

Town of Farmington
Zoning Board of Adjustment Meeting Minutes
Thursday, September 7, 2023
Selectmen's Chambers
356 Main Street-Farmington, NH 03835

Board Members Present:

John Scruton, Chairman
Joe Pitre, Vice Chairman
Bill Fisher
Bob Morgan

Board Members Absent:

John Aylard, Clerk/Secretary

Others Present:

Kyle Pimental, Planning Director
Chris Wyskiel, Wyskiel, Boc, Tillinghast
& Bolduc, P. A.
Irene (Patty) & Mike Hodge

1). Call to Order:

Chairman Scruton called the meeting to order at 7 p.m.

2). Pledge of Allegiance:

All present stood for the Pledge of Allegiance.

3). Review of Minutes:

August 3, 2023- Public Session Minutes- No errors or omissions

Motion: (Pitre, second Morgan) to accept the minutes as written passed 3-0-1 (Scruton abstained).

4). Old Business: None

5). New Business:

Public Hearing for a Variance by Michael E. & Irene P. Rupp Hodge, Tax Map R06, Lot 174. A request has been made for a Variance under Table 2.01(B) Space and Bulk Standards. The applicant is requesting a Variance to allow for an encroachment into the fifteen (15) foot side setback for a proposed storage garage. The property is in the Agricultural Residential District.

Chairman Scruton said he believes this property is also in the Lancelot Shores Overlay (155 Camelot Shore Drive).

Attorney Chris Wyskiel told the board he was here representing Patty and Mike Hodge who are present this evening. He said he submitted a detailed letter with exhibits and supplementary application and asked if everyone had read it because he didn't want to read through the whole thing. He said he had some points he would like to discuss to emphasize what he wrote in his letter and some extra pictures to discuss with them.

Mr. Scruton said it would be safe for him to point out the points he wanted to make in addition

to the written text.

Att. Wyskiel began with the survey plan done by Norway Plains Assocs. depicting the property boundaries to the Hodge's property and the location of their present improvements. He said there is a proposed addition to the side of the house that is currently under construction to which a building permit was issued and it complies with all zoning.

He said if they look at the side yard building setback line it's shown as a dashed line the front corner of the proposed addition looks like it's going into the building but that's a part of the roof that's up in the air and your zoning ordinance allows that. He said they were here today because of the area in front of the addition which is the proposed garage and it's shaded in a dark color purposely because this is an existing conditions plan and that was pavement they always had a driveway right there and they've planned an addition to enclose that area.

He said presently because of the on-going construction some of that pavement has been ripped back maybe 3 or 4 ft. to allow for foundation forms and stuff for the structure to be built over.

He said he had a picture he could submit that shows before any part of the driveway was disturbed the pavement came right up to as it's depicted on the plan and they can add that in the record.

Mr. Scruton said on the Great Northern this is 174.

Att. Wyskiel said yes and if they wanted to look at the tax map to orient the lot is #174 and lot 175 which immediately abuts the subject property is also owned by the Hodge's and it's a vacant lot and that's significant especially because of its change in topography. He said it's lower than 174 and there's quite a drop there. He asked if everyone has been to site or driven by and then said he had some photos that depict what he wanted to talk about if they haven't seen the site.

He said as this was originally planned the intent was to build a structure over the existing pavement but in fact it's going to be shifted over a little bit closer to the center of the house so his variance request was to allow an encroachment into the 15 ft. side yard setback not to exceed 4 ft. because they thought it would go as much as 4 ft. but in fact it's probably going to be more likely 3 maybe 2 ft. because it's going to be shifting closer to the center of house. He then gave some pictures of the site to the board.

Mr. Fisher looked at the photo and said he wasn't kidding about a drop off.

Mr. Scruton said the beach which is just around the corner from this house is straight down.

Att. Wyskiel said this is significant for a few reasons you can see the on-going addition...

Mr. Scruton asked what is going on this other part and if this is their lot beside their house.

Michael Hodges said yes.

Mr. Scruton asked if this has nothing to do with the variance request.

Mr. Hodges said no.

Att. Wyskiel said that lot is currently vacant and perhaps in the future they might build a new house there.

Mr. Hodge came forward and said that is a lot they purchased a couple of years ago and that's a totally separate lot but that 15 ft...

Att. Wyskiel said they could see a rope line in this picture and that is essentially the property line.

Mr. Hodge said it's not straight perpendicular through the property it goes at a slight angle.

Att. Wyskiel said there used to be a structure on that lot but it was torn down and some of the soil disturbance they see is not related to new construction. He said he is showing them the slope on the side yard for 2 reasons-one it also is a reason why the proposed storage garage is shifting a little bit closer to the center of house because the guy doing the excavating they're going to have to put some footings in to support the new building and he wanted to keep as far away from that as he can.

He said another existing condition that's relevant to the unique characteristics of this lot that's pertinent to the hardship requirement is in the front of the house as that's where their septic system is located. He asked why they don't just shift the garage over in front of the house so they can comply with the setback requirement and answered because the guy would dig up chunks of the septic system and you can't do that so they tried to encroach into the setback as little as possible not to exceed 4 ft. because that's how its written in fact it's going to be a little closer that way but it can't be further into the center of the house of the septic being there.

He said the other thing that was significant about this slope condition is it's also a condition of the land that's relevant to the hardship thing and then turned to Mr. Pimental's memo and noted it was a nice checklist to consider some of the points he has to address. He said if he jumps to the hardship criteria on page 2 it talks about there needs to be some special condition attributable to the property itself. He said size is certainly one of them because they are in Camelot (Lancelot) Shore Overlay District and the lots are small. He said the 15 ft. setback is a building standard for all of the Agricultural Residential zone throughout the town where the lots are a lot bigger in other places and down around Baxter Lake they're all tiny little lots. He said the zoning ordinance has a declaration of intent that relief is intended to be given in spots especially the ordinance is specifically for a front setback here we don't need a front setback we're going to comply with it but we think the side yard setback is reasonable.

Att. Wyskiel said one of the reasons for a setback requirement is just a space thing so neighbors are not crowding with each other and if we are in 2 dimensions on a flat surface another 15 ft. and 15 ft. between houses there's a nice 30 ft. split that makes some sense. He said whoever builds on lot 175 which is lower it's going to be on vector that's a longer line too. So the spacing isn't as critical to do the 15 ft. and I think that makes the request reasonable he said.

He said there are these conditions of the land which then lead you to the portion of that test that says is there a fair and substantial relationship between the purpose of the 15 foot requirement in the ordinance and its application to this property. He said its application to this property is unnecessary the encroachment is a reasonable thing, the proposed use is

reasonable they're just going to store a lot of equipment. He said they park themselves and their guests in this parking area that's paved in front of the house so they aren't going to squeeze a car into the garage but it makes sense to put all this stuff away instead of another plastic or metal storage shed someplace else on the property that tries to comply with this and it's a matter of convenience.

Att. Wyskiel said the other one he points out is the side yard boundary lines aren't parallel there's a skew here and whoever laid out the house initially to comply with the setback you're creating a triangular wedge. He asked if it is reasonable to allow this parallel line for the garage to protrude out to be parallel with the structure but it's not parallel to the boundary line but the boundary line is unique. I think that meets the hardship conditions that are required by the statute and case law he said.

He said the public interest he submitted with the application a series of photos that Mr. Hodge took around the neighborhood and they are aware of Camelot Shores. He said there are a lot of structures and these photos are not submitted to say there are some people that have conditions that are invalid under zoning it's just to show them that they are not the only ones that are going to have something close to a property line-there are garages, sheds, other types of things and they showed them on a tax map where those pictures were. He said Mr. Hodge estimated the distances using a program called Onyx where you can put a dot on the computer and they give you an approx. measure and it's not exact but they show encroachments at the side yard setbacks so they are not going to be the only ones who do that.

He said it wouldn't be in the public interest to grant this if it essentially changed the character of the neighborhood or threatened the health, safety or general welfare of the public. He said the public is not going to be harmed by this at all and it's not going to have a detrimental impact on the community because it's sort of in keeping with what a lot of other people have done garages, improvements, the house itself some houses are closer to the side yard setback that is shown by the pictures.

He said the Hodges have spoken with a few of their neighbors and some said they would be willing to come to speak in favor but they didn't come they didn't write against it but they've said they didn't have any problem with it.

Att. Wyskiel said for spirit of the ordinance-the proposed use this addition is not in conflict with the purposes of the ordinance that is a criteria that goes hand in hand with the public interest and just denying the variance doesn't serve the purpose of your zoning. He said he quoted the specific language in his letter but there is a declaration of the intent of the overlay district is that it understands that relief is going to be needed in instances where people try to make reasonable improvements to their property and that declaration is the spirit of the ordinance for that overlay district so coming here for a variance request is consistent with that declaration that he thinks fits that element of proving their variance should be granted.

He said for substantial justice they're all informed of that in the state guidebook and if you put

the competing interest of the public harm that may occur if you grant the variance to the harm that the Hodges' would experience if the variance is denied you put that on a scale and in whose favor does it tip. He said he couldn't imagine what harm comes to the Town of Farmington if the variance is granted here. He said the Hodges' harm you can see it they want to make a nice improvement to their house the neighbors are in favor with it and he thinks the scale tips in their favor.

He said the surrounding property values will not be diminished and he didn't have any specific proof to that effect but the law allows the board to take their personal knowledge in hand. He said this is one heck of a real estate market with property values screaming high and the neighbors would prefer to see this type of a nice integrated storage shed built into the house as an improvement and store all their stuff than in some type of a plastic storage bin or a garage that they may put someplace else. He said they could take notice of the fact that the properties would not be devalued by this improvement.

Att. Wyskiel said he thought all 5 criteria were satisfied with that and he would be happy to answer any questions.

Mr. Scruton said before they go there he had a question for them. He said they only have 4 out of the 5 board members here and asked if they were okay to proceed with 4 board members.

Att. Wyskiel said he explained to the Hodge's that they need 3 votes and they have the right to say we'll wait. He said they have a contractor that's champing at the bit and wanted him to get this application in maybe 2 months ago. He then turned to the Hodges and asked them if they were comfortable going forward tonight getting 3 votes out of 4.

Mr. and Mrs. Hodge said yes and it's not going to change anything.

Att. Wyskiel said we're here we're ready let's do it.

Mr. Scruton said they have their presentation here, their information they have our attorney's summary of the 5 variance criteria and asked the board members if they had any questions.

Mr. Morgan said the only weight he puts on most applications is the objection from the neighbors. I don't see any so I have no questions he said.

Mr. Fisher and Mr. Pitre did not have any questions or comments.

Mr. Scruton said he thought they covered it from his standpoint and he didn't have any additional questions. He then asked Mr. Pimental if he had any questions or comments.

Mr. Pimental said the applicant has essentially covered it and the only thing he wanted to clarify was something someone said earlier even though the property owner owns the next property over it's not encroaching into the other it's just encroaching into the side setback of their own property. So it's not encroaching onto that property just to make sure that that's clear and we really wouldn't put too much weight in that just because the property could always be sold to somebody else. I just wanted to make that clear that it's just the side setback not actually onto the abutting property.

Att. Wyskiel said the plan shows that clearly is that future development on this if the lot next

door does not exist and there's not an encroachment into an existing structure and whoever builds something there is going to want it tasteful they're going to say if they don't want to be this close to the thing on the hill they will design accordingly. He said that makes it a different condition than a property where you have 2 existing structures and someone is trying to add something. That is the only point I was trying to make about it being also owned by them and being vacant he said.

Mr. Scruton said he had a question and maybe he could mark on this is where is the garage going to be now instead of where it is on that plan.

Att. Wyskiel said there is no garage on this plan now all there is pavement and he circled the area where there was existing pavement on the plan and this picture shows that. He said the garage is going to be right on top of where the pavement is except where this setback line this little corner that he is filling in and also circled is going to be less.

Mr. Scruton said so it's going to move north a few feet.

Att. Wyskiel said yes generally north so it's going to encroach less and the garage will be on top of that area.

Mr. Scruton asked if there was anything else he wanted to say.

Att. Wyskiel said no.

Mr. Scruton asked the Hodges if they had anything they wanted to say.

Mr. and Mrs. Hodge said no and Mr. Hodge said he thought he covered it very well.

Mr. Scruton then asked if any of the abutters wanted to speak and seeing no abutters present he closed the public hearing at 7:20 p.m.

He asked the board to begin the review of the criteria and asked for a motion for each of the criteria as they go down through the 5 points to see if they meet the test of a variance.

1). The variance will not be contrary to the public interest: Mr. Scruton asked if there was a motion on public interest and would granting the variance have a detrimental impact on the community.

Motion: (Pitre, second Morgan) granting the variance is not contrary to the public interest;

Discussion: Mr. Scruton said he thought they needed to have a reason for that and asked Mr. Pitre if he wanted to give his reason for making the motion.

Mr. Pitre said it is a very minor adjustment to our zoning and they are not encroaching-they said up to 3 ft. and that pretty much covers it and that's immaterial and if you look at the slope that's 3 ft. on a horizontal plain and that's quite a slope there so they could be in compliance probably not at the line but it's very steep there and that's going to be very difficult. He said there would have to be a lot of adjustment to the next lot to even and it's not crowding out everyone on the next lot even if somebody else where to build.

Mr. Scruton said the way he would state it to be to put in minutes and his reasoning to vote yes on this motion would be: 1). That it does not have a detrimental impact because it's not going to affect neighboring properties, community facilities, public safety and welfare and 2). It's not

going to alter the character of the neighborhood. He said the rest of the neighborhood is not that different than what this is going to be. He asked if there were any other comments on criteria #1.

Mr. Fisher and Mr. Morgan said they agreed with Mr. Scruton's reasoning.

Vote: the motion passed 4-0.

2). The spirit of the ordinance is observed: Mr. Scruton asked if the spirit of the ordinance is observed in granting the requested setback variance.

Motion: (Pitre, second Fisher) that the spirit of the ordinance is observed by granting the requested setback areas;

Discussion: Mr. Pitre said the spirit of the ordinance is to not overcrowd the neighborhood which we know that is a tough area in Lancelot Shores everybody has very small lots and for the landowner and others to enjoy their property he didn't believe its infringing on anybody else's rights in that neighborhood.

Mr. Scruton said he would concur with the statement that the attorney made that the intent of the overlay district is to allow modest and reasonable remodeling and that he thought this is modest and reasonable remodeling.

Vote: the motion passed 4-0.

3). Substantial justice is done: Mr. Scruton asked if there was a motion on the substantial justice question and if granting the setback variance would do substantial justice.

Motion: So moved by Mr. Pitre and seconded by Mr. Morgan.

Discussion: Mr. Pitre said people should what they want with their land as much as it doesn't infringe on somebody else's rights and this basically does substantial justice.

Mr. Scruton said the way he would state it is that there would be little public gain from denying this variance as opposed to what happens with building the garage where it's asked for. I see no real public gain by denying the variance he said.

Mr. Fisher said he agreed and just looking at the surrounding areas-the work they want to do and are proposing and that this is only encroaching a few feet to deny this variance would grant any public gain at all.

Mr. Scruton said he thought it would be unjust and Mr. Fisher agreed.

Mr. Scruton asked if there were any other comments on criteria #3 and hearing none called for the vote.

Vote: the motion passed 4-0.

4). The value of surrounding properties are not diminished: Mr. Scruton said there was nothing presented but knowing what they know about real estate values in the area he asked if there was going to be any impact on property values that any of them could see. He asked for a motion on surrounding property values will not be diminished.

Motion: So moved by Mr. Pitre and seconded by Mr. Fisher.

Discussion: Mr. Scruton said there's a hot real estate market but even if it wasn't a hot real

estate market it's so much like everything else down there that he didn't see how it would affect anything else.

Mr. Fisher said any improvements to anything on the property will increase the value of all surrounding properties in all of Camelot Shores in general.

Mr. Scruton said he could remember going back to the '60's what was built down there and he could tell you that there is tremendous improvement in the quality of the housing that exists in there so they want to encourage continued improvement that goes on.

Vote: the motion passed 4-0.

5). Literal enforcement of the provisions of the ordinance would result in an unnecessary

hardship: Mr. Scruton said normally this is the hardest one to prove and the argument that was presented was literal enforcement of the setback from which relief is requested would result in unnecessary hardship because of the special condition of the property. He said it doesn't distinguish it necessarily from the rest of the properties within Baxter Lake but it certainly distinguishes it from the rest of the properties in Map 7-6 and in that area. He said the topography on those frontage lots is a lot different than the ones behind it.

Motion: (Pitre, second Morgan) that literal enforcement of the relief requested would result in an unnecessary hardship;

Discussion: Mr. Pitre said it's a very minor encroachment into the setback.

Mr. Scruton said what he would add to the minutes is that the topography of the lots down there and the shape of the lots creates a hardship for doing just about anything with the slanted side lines and all of those factors enter into it so he would say that it meets the test of unnecessary hardship. He said this is the one that he frequently gets hung up on and doesn't go along with but this one here certainly meets that case.

Vote: the motion passed 4-0.

Mr. Scruton said having gone over the 5 criteria and feel that it meets all 5 criteria if there was a motion to approve the variance request.

Motion: (Morgan, second Fisher) to approve the variance application for the property at Map 06, Lot 174 for the side setback as requested passed 4-0.

Mr. Scruton asked Att. Wyskiel if they had any questions for the board.

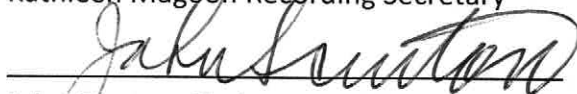
Att. Wyskiel said they had no questions and were just going to sign in before they leave.

6). Any Other Business before the Board: None

7). Adjournment:

Motion: (Morgan, second Fisher) to adjourn the meeting passed 4-0 at 7:31 p.m.

Kathleen Magoon Recording Secretary


John Scruton, Chairman