoning Ordinance be waived to permit construction of an addition to an existing single family dwelling with a front setback of 11.7 ft., where a minimum of 30 ft. is required in the Residential District.

Property Location: 12 Dean Avenue

Abutters: Moury was present.

Jessica Boggiatto, owner of 12 Dean Avenue, said that we are looking at building an addition. There will be a 3 stall garage with 2 rooms above that. We need one floor for elderly living for an in-law apartment for her mother-in-law. Ms. Boggiatto explained that they will be moving a few rooms for that. So we are looking to put a few things up to equal it out so that she will have one floor living. She then read through the criteria.

PUBLIC INTEREST: It is an allowed use for this district (addition to an existing single family home in the Residential District) and in fact is common to the neighborhood.
SPIRIT OF ORDINANCE: Proposed use is an allowed use for this district. The purpose of the dimensional requirements is to avoid overcrowding and provide adequate space for wastewater disposal. Dwelling utilizes municipal water and sewer.

SUBSTANTIAL JUSTICE: Granting the variance would allow the applicant to improve their property to its fullest extent. Property was laid out for residential development. The existing dwelling utilizes the property for residential use. A home addition is a common appurtenance to a single family dwelling. Proposed addition will exceed minimum front yard setback.

DIMINUTION: The addition will greatly enhance the value of the property thereby increasing the value of the neighborhood. Expanded dwelling will be of equal or greater value than surrounding properties.

HARDSHIP:

Special Conditions: Parcel is an existing lot of record which was originally created prior to adoption of the current ordinance (see attached deed & subdivision plan of record). Subdivision created in April 1965 and dwelling built in 1965.

A.

i. Denial of the variance does not result in any gain for the town. The proposed use is common to the area (see attached tax map).

ii. Lot will be used in the same manner as immediately adjacent lots (i.e. residentially). Dwelling will have similar setbacks to property lines as immediately adjacent lots. Property has similar dimensional characteristics as immediately adjacent lots (see attached tax map).

B. Dimensional restrictions on lot were adopted after lot was created.

Chairman Campbell asked, did it end in a cul-de-sac and then was extended? Ms. Boggiatto said that the only two people who use the roundabout, are her and her neighbor. Chairman Campbell asked, if it was not there, you would have clearance? Ms. Boggiatto said that’s correct.

Mr. Hatch asked, will the number of bedrooms change? Ms. Boggiatto explained that they will still have three bedrooms in the unit. It will go up by one. Mr. Hatch asked, will a demand betterment fee be charged? Mr. Moldoff said yes. Mr. Hatch asked, will it be classified as an in-law? Does it meet the requirements, and will they be under the square footage requirement? Ms. Boggiatto said, it is about 750 square feet. Mr. Moldoff said that we looked at that and he believes she is all set.

Mr. Smith asked, you are aware that you will have to put a deed amendment on this as an in-law? Ms. Boggiatto said yes.
Mr. Smith asked, did you look at possibly putting it on the other side of the house where there is more land? Ms. Boggiatto said, we did but we have a sharp corner that’s extremely dangerous and we would have to add another driveway and it would be awkward. There are trees that line the perimeter so you can’t see anyone coming. Mr. Hatch said, that wouldn’t conform anyway because you are supposed to have one driveway.

Mr. Smith asked, the trailer storage, is that short term use? Ms. Boggiatto said, that is just while we are doing demolition.

Chairman Campbell asked if there were any abutters to speak either in favor or opposition.

Janet Moury, 14 Dean Avenue, said she doesn’t have any problems with them building. They are wonderful neighbors.

Mr. Moldoff said the board has a memo from Engineering about runoff. Chairman Campbell said that is in regards to roof runoff needing to be infiltrated and calculations will need to be submitted to Engineering for approval. So if the board grants, we need a stipulation that the requirements of the Engineering Department need to be met.

Mr. Smith asked, is there any reason why it can’t be pushed further back towards the pool? Ms. Boggiatto said, it is too close to the pool and we have a fence and there is water runoff. The drain is there to prevent it from going to her driveway and into the basement.

Chairman Campbell then closed petition # 1.

MOTION by Mrs. Wright to grant with the condition of the recommendation from the town Engineer and that the deed is updated to include the in-law apartment.

Chairman Campbell said that stipulation is that they meet the requirements of the Engineering Department per the memo and that the deed be updated to record the in-law apartment.

SECOND by Mr. Hatch.

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VOTE: 4 – 1 MOTION PASSES. PETITION # 1 GRANTED WITH STIPULATIONS.

PETITION # 2 – Map 62, Lot 3561

John A. and Alma D. Korbey, Trustees hereby request a Variance from Article VIII, Section 490-804, and ask that said terms of the Zoning Ordinance be waived to permit the replacement of a patio with a deck within 17 ft. of the high water mark of Canobie Lake, where 50 ft. is required in the Residential District.
Property Location: 5 Lakeside Street

Abutters: There were no abutters present.

David Jordan, engineer/land surveyor with Greenman Pedersen, is representing John & Alma Korbey, the owners of the property. John Korbey is here. They acquired this property earlier this year and want to replace the brick patio on the front of the house facing Canobie Lake, with a deck. The patio paver area currently exists. It is about 350 square feet of impervious area. It is at ground level. They are looking to remove that and construct a deck that will be about 4 feet above grade. They will walk from the first floor of the dwelling directly onto the deck, which is about 336 square feet. Because of the proximity to the water, a shoreland permit is needed and has been obtained by the Korbays. A copy of that permit is in the application packet. We have the State permit that is needed and we are seeking approval because the deck will be 17 feet from the high water mark of Canobie Lake, where 50 feet is required. The patio pavers are about 16 feet from Canobie Lake, so the deck will be setback slightly further from the lake than what is currently there. He then read through the criteria.

PUBLIC INTEREST: It does not unduly violate the basic objectives of the zoning ordinance, it does not alter the essential character of the neighborhood where most homes have decks facing the lake, and it will allow for water that currently runs off the patio directly into the lake to be absorbed by the ground beneath the new deck thereby protecting the health, safety or welfare of the general public.

SPIRIT OF ORDINANCE: The proposed deck will be further from the lake than the current patio and will allow for the absorption of water into the ground rather than running off into the lake thereby resulting in the property becoming more nearly conforming than the present condition. Granting this variance will not injure the public or private rights of others and will in fact protect the quality of the lake.

SUBSTANTIAL JUSTICE: Granting this variance will permit the applicant to improve the conditions currently existing on the premises and reduce runoff toward the lake. Granting this variance will not result in any adverse impact to any neighbor or the general public and having a deck facing the lake is consistent with other properties in the surrounding area. There is no benefit to the public that outweighs the hardship that would result to the applicant if this variance were denied.

DIMINUTION: The granting of this variance will increase the value of the subject property and by implication, the value of the surrounding properties. The abutters on either side of the subject property have indicated their support of this application.

HARDSHIP:

Special Conditions: This property currently enjoys a 350 square foot impervious patio that is only 16’ from the lake.
DRAFT

A.

i. The general public purpose of this section of the ordinance is better served by removing an at-grade impervious patio and replacing it with a raised deck that is further from the lake and that will allow absorption of the runoff into the ground below.

ii. It will promote the absorption of water into the ground rather than running off into the lake, is consistent with many other homes on the lake that have similar decks, and is less contrary to the ordinance than the current condition.

Mr. Hatch asked, how high will the deck be off the ground? Mr. Jordan said, it is about 4 feet. Mr. Hatch asked, it will be connected to the other one? Mr. Jordan said, that’s correct. Mr. Hatch asked, you are not replacing the tiles? Mr. Jordan said, underneath the deck, typically we put down crushed stone so that the weeds don’t grow out of there.

Mr. Smith asked, would you mind if we add a stipulation that the deck is to remain open, no roof or walls? Mr. Jordan said he has no objection to that.

Chairman Campbell asked if there were any abutters to speak either in favor or opposition of this petition. There were none. He then closed petition # 2. He likes the idea and thinks it makes the property more conforming to remove the impervious surface of the patio, and replace it with a deck. It would be nice to have the water go into the soil rather than running off the patio.

MOTION by Mr. Hatch to grant with the stipulation that the deck is to remain open, meaning no walls or roof to be constructed on or over the deck.

SECOND by Mrs. Wright.

Mr. Hatch  In favor
Mr. Smith  In favor
Mrs. Wright  In favor
Mr. Perry  In favor
Chairman Campbell  In favor

VOTE: 5 – 0 MOTION PASSES. PETITION # 2 GRANTED WITH STIPULATION.

PETITION # 3 – Map 46, Lot 6800

John H. and Nancy H. Sununu hereby request a Variance from Article III, Section 490-302C(1), and ask that said terms of the Zoning Ordinance be waived to construct a single family dwelling on a 62,228 sq. ft. lot, where a minimum lot area of 87,120 sq. ft. is required in the Rural District.

Property Location: 26 Samoset Drive

Abutters: Fuller and Kurczewski were present.
Chairman Campbell asked, this is 26 Samoset? Mr. Moldoff said, that’s what the application says. Chairman Campbell said, the voting record sheet says 25. Mr. Moldoff said, that’s just a mistake.

David Jordan with Greenman Pedersen Inc, is representing John and Nancy Sununu. This is a pre-existing lot of record at 26 Samoset Drive. This lot was created in 1968 and is 62,228 square feet. Under the current zoning, a minimum lot area is 2 acres, 87,120 square feet. The Sununu’s purchased the lot in 1970. There are no wetlands on the lot, and the frontage requirement is met. The only non-conformity is the lot area. The ZBA granted a similar variance in September 2006. The facts that were relied upon then, nothing has changed and those facts can be relied upon tonight, for the same variance. Previously, we received an approval for a septic design on this lot, so we had that from the State. Because it was never acted on, it has expired. If we are successful tonight and when an owner wants to build on the lot, they will need a new septic plan for approval. He then read through the criteria.

**PUBLIC INTEREST:** The construction of a single family dwelling on this lot will not violate the basic objectives of the zoning ordinance. The lot exceeds the State’s minimum lot area requirement for a single-family dwelling serviced by an on-site septic system. This is a pre-existing lot whose area pre-dates the current dimensional requirements. Granting this variance will not be contrary to the public interest because the construction of a single family dwelling, a use allowed in the Rural District, will not alter the essential character of the area, will not create a burden on the town’s infrastructure systems nor will it adversely impact the health, safety or welfare of the general public.

**SPIRIT OF ORDINANCE:** Some of the purposes of zoning requirements, particularly with respect to area, is to prevent overcrowding and provide safe wastewater disposal. This is a pre-existing lot of record that is similar in size to other lots in the neighborhood and can support a single family dwelling that will be similar in size to the other dwellings in the area. All dimensional requirements for the dwelling (property line setbacks, height, lot coverage) will be met and therefore will maintain dimensional uniformity within the district and will not result in overcrowding. The dwelling will be serviced by a new state of the art septic system to provide all necessary environmental protection.

**SUBSTANTIAL JUSTICE:** Granting this variance will allow the construction of a dwelling that is otherwise allowed by zoning and similar to other homes in the surrounding area. The lot has adequate frontage and sufficient soil conditions to support an on-site septic system to service the dwelling. The lot meets the building envelope requirements contained in the Salem subdivision regulations. There is no benefit to the public that outweighs the hardship that would result to the applicant if this variance were denied.

**DIMINUTION:** The construction of a new single family dwelling on this lot will add to the town’s tax base and will not diminish the value of surrounding properties. The new lot will support a home that will have an appraised value equal to or greater than surrounding homes.
HARDSHIP:

Special Conditions: This property is similar in size to other lots in the area and is the only vacant, pre-existing non-conforming property. This property cannot be used for residential purposes without a variance.

A.

i. The general public purpose of the ordinance in this instance is to provide dimensional uniformity within a district. This property can support a dwelling that will be similar in size to other dwellings in the area and will conform with the required buildings setbacks and therefore will not result in overcrowding. The lot size exceeds the State requirement for minimum lot size for a single family dwelling serviced by an on-site septic system.

ii. The proposed use, a single family dwelling, is reasonable because it is an allowed use, is consistent with the surrounding uses, will meet all applicable setback, height and lot coverage requirements, does not result in overcrowding, and will not adversely impact the public health, town resources or essential services.

B. There is no other land available for the owner to acquire to meet the area requirement.

Mr. Smith asked, when you were here in 2006, you had 62,250 square feet. Now you have 62,208. Mr. Jordan explained that the 62,250 was originally from the original subdivision plan in 1968. When we calculated the area with dimensions, it’s a more accurate calculation.

Chairman Campbell mentioned that the Engineering Department has issued a memo about roof and driveway runoff, which will need to be calculated and approved by the Engineering Department if the board grants this. He asked if there were any abutters to speak either in favor or opposition.

David Fuller, 24 Samoset Drive, is here in approval of the plan. He wants go on record that we’d like the builder to maintain the integrity of the wooded area. They will have to take down some trees to place the house on the lot, but he wants the builder to recognize that they are building amongst other people, and set the property accordingly. The Chairman has already mentioned the stormwater. We’re downhill from that property and we have a water problem on that side of the property. We want to make it known that we have concerns about that but overall, he and his wife approve and speak in favor of the project.

Chairman Campbell then closed petition #3.

MOTION by Mrs. Wright to approve the variance as submitted with the stipulation from the senior engineer.
Chairman Campbell said the stipulation is that all of the requirements of the Engineering Department regarding runoff, be met.

SECOND by Mr. Hatch.

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VOTE: 5 – 0 MOTION PASSES. PETITION # 3 GRANTED WITH STIPULATION.

PETITION # 4 – Map 22, Lot 5741
James E. Ball hereby requests an Equitable Waiver of Dimensional Requirements under the provisions of RSA 674:33-a, from Article III, Section 490-303C(1), to permit the newly constructed front stairs and porch to remain 24.9 ft. from the front property line, where a variance was granted at the January 3, 2019 meeting to allow a front setback 26.4 ft., and where a minimum of 30 ft. is required in the Recreational District.

Property Location: 5 Gillis Terrace

Abutters: There were no abutters present.

Kurt Meisner with Meisner Brem Corporation, are the engineers and surveyors for the property at 5 Gillis Terrace. Also here are James & Laurie Ball, the owners. In January, we received a variance to convert an existing seasonal cottage to a year round property. With that approval there were some renovations to be undertaken, and a new septic system was approved to be installed in front of the building. Tonight we are here to ask for an equitable waiver for the front setback. During the construction and installation of the leach field, there was a little ledge in front. The septic tank had to be placed in a particular location. During construction of the deck and front porch, at the corner where the post of that would come down, it sat on top of the waste pipe from the building into the septic tank. That’s unacceptable, and would crush that pipe. There was discussion by the contractor of how to resolve the issue and where to place the post. He checked with people in town, but not an inspector for that item. It was decided to move the leg post slightly further towards the street, which was a shorter distance, to fix the problem. When they moved towards the street it made the setback distance from the right-of-way line to the deck, slightly shorter than what was approved in the previous plan. We are about 1 ½ feet closer to the street line because of the angle of the house. It is a little closer at the far right end. This was a limited area to work in. The contractor moved the leg post out slightly, which kicked the whole thing out. They were unaware of the distance. He then read through the criteria.

GOOD FAITH MISTAKE: During construction of the footings for the front porch it was found that the corner fell on top of a pipe to the septic tank. The only place to move the footing was toward the street by a foot +/- to clear the pipe and set on top of the tank. I could not move the tank or the pipe due to the limited space for the septic system.
NOT DISCOVERED UNTIL TOO LATE: The mistake was discovered July 5th while preparing a certified survey plan for application of a certificate of occupancy.

NO NUISANCE: There is no public nuisance whereas the front deck is slightly more than a foot closer to the “right of way” still allowing for off street parking & allowing the new septic system to remain.

HIGH CORRECTION COST: The cost of removing the deck and reconstructing it would also require moving the septic tank & waste lines. The public cannot see the difference of 1.2’ from the street.

Has this violation existed for over ten years without any attempts by the town to take enforcement action? No.

Chairman Campbell said, it seems like a long time since the discovery of the mistake, to coming here. Was there a timing issue? Mr. Meisner said, this first came up when doing that, but we were preparing for a certificate of occupancy for the first level of the house. The owners felt that the house was completed at that time and they were ready to come in. They came in and applied for a certificate of occupancy, and at that time they were completing the basement also, but that was still under construction and from their feeling, the first level was occupiable and they wanted to move in. The basement was still under construction and they felt that they could do it when they want. When they filed for a certificate of occupancy, the Building Inspector said that the basement level would also have to be completed to get a complete certificate of occupancy. They spent a couple months doing that and this is the remedy. At that time the front porch was constructed and completed.

Chairman Campbell asked, so the measurement was done in July, but they are not applying for the final certificate of occupancy until now? Mr. Meisner said that’s correct. They started to apply for the certificate of occupancy in July because they felt that the building was occupiable. The Building Inspector told them then that they had to complete the remainder of the basement floor of the house. So we’re doing that at that time.

Mr. Hatch asked, is the post sitting on top of the tank now? Mr. Meisner said, it is on top of the septic tank, yes. Mr. Hatch explained his interpretation of what happened. Mr. Meisner said, if the tank was not there, the post could go there. It is hitting the pipe that goes from the house.

Mr. Hatch said, in his mind, an equitable waiver is for a mistake. He is not sure this qualifies as a mistake. He asked Mr. Moldoff, what should have happened at this point? Should they have come in to the Building Department? Mr. Moldoff said, he doesn’t know if it was staked out in advance. It was off by 1 ½ feet, and you can’t see it in the field. He explained what could have been done. He thinks there was a misunderstanding, and they thought it was OK, because it had been suggested that they move the deck location. He thinks it was an honest mistake.
Mr. Hatch asked, if they came in and saw the Building Inspector and told them what happened, would the Building Department have the authority at that point to say, put it here? Or would they have to come back here anyway? Mr. Moldoff said, they would have to come back here. The town can’t authorize anything other than what the ZBA granted. Mr. Meisner said, at the time that the contractor was laying out the deck, there happened to be an inspection going on. The contractor may have asked that inspector what to do about this. The answer was, yes it is acceptable to go on the tank, which it is. That would be a remedy for that, without any regard for approved variances and plans. He explained that, it is acceptable, but it is does not meet the requirements of the variance. All of the questions weren’t asked. They just asked, can you do it.

Mr. Hatch asked, if we deny, you would be here next month for a variance? Mr. Meisner said, probably.

Mrs. Wright said, the original variance was 26.4. It is now 24.9, which is 1.5 feet. In Article 4 you say 1.2 feet. She wants to make sure the record is correct. Mr. Meisner said, he saw that. It is 1.5. There are many dimensions going to that and it was originally a different location. It is 1.5 feet. He said that in his presentation. Mrs. Wright said she just wants the record to be correct.

Chairman Campbell asked if there were any abutters to speak either in favor or opposition.

Laurie Ball was overseeing everything acting as a general contractor. She had been trying to make sure that everything was done the right way. When she went to double check, the footers were in and he was starting to build the deck. She said to him, make sure you are within it because of the variance. After the footings and framing were in, he showed what he did with the footer. She said, make sure before going any further, that this was approved by the town. She was thinking variance, and he was thinking building code. He said the town came out and said it was fine. If she was told to get another variance, she would have. She thought whoever went out there knew about the variance. We did have the town do a partial inspection in July. That was when she was told to have the basement done. So now we have to finish the basement, and that’s why there is the lag time. So then this came up about being out of compliance. She would have taken care of it if she knew. We did our best.

Mr. Smith said, looking at the plans we saw, as approved, he measured what you have there and the extra two feet on this deck. Did the contractor have any plans showing that it should be a 4 foot deck instead of a 6 foot deck? Ms. Ball said, the only plans he had is what she submitted for the variance, so we knew it was supposed to be 4 feet. Then he said we can’t do that and we called the town to correct it. That’s where the miscommunication was. If the town said to get another variance we would have. She is not blaming the town, she thinks he was thinking structural and we were thinking in terms of variance, and we didn’t know that we were both talking about two different things.

Mr. Smith asked, is there anything we have in place, like if plans are approved and its close, or we give more, is there anything to say, before you build one thing, we want it surveyed and staked and this is what you have? Mr. Moldoff explained that normally the building permit
process is a two-step process. They have to verify it complies with the setback requirements or
the variance. They verify it prior to occupancy, and that’s how we caught this. The contractor is
responsible for complying with the variance. The inspector is looking at construction, not the
variance. He explained that he thinks this was a miscommunication. Ideally they would stake it
out in advance. That’s up to the contractor. Mr. Smith asked, they never did that? Mr. Meisner
said, the contractor should be held to the plans that they submit. In this case, the existing home
was already there, so there was no staking really that needs to be done. Everything comes off of
the house. This is a unique situation and he explained how this went wrong. Normally the
surveyor would stake out the building, especially when there is a variance involved.

Chairman Campbell then closed petition # 4.

MOTION by Mr. Hatch to grant.

Mr. Hatch thinks they meet the criteria.

SECOND by Mrs. Wright.

Mrs. Wright thinks it was accident. It is 18 inches closer to the street. They did a beautiful job on
the house. It looks so much better than it did.

Mr. Smith said he looked at the picture of the pipe and the house. What if you shifted the last
post and slid it over? He gets upset where, to him it feels like, they were like, oh well. Mr. Hatch
asked, you are saying they could have kept the deck the same and shifted it? Mr. Smith explained
what could have been done.

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VOTE: 5 – 0 MOTION PASSES. PETITION # 4 GRANTED.

Chairman Campbell wished everyone a Happy Thanksgiving.

MOTION TO ADJOURN; by Mr. Hatch. Second by Mrs. Wright.

MEMBERS IN FAVOR: All were in favor.

The meeting adjourned at 7:55 p.m.

Minutes by: Susan Strugnell

Approved: Zoning Board of Adjustment

Date: November 5, 2019