

Call to Order: Chair Morton called the meeting to order at approximately 7:00 P.M. Board members in attendance: Ralph Estes, John Frink, Richard Ford, Edna Mosher,
Chris Cross: Planning Board Rep., Town Planner: Tom Morgan and the Chair: Matt Morton.

Minutes: John Frink moved to accept minutes of 3/3/08; Edna Mosher seconded. Minutes were approved.

Correspondence: None

Public Hearing: Request by Michael Mazeau for a variance from Article X, Section 6 & 7 of the Zoning Ordinance (wetlands buffers and setbacks) in order to allow a new septic system and the expansion of the residential building at 14 Coleman Drive, Tax Map 12, Lot 8.

Chair Morton advised the Board and others in attendance, that this was a request for a second hearing by Michael Mazeau or rather a request by John McGee, Attorney representing Michael and Janis Marconi. The Attorney would be presenting and addressing the concerns of the Marconi's. The Chair recognized that there was a tape recorder and video and asked if the meeting was going to be taped. Kathleen Young replied that it would be taped at the request of Attorney McGee.

Chair Morton asked Attorney McGee if he would like to begin. His response was that he had requested the rehearing and it was granted, so he felt it was up to Mr. Mazeau to present his request for a variance as though it were a new request. The Attorney stated he did not know why the applicant was requesting the variance and he needed to hear what his reasons were so that he could rebut. The Chair asked if the Attorney had read the minutes of the March 3, 2008 meeting outlining the request and the granting of that request? He stated that he had, but he felt that it was a rehearing and it was the applicant's burden to prove that he needs the variance.

The Chair asked if Mr. Mazeau was willing to go first in his presentation for a request for a variance. Mazeau stated he was and that he did have a couple of new things to say, however, he would start from the beginning as there were a couple of new Board

members.

His proposal is to construct an addition of 1600 sq. ft. of living space to the current house at 14 Coleman Drive. The tentative plan is that the addition will be the main living space with a potential three bedroom apartment and the existing house would become a one-bedroom apartment. He needs relief (variance) from the 100 ft. setback, which the Town enacted in 2004. This setback encompasses almost all of his property and is very restrictive to smaller parcels of land.

1.

He gave examples of variances approved in other Towns, specifically North Hampton. They changed their setback to 100 ft. in 2003. Based on the high number of variance approvals after that date, he felt it showed him North Hampton felt in most cases relief should be granted.

Mazeau said he believes the main concern of the wetlands buffer is to maintain the water quality. Because of the approval of his variance request on January, 28, 2008, he has torn down the garage which was 17 ft. from the wetlands. The new structure will be 27 ft. away. The new garage will be on the old dirt driveway parking area. Instead of cars being parked on gravel near the drainage ditch, where oil and gas can drip, cars will be parked on a cement floor inside the garage that will be located under the new addition.

The design of the new septic system will be 75 ft. from the wetlands. The old system is 20 ft. from the wetlands. Since the last hearing he has had the old system inspected by a licensed septic installer. He found deficiencies in the 50 year old system. Mr. Mazeau outlined the deficiencies found by the installer. The Klanchesser's, who live next door, had their system fail last year. They replaced their old system with the same system that Mazeau would like to replace his old system. He said he was trying to be more proactive before his old system failed and more raw sewerage leaked into

the leach field. Without the variance, he will not be able to do this.

He then tried to address the concerns of the Marconi's. At the January 28, 2008 Zoning Board meeting, the Marconi's submitted a signed statement that Coleman Drive was a single-family neighborhood and they did not want to change to a single/multi-family neighborhood. Mr. Mazeau stated there were 11 homes on Coleman Drive and that several of them had apartments in them and that apartments were legal in Newington. He pointed out that Mr. Marconi's home had an apartment in it when they bought their home and in fact, it could be turned back into a home with an apartment.

Mazeau said that Marconi's letter of February 12, 2008 stated that the Mazeau's home was a two-bedroom apartment and that it had been rented most of the time. In fact it had been for sale for some time. Marconi felt there was no hardship in this case. Mr. Mazeau replied that he had several potential buyers during the time the home was on the market, however, every potential buyer was turned off by the small size of the home. Many liked the location, but felt the home was too small and they didn't want to deal with the variance process in order to expand the house. Mazeau said he had learned in order to get the full value of his property he would need to add on.

Mazeau stated that the Board had a long discussion regarding the Boccia Court decision and the financial hardship and he felt it applied in his case.

2.

Item #4 of Mr. Marconi's rehearing request was concern that Mr. Mazeau was going to incorporate the old garage into a living space next to the active water. Mazeau stated that in the first hearing he thought he was quite clear that he was going to tear down the old garage and in fact it has been torn down.

Item #5 of Marconi's rehearing request was concern that there had been any communication with DES. Mazeau said that was not true. DES reviewed and approved the septic plan. Marconi also indicated that was concerned that the new system would flow into the water way. Mazeau stated that functioning septic systems do not

flow into water ways.

Mr. Marconi also included information on the Shoreland Protection Act. Mazeau replied he did not believe a drainage ditch made the property a waterway and therefore, he did not think the Shore Land Protection Act had any jurisdiction over his property.

Mazeau said on February 22, 2008, Mr. Marconi's Attorney, John McGee had filed a motion for a rehearing. He stated that the motion appeared to have four major points:

First concern - There was no formal Building Permit denial before the granting of this variance. Mazeau said he did get a verbal denial but not written. He has since gotten a written denial which has been presented to the Town Planner and a copy is available. He felt the problem was resolved with the rehearing. He did say he thought the Board did the right thing by granting a rehearing rather than subjecting the Town to a possible lawsuit.

Second concern - Attorney McGee stated that no house plans were submitted to the Board or any dimensions for the new addition. Mazeau stated his understanding was that the Board was not concerned with the kind of house(building) being built, it only needed to know how many square footage was needed. Mazeau had an information packet and he reviewed the requirements needed for request of a variance to build/ or add to an existing structure. Mazeau said his plan was drawn by a licensed surveyor. The plan exceeded the application requirements.

Third concern - Marconi is concerned about encroachment of the wetlands and water run off. Mazeau stated that his property was the lowest in the neighborhood. He receives water run off from the surrounding houses and the street, due to the lack of functioning swales and street culverts which the Town is addressing. In terms of the old building which is 17 ft. from the wetlands, the new building will be 27 ft. This is an improvement, not an encroachment. Mazeau had an extensive consultation with Jeff Sheppard, from the N.H. Soil Conservation about water run off issues.

3.

Fourth concern - The size of the project. Mazeau said he had the smallest house on the street.(840 sq. ft.) He stated the sizes of houses on Coleman Drive range up to as much as 2800 sq. ft. There are three other homes that are between 2000 and 2200 sq. ft. His project will be 2500 sq. ft., which he feels is completely reasonable.

He reviewed the five criteria as it pertained to his request for a variance and gave his justifications for each.

1. No decrease in value of surrounding neighborhood. (Nicely landscaped home replaces the old camp style house.)

2. Granting variance must not be contrary to the public interest. (Property will look better and will protect the water quality.)

3. Denial of the variance would result in unnecessary hardship to the owner seeking it.

(House is not a desirable home, too small. Needs to enlarge the house within a reasonable amount in order to enjoy this property.

. The variance is an area variance. The Boccia Decision comes into play for area variances. Applicant needs to demonstrate unnecessary hardship by establishing two criteria:

a. Special conditions of the property make an area variance necessary in order

to allow the applicant to construct the development as designed. (Special conditions are that the 100 ft. buffer encompasses almost all of the property.)

b. The applicant cannot achieve the same benefit by some other reasonably alternative method that would not impose an undue financial burden.

(there

are no reasonable feasible methods to enlarge his house to 2500 sq. ft. He is unable relocate project anywhere on the property because of location restrictions)

4. By granting the variance substantial justice would be done. (Not granting him a variance would be a substantial loss to him and no offsetting gain to the

public by withholding the variance. He feels that if he meets all the other criteria he should be granted the variance.)

5. Use must not be contrary to the spirit and intent of the ordinance. (Is consistent with the Zoning Ordinance, will still be residential, and wetlands buffer will be increased.)

4.

Chair Morton thanked Mr. Mazeau for his presentation. He felt Mr. Mazeau had covered his information very well and had explained a great deal.

Because there were five Board members in attendance, the Chair said he would not be voting. He asked if there were any questions from the Board for Mr. Mazeau. Board Members felt he covered the request very well and that at that time they had no questions.

Attorney Jack McGee, representing Michael and Janice Marconi, said based on the comments from Board he had the feeling that this was not a full rehearing. He felt the Board was checking to see if they had made any mistakes the first time. He stated " When you have a rehearing you start from the beginning as though it is a new hearing." Chair Morton advised the Attorney that the Board was listening to the information presented tonight as though it were a new request. Chair Morton told Attorney McGee that the Board took their responsibility very seriously and listened to both sides before making their decision.

Chair Morton told Attorney McGee that the Board was hearing what they heard the first time and there were no errors as far as they were concerned. The Chair stated the Board was giving Attorney McGee and the abutter, Mr. Marconi, the opportunity to speak if they thought there was something new they felt should be brought up or if there was something of a special nature they wanted to bring before the Board.

Attorney McGee stated that he was sure the Board knew they sat as a quasi judicial body, and not as a body that listens to the plans of a developer, (which is what Mr. Mazeau is tonight). to decide whether the plans make sense and whether the

plans
are good plans. This Board sits to determine in a very narrow fashion whether Mr. Mazeau has met the five criteria as he has pointed out.

Attorney McGee went on to say that the Town of Newington has a Zoning Ordinance.
Everyone has to live within that Zoning Ordinance and has to make a common sense decision to live within that criteria. He stated that they did not feel Mr. Mazeau was doing that.

Stated he felt there were more issues than he thought and one was that you had to have a formal denial of a building permit before you can come before the Zoning Board. Attorney Loughlin advised the Board that they did not have to do that. He stated that half the towns do and the other half do not. However, Attorney McGee advised, the Rockingham Superior Court ruled that you had to have a decision of denial of a permit. He felt Mr. Mazeau had time to get this denial between the two

5.

hearings and apparently he had not done that. Mr. Morgan advised him that it had been done and that he had an application dated 3/4/08 stating it was denied. A copy of the denial was available for the Attorney if he wanted it. The Attorney asked if it was a full request with plans and everything. Seeing that it was a one page permit denial, the Attorney reserved his right to comment on this information at a later time.

Attorney McGee felt they were there for a very different purpose since Mazeau had presented a denial for his request to build. The Attorney went on to say that the Board had nothing to vote on the first time, (1/28/08) because there was no building permit denial. Therefore the Board was here tonight to hear this request for the first time.

He said they were here to discuss the wetlands issue and didn't feel Boccia criteria applied. Boccia would apply if you were dealing with undeveloped property. The

Mazeau's property already existed, it had a single family house on it. It had a house within a certain footprint.

Is there a hardship by denying this request? Attorney McGee does not feel there

is a hardship. This request encroaches the decision made by the Zoning Ordinance of 2004. Mr. Mazeau knew it was a single-family house and knew of its closeness to the wetlands when he purchased it.

He went on to state that Mr. Mazeau was a developer and he knew that the Town of Newington had a Zoning Ordinance and therefore **does not feel substantial justice would be done by granting the request, that this was contrary to Public interest.** He stated that Mr. Mazeau was coming before the Board with a request to construct an addition, within 27 ft. of a wetland on a non-conforming lot. The house will be almost triple its size, and he feels this addition **will decrease the value of surrounding properties.**

The Attorney stated there was a potential flowage problem, that will be increased with the approval of Mr. Mazeau's request. This issue does affect his client. He feels the Board shouldn't even consider this request until there has been a study of how this will affect water run off. There is a drainage issue from the street that the Town is addressing.

Attorney McGee questioned Mazeau's discussion with Mr. Sheppard. He stated Mr. Sheppard hadn't done any studies on the land or he would have seen them. He questioned on what basis Mr. Sheppard made his decision regarding the wetlands discussion. Attorney McGee said he felt Mr. Sheppard was a fine engineer, however, he was not here tonight to speak on this matter

6.

Attorney McGee questioned whether **substantial justice would be done** to grant this variance to Mr. Mazeau. He did not think so. Mr. Mazeau is a developer, he bought the property knowing the conditions, he has not lived at the property. His plan is to enlarge the property for a profit. It is not as if he had lived on the property for several years and now wanted to enlarge his home, he has had the property for a very short time and he knew when he bought the property what he was getting. The Attorney felt based on these conditions, **substantial justice would not be done.**

The Attorney ended his remarks by saying that he felt Mr. Mazeau did not meet the

five criteria, that he didn't meet the legal standards and therefore the Board should deny the request because it did not meet the five criteria.

Chair asked if there were any questions from the Board to Attorney McGee. Ford said he appreciated the Attorney's opinions, but the Board has its own. He asked why the Marconi's oppose the granting of this variance? The Attorney responded that the Marconi's have been involved in real estate and zoning variance requirements and their concern was they didn't feel it would be beneficial to have a duplex in the neighborhood. McGee reiterated previous comments to include that he felt granting of this variance would offend his understanding of the Zoning Ordinance. Stated that Mr. Mazeau is a developer and therefore should not be granted a variance on this basis. Ford responded that he didn't feel Mr. Mazeau's occupation had anything to do with the issue. The Attorney disagreed.

Chairman Morton advised the Attorney that the Board takes every issue very seriously. They have to take each case individually and make their decision based on the information presented with each request.

The Chair asked Mr. Mazeau if he wanted to respond to any of the Attorney's comments. Mazeau made a comment about his occupation as a developer. His response to the wetland issue; he stated the wetland was not prime wetlands. As for the runoff issue, the soil is heavily clay-based and he really didn't feel the 1600 sq. ft. addition would have any impact. The issue of run off due to a lack of a culvert on the street is being addressed by the Town.

As far as two families, they are allowed in Newington. He said he had spoken to Mr. Marconi and Marconi said he would support Mazeau's request for a variance. When He saw Marconi on 1/28/08, he fully expected Marconi to speak in support of his request. As soon as he heard it included a request for a 1600 ft. addition, he was against it.

7.

Marconi is against Mazeau putting in a 2-3 bedroom septic system, but where was he when the Klanchesser's put in a 5-bedroom system?

The applicant stated it was going to be a nice house. In reference to the discussion regarding encroachment; his proposal involves taking down the old garage, which was 17 ft. from the wetlands, and building the addition that would be 27 ft. from the wetlands. Building the addition 10 ft. further from the wetlands did not seem an

encroachment to him.

The Chair recognized that there were many people in the audience and if they would like to speak to please state their name. Any one in favor or against? Mr. Marconi was in the audience but he, too, chose not to comment.

The Chair asked if there were any questions from the Board? Mosher said she had a comment. The Klanchesser did put in a 5 bedroom septic system last year which is right next door to Mazeau's property line. In fact they are 15 ft. from Mazeau's property line. She said she thought it was a good idea to put in a new septic system. As far as the wetlands, she had been in Newington since 1964 and the wetlands are getting wetter every year and they are increasing.

Cross said he had some questions to the Board. He has reviewed the case and he was looking to see if there was a requirement for a variance for the ordinance the Board has before it. This is clearly in a residential area with single and two- family homes which are permitted in that area and he does not see any difference between the two.

He then said he would go back to the issue of the conformity or not conformity. There are very specific conditions in our ordinance that apply . There are three questions he would ask: 1. Is this a conforming lot? It is not. 2. Is this a conforming structure? This is a conforming structure to all the setback boundaries. 3. Is this a conforming use? Yes it is a conforming use. So he felt the question becomes if you have a conforming structure and a conforming use in a residential zone on a non-conforming lot can it be expanded? He believes it can be expanded based on ordinances he addressed. But he wasn't sure.

Chair advised Cross that he was reading Section 4, but he was talking about land use, not expansion buildings. There was more discussion regarding whether a variance could be granted. Cross felt the Board should consider the Conservation Commission. Does Ordinance require a special exception?

The Chair asked the Town Planner, Morgan if he had any comment on the discussion.

Morgan said Cross is suggesting there may be more to the ordinance that requires a special exception. However, he stated that tonight the only thing the Board could act on was what has been advertised. He said if the Board wanted to pursue the matter, they could confer with Town Council tomorrow, however, he thought he knew what his answer would be. At any rate he advised the Board to stay away from special exception.

Mosher said she was very disappointed that the abutters who were here did not speak.

The Chair said he had given them an opportunity to speak.

Estes made a motion to accept Mr. Mazeau's request, Mosher seconded. Frink had a question on whether Boccia applied in this case. There was discussion regarding land use or dimensional use. Morgan pointed out that on page 15 of the Handbook they specify the criteria that you apply for dimensional hearings. Mosher pointed out page 101 which she felt gave a clearer outline of the Boccia requirements. One refers to use and one is area and it outlines the specific criteria more extensively. It goes A, which is the Simplex analysis and B which is the Boccia criteria. The Board reviewed and discussed the criteria on page 101.

Morgan advised the Board there are two criteria that apply to Boccia. He said unless Attorney McGee can prove otherwise it is his recommendation that the Board needs to apply the Boccia criteria. However he reminded the Board they must remember they have to address the other four criteria of Zoning Ordinance as well. The Chair asked if the Board still had to go through all five criteria and Morgan replied that one of the criteria referred to hardship and Boccia applies to that one.

The Board discussed the five criteria to determine whether the applicant met the requirements for a variance.

1. No decrease in value of the surrounding properties. Morton feels it would

increase the value. Ford has been down to the area and he agrees. Estes was down there several times and saw that the old garage was right on the wetlands.

2. Granting the variance must not be contrary to the public interest. Mosher said there are several apartments/duplex houses in that area. It is not new to the area.

9.

3. Denial of the variance would result in unnecessary hardship to the owner seeking it.

for The variance is an area variance. The Boccia decision comes into play area variances.

a. Special conditions of the property make an area variance necessary in order to allow the applicant to construct the development as designed.

Frink said it seems when you have a non-conforming lot and you want to do something with it, you have to seek a variance.

b. The applicant cannot achieve the same benefit by some other reasonably alternative method that would not impose undue financial burden. Frink feels

this is true. He has read the Boccia conditions several times and he feels hardship under Boccia does apply. Mosher said the Court did say, the developer's financial situation does indeed come into play.

4. By granting the variance substantial justice would be done. Estes feels it will increase the value and Morton felt it would increase the value of the properties in the area.

5. Use must not be contrary to the spirit and intent of the ordinance. Frink said

disturbance we know it is a residential area and we know there is a wetland

there ordinance that must be addressed. He feels by granting this variance

will be minimal disturbance to the wetlands. So he feels it meet the spirit and intent of the ordinance.

Chair asked if the Board was ready for a vote. There has been a motion and a second, all those in favor say aye. Motion carried, all members were in favor.

Mosher made a motion to adjourn, Ford 2nd, motion carried.

Meeting adjourned at 7:30 P.M.

Respectfully submitted,

Sandra Sweeney,
Secretary

