

Town of Newington, NH
ZONING BOARD OF ADJUSTMENT

Meeting Minutes – August 14, 2012

Call to Order: Chair Matt Morton called the August 14, 2012 meeting to order at 6:32 PM.

Present: Matt Morton, Chair; Ted Connors; Ralph Estes; John Frink; Planning Board Rep, Mike Marconi; Town Planner, Tom Morgan; and Jane Kendall, Recorder

Absent: Steve Prefontaine

Public Guests: Jane and Michael Mazeau; Attorney Bernie Pelesh; Andrea Parson; Tom Viccaro; Evelyn Ferland; Robert Scharff; Eric Morris and Jeremiah Richter

Minutes: Ted Connors moved to accept the Zoning Board Minutes of July 11, 2012. Ralph Estes seconded the motion, and all members voted in favor.

1) Public Hearings: Request from Michael & Jane Mazeau for variances, special exception and access from a private driveway on their property at 124 Fox Point Road, Tax Map 11, Lots 13 & 14, as follows:

A) A variance in order to allow a 10-foot front yard setback where Article VI of the Zoning Ordinance requires a 40-foot setback;

B) A variance from Article X Section 7 of the Zoning Ordinance in order to permit the erection of a building less than 100 feet from wetlands;

C) A Special Exception pursuant to Article X Section 4C of the Zoning Ordinance in order to permit the construction of an access way over wetlands; and

D) Access to Fox Point Road via a private driveway pursuant to RSA 674:41 II.

Michael Mazeau updated the Board of DES approval to cross the wetlands on his back lot from Beane Lane, State subdivision approval, and storm water runoff plan approval. Mr. Mazeau said test pits on the lots showed they meet or exceed all State regulations except for the wetlands setbacks, which he was requesting variance.

Mr. Mazeau said he went before the Conservation Commission meeting on the previous Thursday, and they recommended the special exception in order to permit the a driveway crossing over wetlands on Lot 14-6. However, the Commission questioned

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the house and septic plan at the front of Lot 14-7, and recommended moving it to the back by Lot 13, saying they would accept a 75 foot setback instead of 100 foot. Ted Connors asked if the Mazeau's plan proposes moving the house envelope back as recommended, and Mr. Mazeau said he did not get wetlands crossing permits to put the housing envelope at the back of the lot, and therefore the plan was still to put it in front.

Board member, John Frink asked which lots would have City of Portsmouth water, and Mr. Mazeau said Lot 14-7 would be serviced by municipal water, and the home lot would stay with well water for now. Board Chair, Matt Morton asked if any of the lots would have well water, and Mazeau said the Planning Board wanted all the lots to have City water access. Chair Morton asked about fire hydrants, and Town Planner, Tom Morgan said the Fire Chief said in March that he wanted to see how the plan played out.

When Chair Morton asked if any of the abutters had any comments or objections, abutters Andrea Parsons and Tom Viccaro of 156 Fox Point Road said they came to the meeting because they didn't know enough about the building plan to raise any objections as yet. Tom Viccaro asked if the construction would shift water runoff toward his home, and Mike Mazeau said there would be no disturbance of the wetlands or intermittent streams. For the record, Chair Morton asked Viccaro if he already had a dry basement or septic pump, and Viccaro said his basement was dry without a pump.

Mazeau Attorney Bernie Pelesh went through his responses to the ZBA criteria for granting variances as listed on the application he submitted to the Board, stating that he could see no reason for not granting the Mazeau's requests.

Attorney Pelesh discussed the large 60'x130' house foot print 25 feet from the wetlands and said it could end up half that size with 50 feet from the wetlands, showing another drawing with a 70'x48' house, a 30'x37' garage and increased setbacks. Tom Morgan said there is a procedural problem with presenting other plans for approval at the last minute during meetings. Pelesh said there were no changes being made to the plan, he was just illustrating that the building envelope shown on the plan was the entire work area, including the garage, and driveway. Chair Morton said he needed to know which dimensions they were presenting for approval, and wouldn't want a land buyer to come back later with a request for expansion. Mike Mazeau said he would like to go with the larger footprint to accommodate building construction disturbance area, and the possibility of decking, but would be willing to move back from the setback if needed for approval.

Chair Morton closed the Public Hearing, and asked Planning Board representative, Vice Chair, Mike Marconi what the Planning Board's position was on the plan. Marconi said the Planning Board concedes that a shared driveway is the best option, widened to accommodate two vehicles and utility lines, and moved in their last meeting to put the Conservation Commission's recommendations on file. Marconi said he thought widening the drive would solve the Fire Chief's concern with emergency vehicle access.

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Ted Connors moved to grant variance A) in order to allow a 10-foot front on Lot 14-7 of Michael and Jane Mazeau's subdivision plan of June 28, 2012 for their property on 124 Fox Point Road. Mike Marconi seconded the motion, and all were in favor except John Frink.

Ralph Estes moved to grant variance B) in order to permit the erection of a building less than 100 feet from wetlands on Lot 14-7 of Michael and Jane Mazeau's subdivision plan of June 28, 2012 for their property on 124 Fox Point Road. However, after further discussion regarding concerns that the building envelope could allow a house to be built that would be larger than all the other houses in the neighborhood the motion was withdrawn. John Frink asked if the Board would be voting on the plan as advertised, and Tom Morgan said yes, but the plan presented was vague. Matt Morton asked if they could change the setback, and Morgan said they could. Discussion ensued whether they would use the dimensions given by Attorney Pelesh or the dimensions on the plan. Mike Mazeau said he was concerned that making a smaller envelope would not allow enough room for construction or the addition of a deck. Ted Connors asked Mr. Mazeau if he had reviewed the suggested changes with his attorney, and Mazeau said he had not done so before the meeting. Mr. Mazeau said he would like to keep the 50 feet on the back and 65 feet on the side, but could put a notch in the garage as shown on Pelesh's drawing to allow a shift in the yet to be designed septic.

Ralph Estes moved to grant variance B), a setback from 100 feet to 50 feet at the rear of the lot, and 65 feet on the right and left sides of Lot 14-7 on Michael and Jane Mazeau's subdivision plan of June 28, 2012 for their property on 124 Fox Point. Mike Marconi seconded, and all were in favor except John Frink.

Ted Connors moved to grant Special Exception request C) in order to permit the construction of an access way over wetlands, which has DES Approval # SA2012009947 for Lot 14-6 on Michael and Jane Mazeau's subdivision plan of June 28, 2012 for their property on 124 Fox Point. Ralph Estes seconded, and all were in favor.

Attorney Bernie Pelesh then explained the reasons for the final request in response to RSA 674:41 II, which says driveways must have access from their own property on Town frontage unless there are extenuating circumstances as is the case with shared driveways. John Frink expressed concern for liability to the Town, and Attorney Pelesh said that statue came about as a result of land locked lots with no access, and easement agreements would be established for the shared drive.

Ralph Estes moved to grant D) relief to Lot 14-9, 14-8, and 11L13 on Michael and Jane Mazeau's subdivision plan of June 28, 2012 for their property on 124 Fox Point to access Fox Point Road via a private driveway pursuant to RSA 674:41 II, subject to approval by Town attorney on deed language. Mike Marconi seconded, and all were in favor.

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2) Request by Evelyn Ferland for a variance from Article X Section 7 of the Zoning Ordinance in order to permit the erection of a building less than 100 feet from wetlands at 33 Captain's Landing, Tax Map 16, Lot 7A.

Evelyn Ferland came before the Board with a drawing showing a building envelope 40 feet from the wetlands as recommended by the Conservation Commission. John Frink noted that the Town Planning Board approved the lot in 1996. Town Planner, Tom Morgan said the lots on Captain's Landing were approved in the late 1980's before the wetlands setbacks were established, but the Town building inspector recently noted the 100-foot setback so the request is for a variance on a lot that was approved 20 years ago.

Abutter, Robert Scharff of 32 Captain's Landing expressed concern over the building of a larger house than all the others and the cutting of trees. Tom Morgan said it is also conceivable that a strange looking house could be built in the corner of the lot without the variance. Chair Matt Morton said the ZBA has no input or control over what kinds of houses are built or the views from neighbors, but it is clear that a variance is warranted.

Mike Marconi moved to grant Evelyn Ferland a variance of no less than 40 feet from wetlands in order to permit the erection of a building at of 33 Captain's Landing, Tax Map 16, Lot 7A. Ted Connors seconded, and all were in favor.

3) A request by Eric Morris and Richard Gorsey for a variance from Article V Section 2 of the Zoning Ordinance in order to permit the establishment of a gymnasium at 32 Nimble Hill Road, Tax Map 12, Lot 17.

Attorney Bernie Pelesh came before the Board on behalf of Eric Morris and Richard Gorsey who are proposing a fitness school. Town Planner, Tom Morgan asked for clarification as a gym is not a listed business use without variance in Town, but a school would. Co-owner, Eric Morris said they would be educating clients, but it is a fitness facility. Morris said they were hoping to build a gym community in Town.

Eric Morris said there would be morning, noon and afternoon classes for adults ages 18 and beyond, scheduled with ten students per class maximum, resulting in a maximum of ten cars in the parking lot at a time.

Chair Matt Morton asked what the hours of operation would be, and Mr. Morris said Monday through Friday, 5 a.m. – 10 a.m.; Noon; and 4 p.m. – 7 p.m. Chair Morton asked if there would be showers in the facility, and Morris said there would be, and they intended on eventually building a second bathroom. Morton asked if there would be gym equipment in the facility, and Morris said they mostly focus on body resistance, there would not be any weight machines, but there would be weight plates.

Ralph Estes asked Morris what his background was, and Morris said he had a BA in Exercise Science from UNH and various certificates, including First Responder.

Mike Marconi asked about membership, and Morris said it would be month to month, but they were considering a discount for First Responders. Matt Morton asked if there would be loud music, and Morris said generally not.

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Mike Marconi asked about lighting, and Morris said it looked as if there was adequate lighting from the building already. John Frink suggested modifying the landscaping that obstructs the line of sight when coming out of the driveway.

Tom Morgan said they would need to go to the next Planning Board meeting scheduled for Monday, August 20, 2012 for a site plan review of new use as gyms are not a listed use in Town.

Ralph Estes moved to accept the variance from Article V Section 2 of the Zoning Ordinance in order to permit the establishment of a gymnasium at 32 Nimble Hill Road, Tax Map 12, Lot 17. Ted Connors seconded, and all were in favor.

Adjournment: Mike Marconi motioned to adjourn. Ted Connors seconded, and all were in favor. The meeting adjourned at 8:10 p.m.

**Respectfully
Submitted by:** Jane K. Kendall, Recording Secretary