

Town of Newington, NH
ZONING BOARD OF ADJUSTMENT
Meeting Minutes, Monday, January 31, 2022

Call to Order: Chair Matt Morton called the January 31, 2022, meeting at 6:30 p.m.

Present: Vice-Chair Ralph Estes; Bob Byrnes; John Frink; Edna Mosher; Alternate Board members, Will Gilbert; Kathy Latchaw; Town Planner John Krebs and Recording Secretary Jane Kendall

Absent: Alternate Board member, and Derick Willson

Public Guests: William Blatt, Jr.; Jeff and Nell Ann Hiatt; Brendon McNamara, residential designer with Ross Engineering

1) Continuance of request by **William H. Blatt, Jr.** for a variance from Article X to allow the construction of a new home closer than 100 feet from the shore of Little Bay on property located at **76 Little Bay Road, Tax Map 9, Lot 6.**

Brendon McNamara, residential designer with Ross Engineering returned to the Board to present a request to allow a porch to be ten feet in the buffer on a new home that would replace an existing, non-compliant house that that was already further in the buffer, bringing the site into greater compliance.

Mr. McNamara said they had updated their plans from the survey used from the previous owner, showing that a shed that had been moved, the abutters' septic system, and leach field, and changes to the driveway turn around as requested at the previous meeting.

Mr. McNamara explained that they would use a stone infiltration trench on the side of the driveway to contain runoff, and a stone infiltration trench around the perimeter of the house to address concerns with a berm and valley that was a concern.

Board member, Bob Byrnes asked what the width and depth of the drainage would be, and where it drained. Mr. McNamara replied that it would be 24"x24" and drain into soil.

Alternate Board member, Kathy Latchaw asked for clarification how the new construction met the Shoreline Protection setback requirement. Mr. McNamara replied that the lot and existing conditions were non-conforming, and the redesign would reduce the non-conformity with 800 feet less impact to the wetlands. Town Planner, John Krebs added that the new design would reduce the house setback an additional 20 feet from the shoreline, bringing it from 1,000 square feet to 300 square feet in the shoreline.

Mr. Byrnes wondered if the two steps off the proposed porch would lend themselves to additional improvements, as well as tying into the staircase down by the

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water. Mr. McNamara responded that the grade flattened when coming up to the porch steps so there was no need.

Mr. McNamara said Woodburn Landscaping would be using plants with root balls to further stabilize the area.

Board member, Edna Mosher said she still didn't see what the hardship was because he would have a blank slate after demolition. Ms. Mosher asked why they wouldn't meet the 100-foot setback, and not build a porch on the back. Mr. McNamara replied that they would only have a blank slate if the request was approved, the encroachment was relatively moderate, and they were actually reducing the non-conformance of the exiting lot with substantial improvements through a large expenditure.

Ms. Mosher asked why they would risk building toward the shoreline setback considering high tides. Mr. McNamara replied that the grade of the cliff was over 40 feet high.

The applicant, Bill Blatt stated that the proposal was to build the house within the 100-foot setback, and only the porch was within ten feet of the setback. Mr. Blatt said it was a small property with a tight turn into the garage, and he was not going to develop on the existing footprint because it wouldn't be good or safe for him.

Ms. Mosher replied that he might have to make a three point turn as many had to on similar small properties in Portsmouth, and the lot next door to her house that wasn't done correctly.

Chair Morton agreed with Ms. Mosher that it was a hardship that the applicant brought on himself, and he thought the applicant could resolve the issue with a redesign such as making the house nine feet narrower, or putting the porch to the side. Chair Morton said the applicant was only asking for a small variance, but he was concerned with others making the same kinds of requests in the future if this variance was granted.

Ms. Mosher asked if they designed the house knowing that the porch would be in the setback. Mr. McNamara replied that they designed the house with the intent of making a substantial improvement from the existing non-conformity.

Mr. McNamara stated that the five criteria for granting a variance addressed the nature of the law that supported their request. Ms. Mosher replied that the applicant was presenting his opinion, but the decision was up to the Board.

Chair Morton closed the public hearing to open discussion among Board members.

Board member, John Frink said he thought it would be a shame to hold a fire under the applicant's feet on a technicality of 10 feet considering that the improvements were more environmentally responsible in relation to the non-conformity of the existing structure conditions.

Chair Morton responded that the setback used to be 200 feet, and the Board had turned similar projects down, and he was concerned with setting a precedent. Chair Morton added some people didn't even have a garage, and it was still possible to push the garage back, but the applicant didn't want to.

Mr. Frink said the applicant was proposing a dramatic improvement in comparison to the existing lot use, and they should keep in mind that someone could

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rebuild on the existing footprint and never go before the Board. Chair Morton said he was not sure that the building inspector would approve an occupancy permit.

Mr. Byrnes added that it was a marked improvement, but he thought they could improve it completely.

Mr. Frink said he was hard pressed to imagine someone else with a similar condition coming before the Board with a similar request considering that no two properties were the same, and the Board was supposed to take that under consideration.

Vice-Chair Estes added that another applicant had asked for many more variances, and it was granted. Mr. Frink said he was not sorry they were granted either. Vice-Chair Estes said he was sorry.

Mr. Krebs agreed that it was fair to look back to the multiple setback variances that were granted on a commercial application a month earlier, where that site was completely blank, and they could have complied as well. Mr. Krebs said it was not fair to say this was a blank slate, however, because many people purchase non-conforming lots with grandfathered conditions that are allowed.

Abutter, Jeff Hiatt said he and his wife saw the proposal as an improvement, and there only concern was that they would be able to work with the applicant as to where the contractors parked in the limited area.

Edna Mosher moved to grant the request by William H. Blatt, Jr. for a variance from Article X to allow the construction of a new home closer than 100' from the shore of Little Bay on property located at 76 Little Bay Road, Tax Map 9, Lot 6. Matt Morton seconded the approval. The motion was denied 2-3 with Bob Byrnes, Edna Mosher, and Matt Morton voting in against the approval, and John Frink and Ralph Estes voting in favor of the variance request.

2) Other Business:

Mr. Krebs asked if Chair Morton and Vice-Chair Estes if they would reconsider their resignations, and they said they would not.

Ms. Mosher said she would like to resign as well, and passed Mr. Krebs a letter for the Board of Selectmen.

Mr. Krebs announced that Mr. Byrnes was running for the Planning Board, and the Board of Selectmen had set a precedent that serving on the ZBA at the same time was no longer allowed, although he thought it could allow communications between boards. Mr. Byrnes said he thought there was a limit to serving on two boards, and assumed he would stay.

Chair Morton said he had discussed the matter with Town legal counsel, Walter Mitchell who recommended that the Town Planner communicate with the Zoning Board of Adjustment (ZBA) that needed to be impartial as a judicial board considering relief from Ordinances, rather than having a Planning Board member influence their decisions.

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Mr. Krebs responded that there were rare cases where a planning board might adversely influence a zoning board, but he thought the benefits outweighed most cases.

Mr. Frink said he had been a representative with give and take for the Planning Board without power issues for years, but it was true that overbearing personalities could challenge the ZBA's purpose in some way if that was their intent.

Mr. Byrnes suggested that joint meetings were warranted on occasion to get through a large, complicated project.

Minutes: *Edna Mosher made a motion to approve the Minutes of January 3, 2022, meeting. Kathy Latchaw seconded, and all were in favor.*

Adjournment: *Edna Mosher moved to adjourn the meeting. Bob Byrnes seconded, and the meeting adjourned at 7:14 p.m.*

Next Meeting: To be determined.

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

These Minutes were approved and adopted by the Zoning Board of Adjustment at their April 25, 2022, meeting.