

## ZONING BOARD OF ADJUSTMENT

Wednesday, March 24, 2010  
Belmont Corner Meeting House  
Belmont, N.H.03220

Members Present: Chairman Peter Harris; Pleasant Oberhausen and Marshall Ford.  
Members Absent: Linda Couture (E) and Norma Patten (E).  
Alternates Present: Ed Hawkins.  
Staff: Candace Daigle, Steve Dalton and Elaine Murphy.

The chairman opened the meeting at 7p.m. He congratulated and thanked the incumbents for running and being reelected to the Board. The continuity keeps the Board running smoothly.

### **Abutters' Hearing – Theresa Corriveau:** Continuation of Public Hearing for:

- A. A Variance of Article 5 Table 2 of the Zoning Ordinance to reconstruct a single-family dwelling, 2-story with full basement, closer (25.3') to the front property line than allowed (50'). ZBA # 1010Z
  - B. A Variance of Article 5 Table 2 of the Zoning Ordinance to construct a single story addition to an existing accessory structure (garage) closer (34.1') to the front property line than allowed (50') but not closer than the existing structure. ZBA # 1110Z
- Property is located at 135 Jefferson Road in an "RS" Zone, Tax Lot 111-017.

The chairman explained that the original full Board is not present tonight. Applicants can go with a short Board or they can table until a full Board of the original members are present.

Mr. Jim Bolduc and Sharon Mercuri presented the application and agreed to a short board.

Mr. Bolduc explained that the lot is on Jefferson Road. The existing restraints on the property are the setbacks from the lake and road. There is only a 12' area within the setback where they could build a new single-family house. They are demolishing the existing house and reconstructing a new one outside of the shoreland buffer zone. They have received a Shoreland Protection permit. They need two variances, one for the garage and one for the new house. The new house will be 8' closer to the road than the existing house.

At the last meeting there was discussion on the restraints put on the site and the Board asked that the applicant provide additional information on the height of the proposed building and the affects it will have on abutters' views of the lake. Mr. Bolduc stated that he has done fieldwork at lot 30 because of concerns from the abutters about their view being obstructed. There is a narrow view corridor on side of

the house from their lot to the lake. He does not know what the view will be in the springtime. He submitted photos taken in the fall and ones taken today. It is an extremely small view.

He explained that he has prepared a profile of the existing house and the proposal. The elevation of the existing house is 514.72' and the proposed new house elevation is 528'. The new house is not anywhere near the 45' height restriction. It is a 1.5 story structure with the roof point 8' below the highest point of the house. He has established the elevation of existing house and the new house.

Mr. Bolduc explained this application is unique from other applications because of the Shoreland Protection requirements. The Land Use staff has put together all the zoning applications that have been applied for in the Jefferson Road area and most of those predate the Shoreland Protection Act. As a result of the Shoreland Protection Act they are required to push the house back towards the road. Mr. Bolduc explained that when the Corriveau's first came to him they wanted to be closer to the lake. Based on his experience with the State He explained that they would not be allowed to build within 50' of the highwater mark. The hardship is the State's regulations requiring you to construct the house no closer than 50' from the highwater mark. After the last meeting he had the Corriveau's go back to the State to see if they would allow them to appeal and build closer to the lake. He presented the Board with an email from the State stating that they are unable to waive or vary from the 50' setback. The Corriveau's also asked the State if they could remove the existing tree on the side of the property. The State would not allow them to remove the trees and want them to comply with the State's requirements.

Ms. Mercuri stated that she called the State on a daily basis and they were either in a workshop or not at their desk. She received an email today stating that the regulations cannot be waived. She is trying to do whatever she can for the neighbors but it is out of her hands.

Mr. Brian Corriveau stated that he designed the new house. The existing house was built in the 1950's on a stone foundation with dirt on half of it. It was built as a camp. The only choice they have is to build a new structure. They had to turn the house to meet the setbacks. After hearing the neighbor's concern they are building a 1.5 story house instead of a 2 story one. This will keep the height down. There will be a loft area with no bedrooms upstairs.

Mr. Bolduc stated that there was a letter dated March 3, 2010, from Mr. David Kaye, an abutter that threatened legal action if the variances are approved because he was denied a variance in 2003. Approving the variance would be showing favoritism for the Corriveau's. Mr. Bolduc stated that he does not see the basis for the legal action. In the packet the town provided it referenced the 2003 variance that was denied. Mr. Kaye was granted a rehearing but he never applied for it. This application is unique because of the Shoreland Protection Act. The replacement of the existing house with the construction of a new house will increase the values in the neighborhood. P. Harris explained that it is the Board's job to look at each individual application on its own merits and make its determination based on the five criteria.

P. Oberhausen wanted to know if the Corriveau's have their Shoreland Permit. Mr. Bolduc stated that they do; it was part of the application last month.

P. Oberhausen stated that looking at the profile view he is concern about the LaPlante's view. The new house is 14' higher than the existing house. In order for the LaPlante's to have a view of the lake then they would have to sit on their roof. The designer said it is 1.5 stories but it is 2 stories. The plans show an open loft bedroom making it 2 stories. Mr. Corriveau stated that it was 2 stories but they are taking advantage of open space and didn't make the roofline around the second story. This is the only way they could have a two bedroom house cramped on all setbacks. P. Oberhausen stated that at 514' elevation the LaPlantes could see the lake from their second floor window but not the 528' elevation.

Ms. Mercuri stated that the LaPlante's house is for sale so they intend on moving, should their input be taken into consideration? She stated that she has a description of the listing for their property and it does not advertise a lake view. P. Oberhausen stated that it doesn't change the view. Ms. Mercuri stated that the fact that they have a view is a bonus. The property across the street doesn't have a view and they don't have frontage on the water. They don't have to pay taxes on water front property. M. Ford stated that Mr. Corriveau's land value is \$321,600 and the LaPlante land value is \$64,800. They do not have the same taxes as someone on the lake with views. Mrs. LaPlante stated that their property is 75% wetlands. When they constructed the house they just met the setback requirements. M. Ford stated that property values on the lake side are over \$ 250,000 and property values across the road are around \$60,000. You have to look at the value of shore frontage and its views. If you want to look at the lake you need to buy on the lake side.

E. Hawkins stated that there has to be a major short coming if there is no allowance in Shoreland Protection Act to allow similar construction in setback for replacing an existing unit. There has to be some relief so the burden doesn't fall on the local level to provide relief. There should be an allowance to infringe in the setbacks using the existing footprint.

E. Hawkins stated that if they are razing the existing house to make room for the new structure they can also raze the garage and create a buildable area in that footprint without going closer to the road. This would allow them to meet the front setback and give them space for the reconstruction. Considering the 50' buffer to the water there is room to accommodate the project. If you look at the width of the deck on the lakeside it almost exceeds the amount of additional encroachment that they are going into the front setback. The deck is quite large but looking at the size of the existing structure it is really the size of the deck that is pushing the new construction further into the front setback. Maybe they could consider a design that would eliminate the need for encroaching further into the front setback.

E. Hawkins wanted to know what the special conditions of the property are compared to other properties in the area. What makes it different? Mr. Bolduc stated that it is the narrow buildable area they have available which is a 12' area. E. Hawkins stated that every lot in area is pre-existing nonconforming, that does not make it unique. Mr. Corriveau stated that most lots in Belmont are much larger than this one. This lot has no land. The lot is 50' x 100' and with the setbacks for the rest of the town it makes all the lots on the waterfront non-conforming. All the waterfront lots are small not just theirs. Mr. Bolduc stated that it is unique from other lots in Belmont and they are asking for relief from an ordinance that covers the entire town. These lots were created a long time ago and now everyone on the lake has to come to the Board for relief. The State forces the town to a 50' area of lakefront. If they didn't have to eliminate the 50' then they could make it balance. The State has tied their hands. If they

moved the house 40' from the lake then they would not meet the Shoreland Protection requirements. E. Hawkins clarified that the unique character is that it is a nonconforming lot.

P. Harris stated that if the State doesn't grant any relief then why should the town have to grant relief. The State has a strong requirement of 50'; they should have some form of relief from it. The town has been fair allowing the developer to create lots but some developers got greedy and chopped the lots into many smaller lots. What happens when everyone in the area comes in for the relief changing a camp into a house? The Board has to consider the impact to the roads, services, schools etc. The infrastructure in that area was not designed for that type of development. If everyone applies for and receives the same type of relief it will have a domino affect. The property values will not be diminished because property values around the lake never go down but they need to consider smart growth to increase property values.

P. Harris stated that the Board has to consider if the applicant has reasonable use of the property. He referred to Mr. Kaye who came before the Board and his application was denied. He had a choice to come back with a new application but decided to meet the setbacks instead. The Corriveau can build in existing footprint. The negative impact in the area gets worst if they reduce the setbacks on all the properties. Jefferson Road already has problems with camps being converted to houses. People rebuild the camps just to use themselves then the next thing you know they are living there year round and there are school buses picking up children on roads that were not designed to handle that kind of traffic.

C. Daigle stated that the town has seen a great amount of success with the State allowing structures to be rebuilt in their existing footprint or adding second stories. They do make trade offs like having to install rain gardens and reducing impervious surfaces. The State has allowed many rebuilds in Mallard's Landing using the existing footprints. Mr. Ray Laplante, an abutter, stated that he has not problems with them building in the same footprint.

Mr. Corriveau stated that they relieved some of the infringement on the setbacks by turning the existing house. The existing footprint encroaches in two setbacks, by turning it the only encroachment is to the road. Mr. Laplante wanted know if they considered a different design. Mr. Corriveau stated that they would have to go longer but narrower. There is 12.5' side setback so if they build it as a rectangle it lessen encroachment into the setback. Mrs. Laplante wanted to know about going up instead.

Mr. Jean Carbonneau stated that he is not an abutter but lives on the lake and because of the small lots some people have to go higher to meet the setbacks which can be more disruptive and not the best solution. Mr. Bob Boudreau stated that the objection he is hearing is to the height of the roof and the loft. What if the loft is taken out? Mr. Corriveau stated that the design is aesthetically pleasing and they didn't want a cape with a square roof. They also want to comply with the height restrictions.

E. Hawkins stated that the existing structure is 35'-40' from the lakefront and has no adverse affects on the lake. The local Boards have to challenge the State to look at everything on a risk basis. Allowing new construction in the existing footprint would have no impact on the lake. Every year thousands of out-of-State boats come to the lakes and pollute the lakes with milfoil; polluting which has a greater impact on the lakes than allowing people to rebuild in the existing footprints. The State has to

look at the big picture when reviewing formal applications. C. Daigle stated that the town has had many applicants that have rebuilt in the existing footprint within the 50' setback. They may have had to show a reduction of impervious surface or put in rain gardens. They still needed relief from the town but the relief was reasonable. The lots are not suitable for today's sized house.

Mr. Laplante submitted photos of his view of the lake during the summer. He built his deck so he could see the lake from the deck. If the rebuild is going to be a two-story house with a basement it will block his view. In 1998 the Corriveau received a variance for a 30' setback for the garage. Now they want to move the house closer to the road. This is not keeping the spirit of the ordinance. It is a ½ acre lot and will destroy the rural character.

Ms. Mercuri stated that the Shoreland Protection Act is new and that is what makes this application different. P. Harris stated that they have a grandfathered right to rebuild in the existing footprint. Ms. Mercuri stated that they cannot rebuild in the same footprint. Mr. Carbonneau stated that the State doesn't let you rebuild in the same footprint. C. Daigle stated that they have had several applicants that were allowed to rebuild in the same footprint. If you show the State that you can meet the 50' setback then they will require you to meet that setback. She stated that you will not know if you can rebuild in the same footprint unless you make an application for that.

Atty. Regina Nadeau stated that she is not representing the applicant but she has had applicants that have received a Shoreland Development Waiver. They have to apply for a Shoreland Development Waiver not a Shoreland Permit. You are allowed to go up if you maintain the footprint Her applicants had to trade off on impervious surface but they were successful in getting the waiver.

Mr. Corriveau stated that they could stay in the footprint but does Belmont want a four-story box? Is that keeping with the spirit of the ordinance?

Mr. Bolduc suggesting tabling the application until next month to give the applicant time to look at different ideas and possibly adjust the application with a new one.

P. Harris suggested that the owners in the area get together and form an Association to work on the infrastructure and development in the area. If they all work together they can preserve the area while still developing their lots.

The chairman asked if anyone in the audience had any questions or comments. There were no additional comments.

### **BOARD ACTION – THERESA CORRIVEAU:**

**MOTION:** P. Oberhausen moved to Table the two applications to April 28, 2010. To allow the applicant time to investigate new ideas and adjust the application.

The motion was seconded by M. Ford and carried. (4-0)

**Abutters' Hearing –Frederick & Claudette Brezinski:** Continuation of Public Hearing for:

- A. A Special Exception of Article 10.A.3.c of the Zoning Ordinance to allow a deck and stairs (northside) closer (33.04') to the front property line than allowed (50') but not closer than the existing structure. ZBA # 3409Z.
- B. A Special Exception of Article 10.A.3.c of the Zoning Ordinance to allow a deck and stairs (northside) closer (23.24') to the northside property line than allowed (25') but not closer to than the existing structure. ZBA # 3709Z.
- C. A Variance of Article 5 Table 2 of the Zoning Ordinance to allow a deck with ramp (southside) closer (12.43') to the south side property line than allowed (25') but not closer than the existing structure. ZBA # 3309Z.
- D. A Variance of Article 5 Table 2 of the Zoning Ordinance to allow a deck with ramp (southside) closer (33.10') to the front property line than allowed (50') but not closer than the existing structure. ZBA # 3809Z.

Property is located at 28 Morgan Road in an "R" Zone, Tax Lot 239-068.

At least three members have viewed the site.

Mr. Brezinski presented the application.

Mr. Brezinski stated that he thought the Board wanted to know about the dry well. He contacted the State about the drywell and there are no permits on record. It is shown on the March 30, 1991 assessment card. He bought the property in 1992. DES has no comments about the dry well except that they were allowed back then but are not allowed now. In 2007 the holding tank was inspected by Seeley White and everything was ok. The Building Official, Gary Boisvert, also inspected it and said there were no problems. Mr. Dexter Dragon, at the State level, told him that no one knows why it was put on the septic plan, that no well was allowed, but it may be because the lot was too small. Mr. Brezinski stated that there are five or six lots smaller than his that have wells on them. He also talked to Mr. Rich Schofield from the State, and asked for a permit for the well that he dug. He explained to Mr. Schofield that the well was not for drinking but for showers and the bathroom. Mr. Schofield told him that all well permits come from the Town. Today he went to Town Hall and talked to E. Murphy who told him that the town doesn't permit wells the State does that. She gave him the phone number to call at the State. He called the State and talked to Mr. Dragon who told him he couldn't help him and referred him to Mr. Schofield who referred him to Mr. Dick DeSeve. Mr. DeSeve was not available so he left a message for him. He has been talking to these people since 2006 and no one knows anything. He is hoping to hear from Mr. DeSeve tomorrow. Mr. Brezinski stated that he thought he could get a well permit from Town Hall and send the report to him on completion. S. Dalton stated that the Town hasn't issued permit for wells. He is familiar with the setback requirements but the Town doesn't issue well permits. He also stated that Mr. DeSeve is the State's Compliance Officer and he does return phone calls.

Mr. Brezinski stated that he doesn't want a septic system. P. Oberhausen stated that Mr. Brezinski needs 75' from the septic system to the well. He stated that Mr. Brezinski has been working on this situation since 2006 and nothing has been resolved. He was supposed to get receipts for pumping the system but the Board hasn't seen them. Mr. Brezinski stated that he brought them to the last meeting but they didn't want to see them. C. Daigle stated that Mr. Brezinski did supply the pumping receipts. P.

Oberhausen referred to the history of the lot dating back to April 2003 including building a deck and walkway without a permit and now they want approval for those additional items that are in violation.

C. Daigle explained to Mr. Brezinski that at the last meeting the Board recommended to him to put his request to the State in writing because the information he is looking for would be in the archives and the State would need to research that information. In order to do research in the archive the State needs to have it requested in writing. Mr. Brezinski has a septic approval that prohibits having a well on the property. He is in violation of his approval and needs to get something in writing from the State permitting the well. The Board needs to know if the well is legal. Mr. Brezinski stated that he was not aware that he needed to get it in writing. C. Daigle stated that at the last meeting they talked about sending the request certified mail because the documents would be archived. The State needs to review the permit in order to make a decision. He needs to write to Mr. DeSeve asking him to release the restriction prohibiting the well that was placed on the septic approval. Mr. Brezinski stated that he has been to the State many times. C. Daigle reiterated the fact that he needs to put his request in writing. He needs to provide the Board in writing the response from the State. They need a copy of approval or release of the condition on the original septic approval.

P. Oberhausen stated that in 1971 DES approved a septic system for a holding tank with the condition that no water well was installed. His property has been reviewed by the Town seventeen times and it is still not resolved. Mr. Brezinski needs to get the information from the State in writing.

P. Harris wanted to know if Mr. Brezinski could get the information to the Board in writing by the next meeting. Mrs. Brezinski stated they will if they can get the information from the State. E. Hawkins stated that if they cannot get the information from the State in time for the next meeting the Board needs to act on the application to address the open ended violations regardless of what action the State takes.

The chairman asked if anyone in the audience had any questions or comments. There were no additional comments.

### **BOARD ACTION – FREDERICK & CLAUDETTE BREZINSKI:**

**MOTION:** P. Harris moved to Table the four applications to April 28, 2010 to allow the applicant time to provide written confirmation from NH DES or a licensed septic designer as to the legal status of the existing well, drywell and holding tank; and, as applicable, provide a plan for the upgrade and/or removal of same.

The motion was seconded by M. Ford and carried. (4-0)

### **Abutters' Hearing – Dana Belletete:** Request for:

- A. A Variance of Article 15 "Dwelling" of the Zoning Ordinance only one detached dwelling is allowed per lot. ZBA # 1210Z.
- B. A Variance of Article 15 "Lot" of the Zoning Ordinance only one main building is allowed per lot.

ZBA # 1310Z.

- C. A Variance of Article 5 Table 1 of the Zoning Ordinance the maximum allowed density is one dwelling unit per acre. ZBA # 1310Z
- D. A Variance of Article 8.F.4 and Article 8.F.2 of the Zoning Ordinance accessory apartments must be located within the existing single family dwelling and may not be in a detached building and may not exceed 25% of the finished combined primary dwelling and accessory apartment. ZBA #1510Z.

To permit a second detached single family dwelling or Accessory apartment. Property is located at 26 Rodin Road in an "RS" Zone, Tax Lot 111-52.

Mr. Dana Belletete presented the application.

Mr. Belletete stated that he purchased the property in May 2005 and was told it was an apartment. It is being taxed and assessed as an apartment. Basically it is a 2 story garage with an open suite with a bedroom and a small kitchen above the garage. All the permits were pulled when it was built in 1986. The sewer permit was in 1987. It has been around for 24+ years without incident. Someone is now complaining it has turned into an apartment. It has always been occupied even before he purchased it and since he has owned it. He lived there three years while he was renovating the main house. He is just trying to get it into compliance. It has been an apartment. It is actually a legal apartment.

P. Harris wanted to know if Mr. Belletete read the submittal from staff and how they compiled their information to make their decision. Mr. Belletete stated that he had and there is only one thing he saw that he wants to address and that is the people complaining are not abutters and cannot see his property. P. Harris read the history of the property. May 26, 1986 permit to build a two-car garage with gambrel roof and storage area not attached to the main house. April 20, 1987 permit to finish up space above two-car garage to include bathroom and sleeping quarters. Stairway has outside exit and will be enclosed as per fire regulations, smoke alarms included. Bathroom will be connected to sewer system. This alteration is for additional sleeping quarters for family use primarily during summer. July 25, 2008 three after-the-facts applications for a membrane structure, retaining walls and the installation of a full foundation under the house. Mr. Belletete listed all the uses and structures on the property as "house, garage, woodshed, storage shed, membrane structure." July 27, 2009 an application to reconstruct a deck, Mr. Belletete listed all the uses and structures on the property as "house, garage, woodshed, storage shed, membrane structure." November 16, 2009 the Code Enforcement Officer sent a letter regarding the illegal second dwelling. November 20, 2009 follow up code enforcement letter. On November 25, 2009 a complaint from abutters, Mr. & Mrs. Kelly, was filed opposing the two-family use on Belletete property.

P. Harris wanted to know if Mr. Belletete had any paperwork to dispute the facts. Mr. Belletete stated that he bought the house in 2005 and had nothing to do with any of that prior to 2005. Everything was in compliance at that time or he would have been told. There always was a kitchen there he never added one. The apartment was always there and there are others all over the neighborhood.

P. Harris referred to the after the-fact permits in 2008, membrane structures, retaining walls and full foundation under the house. Mr. Belletete stated that he went to the town and asked if he needed a

permit to dig the basement out and he was told he didn't need one. After he finished he was told he did need a permit. At that point he filed an after-the-fact permit. All the setbacks were met and he worked within the existing footprint. It was verbal and at the same time he was told he needed a permit for the beach shed. He did get a permit at that time.

E. Hawkins referred to the 2009 permit that listed all the structures on the property as house, garage, woodshed, storage shed, membrane structure and wanted to know if that was correct. Mr. Belletete stated that it was correct. It did not say house, apartment, woodshed, storage shed, and membrane structure. Mr. Belletete stated that he did not say apartment over the garage he assumed the apartment was part of the garage.

Atty. Regina Nadeau stated that she is representing Joseph and Linda Kelly. She used an old subdivision plan from 1975 to show Mr. and Mrs. Kelly's property. The subdivision plan also showed the railroad and a ROW. At the time of the subdivision in 1975 they decided to split the large parcel into two lots. The remaining parcel is the one that is now owned by Mr. Belletete. The deed that goes to the Belletete property has the access easement and it is the same language that goes back in the chain of deeds. The access easement is to get from the railroad to the main road. There also has been a travel path there. After the subdivision was approved the lot was conveyed with a condition that it not be considered a buildable lot. The other lot was conveyed with the language saying where the access was. She can't find an original granted easement to the travel path even though there is an argument that it has been used for twenty years. The historic information shows that as far back as 1975 in order to get the subdivision approved, with the consent of the neighbors, they had to do something to assure that the ROW would end with only one buildable lot. You can use that easement based on its historical use. You can't use an easement by overburdening it by creating more usage of it. The history she sees under the legal records of the town, which hasn't been contradicted by anyone present, is that the ROW can be extended for the use of one single-family home. If you allow a second single-family structure with additional use it will over burden whatever easement rights they may or may not have.

Atty. Nadeau stated that her clients are abutters because the ROW goes over her client's property. Under the law they have standing and the right to testify because they are directly affected. The original approval for this property is that all that was to go into the garage was a bathroom and bedroom. She stated that tax records are often incomplete but with any amount of due diligent involving a visit to the Town Hall would find out what the original approvals were. It would have put anyone on notice that the approval was to limit the use of the garage as overflow for the people associated with the main dwelling. In the 1980 it was referred to as a bunkhouse. There is no evidence to support any of the allegations as to when the kitchen was installed. If the applicants bought it with representation that they were allowed to rent out the unit to other people then it is a matter between buyer and seller. Her clients who have owned their property since 1996 don't have any evidence that the unit was ever rented out to different parties other than the family who used it. The burden is on the applicant to prove it.

Atty. Nadeau stated that the relevance is that there was an approval that was limited in scope. It was a matter of public record. The question is under the variance criteria does the application meet the requirement for a variance. She handed out the new criteria for a variance and wanted to know how many hearings the Board has had since January 1<sup>st</sup> when it went into affect. E. Hawkins stated that they

had three meetings. Her understanding of the new criteria is that the first four criteria remain the same. The fifth criteria pertaining to unnecessary hardship has been divided into two steps. There are some circumstances where applying the ordinance to a specific fact pattern doesn't make sense. She gave an example of a twenty-five foot side setback up against land that is protected in perpetuity by the forestry society where there is no sense in applying the ordinance or making them show hardship. The first test is is it a reasonable application of the law. The only answer that has been given is that it has been used this way so it is unreasonable not to allow it. The legal perspective is if it is a reasonable application of the law. It is intended to monitor density, orderly development specifically applicable to this process. The second prong is if it can't meet the standard that it doesn't make sense to apply the variance. You are limited to the standard, which is there something that is uniquely distinguishing about the property as compared to other properties in the area. Then the property cannot be reasonably used. There is nothing unique about this property. They do have a larger parcel of land. Originally there was a driveway across her client's land. Over time that has been turned into two driveways. There are also four dwellings, which were not originally intended back in 1975. Almost everyone along the road has a main dwelling and probably a garage across the street. There is a similarity in that her client applied in 1998 to convert their garage while they were re-building the main house. They were denied, they would have needed a variance. The town has consistently applied this rule.

Atty. Nadeau addressed the criteria for a variance. There is nothing distinguishable about this because her client went through the same application process. They wanted to do the same thing and the town said no. There are many properties along this road with two structures. There are no other structures in the area that would be allowed to have a second dwelling unit if they haven't already expanded without a permit. The applicant can make reasonable use of the property. They have a good amount of shorefront, a dock and a main house. It does not meet the hardship. It is not an unusual property and they can make reasonable use of the property. Granting the variance is contrary to the public interest because you would be rewarding the successors to the people who just bypassed the law. It doesn't conform to the spirit of the ordinance because the purpose is to limit expansion in the shorefront district. There is no reason to allow two families on this lot especially when it doesn't even have a town road. Substantial justice is what the applicant has to gain by the granting of the variance vs the goal of what the public is trying to achieve with the ordinance. What the public is trying to achieve is the reasonable density along the shore. Not over congestion whether it is for protection of the people on land or the impact to the lake.

Atty. Nadeau stated that historically it has not been used for multiple families. Any grant to allow multiple families now will adversely affect her client's property values. This is a small roadway and her clients have no control of who is going in and out of there. She asked that the application be denied.

Mr. Belletete stated that they can dance around whether or not the ROW is grandfathered or not but as far as traffic loads they are talking about one person and a single vehicle. There is more traffic a day from UPS from Rodin Road where it ties into Jefferson Road. The apartment has been there for twenty-four years and the lack of any complaints from abutters is proof of that. Nobody but the Kelly's are complaining. There is nothing wrong being done. There is no impact to the public, no change in their assessment or property values. There is no traffic impact. He maintains the private road year round.

E. Hawkins wanted to know what the special conditions of the property are that makes it different from others in the area. Mr. Belletete stated that there are lots of other properties in the area that have much smaller lots with apartments in the garage. His property is at the end of a deadend. He has almost two acres which puts him just under the two acre rule for two dwellings. This is not another family that they are adding to the neighborhood it is a single person. The property is large and the setbacks are all met, it is away from the lake and everyone else. There is no way anyone is going to build on or around the lot. It abuts the railroad tracks and the surrounding lot is unbuildable. There is no change to the lot.

E. Hawkins wanted to know if there is another lot in the area that has an apartment in the garage that is in violation of the ordinance. Mr. Belletete stated that it is not in violation because it was built prior to March 1986. His apartment was built just after zoning was enacted. He wasn't around when that was done but the permits were pulled. No one had an issue with the apartment.

E. Hawkins wanted to know if Mr. Belletete was aware of the violation in May of 2009 when he decided to rent the apartment. Mr. Belletete stated that he absolutely did not know. He had no reason to believe that he could not rent the property. It was rented when he bought it. The advertisement for the property when he bought it said apartment in garage. The real estate agent represented it as rental income. Had it not been on the property he would not have bought it because he is on a fixed income. He always planned on renting the apartment to offset the taxes.

M. Ford wanted to know if there are any other single-family lots in Belmont that have two dwelling on them that are not attached since zoning. C. Daigle stated not to her knowledge. She stated that they may have had a variance request for one but doesn't believe it was granted. Mr. Belletete stated that there is another one that was built on Wakeman Road last year on a 42' x 42' lot. They built a detached garage. M. Ford stated that you can build detached garages with no living area in them. Mr. Belletete stated that it is already built with living area in it. C. Daigle stated that it may be a violation and she told Mr. Belletete that if he wants to file a complaint staff would look into it. She has looked at all the assessment records in that area and it doesn't appear to be true. The Board had a request before them for a property on Sunset Drive for a detached garage with living space. The Board granted the variance for the garage but specifically prohibited putting living space in the detached garage.

C. Daigle stated that Mr. Belletete was correct in that there is a permit for his particular property but it is for a bedroom and bathroom to be occupied by the family on site. She understands that the sellers may have misrepresented that to him but that is a civil matter between the buyer and seller. It is not grounds for the Board to grant the variance.

Mr. Belletete stated that the garage is a specific part of the property. The size and location of it and the lack of impact to the public are what make the lot unique.

P. Harris stated that the ordinance is important because if they start putting people in every garage in town they may end up raising the population by another 9,000 people. To set a precedent on why Mr. Belletete can have more than one house there isn't much there to say that anyone coming before the Board can have the same. The problem seems to be in the person who sold the place and Mr.

Belletete took him for his word. The process the Board has to do is to look at the best interest of the town. The fact that Mr. Belletete needs a person to rent the place to make the property useful is not a hardship. There is use of the garage. P. Harris stated that his concern is the wishes of the people of the town preserving the rural area. Mr. Belletete could make an apartment if it was attached. Mr. Belletete stated that he could build a large walkway or 16 stall garage to attach the garage to the house. There is the fact that the apartment has been there for twenty-four years. He doesn't see the impact. The town can't stop him from having a roommate or having his sister living there. There is no change or adverse affect to the property. There are many people who have apartments in their garages

The chairman asked if anyone in the audience had any questions or comments. There being none, he closed the public hearing.

### **BOARD ACTION – DANA BELLETETE:**

**MOTION:** E. Hawkins moved to deny a Variance of Article 15 “Dwelling” of the Zoning Ordinance only one detached dwelling is allowed per lot for the following reasons:

1. Diminution of property values would result with the granting of the variance by altering the character of the area by having illegal activities on the property.
2. Granting the Variance would be contrary to public interest because it alters the character of the locality by allowing more than one dwelling on the property. A threat to public safety exists if multiple dwelling units are allowed on the property.
3. Granting the variance is not necessary for substantial justice because the applicant will still have use of the garage for family member overflow.
4. The loss of revenue from the rental income by denying the variance is outweighed by the general benefit to the public in preserving the intent of the ordinance by limiting density and limiting the non-conformity and preserving the nature of the residential character of the town.
5. The spirit of the ordinance would not be observed by granting the variance. The ordinance was enacted to protect the zoning goals of the Master Plan for the health and safety of the general welfare by having less congestion and security from fire. Allowing the variance would defeat the spirit of the ordinance.
6. There is no special condition of the property that creates the hardship. The property is no different than others in the area.
7. There is a fair and substantial relationship between the general purpose of the ordinance and its specific application to the property. The ordinance is to protect property and to preserve occupancy, density and uniformity of development within the town and within zones.
8. The proposed use is not reasonable - having multiple main dwellings on one lot. It is a direct violation of the spirit of the Ordinance.

The motion was seconded by P. Oberhausen and carried. (4-0)

**MOTION:** E. Hawkins moved to deny a Variance of Article 15 “Lot” of the Zoning Ordinance only one main building is allowed per lot for the following reasons:.

1. Diminution of property values would result with the granting of the variance by altering the character of the area by having illegal activities on the property.
2. Granting the Variance would be contrary to public interest because it alters the character of the locality by allowing more than one dwelling on the property. A threat to public safety exists if multiple dwelling units are allowed on the property.
3. Granting the variance is not necessary for substantial justice because the applicant will still have use of the garage for family member overflow.
4. The loss of revenue from the rental income by denying the variance is outweighed by the general benefit to the public in preserving the intent of the ordinance by limiting density and limiting the non-conformity and preserving the nature of the residential character of the town.
5. The spirit of the ordinance would not be observed by granting the variance. The ordinance was enacted to protect the zoning goals of the Master Plan for the health and safety of the general welfare by having less congestion and security from fire. Allowing the variance would defeat the spirit of the ordinance.
6. There is no special condition of the property that creates the hardship. The property is no different than others in the area.
7. There is a fair and substantial relationship between the general purpose of the ordinance and its specific application to the property. The ordinance is to protect property and to preserve occupancy, density and uniformity of development within the town and within zones.
8. The proposed use is not reasonable - having multiple main dwellings on one lot. It is a direct violation of the spirit of the Ordinance.

The motion was seconded by M. Ford and carried. (4-0)

**MOTION:** E. Hawkins moved to deny a Variance of Article 5 Table 1 of the Zoning Ordinance the maximum allowed density is one dwelling unit per acre for the following reasons:.

1. Diminution of property values would result with the granting of the variance by altering the character of the area by having illegal activities on the property.
2. Granting the Variance would be contrary to public interest because it alters the character of the locality by allowing more than one dwelling on the property. A threat to public safety exists if multiple dwelling units are allowed on the property.
3. Granting the variance is not necessary for substantial justice because the applicant will still have use of the garage for family member overflow.
4. The loss of revenue from the rental income by denying the variance is outweighed by the general benefit to the public in preserving the intent of the ordinance by

limiting density and limiting the non-conformity and preserving the nature of the residential character of the town.

5. The spirit of the ordinance would not be observed by granting the variance. The ordinance was enacted to protect the zoning goals of the Master Plan for the health and safety of the general welfare by having less congestion and security from fire. Allowing the variance would defeat the spirit of the ordinance.
6. There is no special condition of the property that creates the hardship. The property is no different than others in the area.
7. There is a fair and substantial relationship between the general purpose of the ordinance and its specific application to the property. The ordinance is to protect property and to preserve occupancy, density and uniformity of development within the town and within zones.
8. The proposed use is not reasonable - having multiple main dwellings on one lot. It is a direct violation of the spirit of the Ordinance.

The motion was seconded by M. Ford and carried. (4-0)

**MOTION:** E. Hawkins moved to deny a Variance of Article 8.F.4 and Article 8.F.2 of the Zoning Ordinance accessory apartments must be located within the existing single family dwelling and may not be in a detached building and may not exceed 25% of the finished combined primary dwelling and accessory apartment for the following reasons:

1. Diminution of property values would result with the granting of the variance by altering the character of the area by having illegal activities on the property.
2. Granting the Variance would be contrary to public interest because it alters the character of the locality by allowing more than one dwelling on the property. A threat to public safety exists if multiple dwelling units are allowed on the property.
3. Granting the variance is not necessary for substantial justice because the applicant will still have use of the garage for family member overflow.
4. The loss of revenue from the rental income by denying the variance is outweighed by the general benefit to the public in preserving the intent of the ordinance by limiting density and limiting the non-conformity and preserving the nature of the residential character of the town.
5. The spirit of the ordinance would not be observed by granting the variance. The ordinance was enacted to protect the zoning goals of the Master Plan for the health and safety of the general welfare by having less congestion and security from fire. Allowing the variance would defeat the spirit of the ordinance.
6. There is no special condition of the property that creates the hardship. The property is no different than others in the area.
7. There is a fair and substantial relationship between the general purpose of the ordinance and its specific application to the property. The ordinance is to protect property and to preserve occupancy, density and uniformity of development within the town and within zones.

8. The proposed use is not reasonable - having multiple main dwellings on one lot. It is a direct violation of the spirit of the Ordinance.

The motion was seconded by M. Ford and carried. (4-0)

M. Ford stated that Mr. Belletete has options and if he see that the town approves two single residences on a single lot he needs to come back to the Board. Mr. Belletete stated that the whole premise of a variance is supposed to be for that lot. Everything they discussed tonight is for somewhere else in town. This is a variance for one specific lot. The issue is it at the end of end of road. This is ridiculous the use has been going on for twenty-four years. The Board explained that it is nothing personal it is something that comes before the Board. Mr. Belletete stated that it is harassment. P. Harris stated that he has thirty days for an appeal.

**Abutters' Hearing – Sylvie Breton & Jean F. Carbonneau:** Request for a Variance of Article 5 Table 2 of the Zoning Ordinance to reconstruct a single family dwelling closer (31.1') to the front property line than allowed (50'). Property is located 443 Jamestown Road in an "RS" Zone, Tax Lot 117-003, ZBA # 1610Z.

Mr. Jean Carbonneau presented the application.

Mr. Carbonneau stated that the property is located at 443 Jamestown Road. It is the first property abutting the Lochmere Dam property. The property has two sheds and a small camp on it. He plans to remove a shed and the house. The proposal is to build a 1,500 square foot house. When he purchased the property the deed stated that the lot size was 164' x 75' and when he had the survey done he found out that the depth of the property was actually 148' making the lot 20' smaller than he expected. He has received a Shoreland Permit. He loves the lake and knows the rules are to preserve the lake.

The proposal is not contrary to the public interest because he is removing two nonconforming structures and will implement a stormwater management plan. He will control the water run off from his property and eliminate the current runoff problem. The spirit of the ordinance is observed as there is adequate room for safe road maintenance, improvement and drainage. There is room for snow removal and off road parking for all vehicles related to the lots. There is 50' from the edge of the pavement to the new house.

Mr. Carbonneau stated that he bought the house in 2007 and trusted the map and deed. The variance will not diminish property values but removal of the old camp will increase property values. The proposal is for a 1,500 square foot, 3 bedroom house to fit his family during his retirement. The house is a small modest house. He doesn't know how to reduce the footprint and still have a three bedroom home. The house is set longitudinal and meets the highwater setback but encroaches in the front setback. The footprint of the existing house is 700 square feet. He has reviewed multiple options and can't find a better alternative without going up three-stories which would not be in character of the lake.

E. Hawkins wanted to know if when they applied for the shoreland permit they looked at the

option of building within the shoreland setback. Mr. Carbonneau stated that other options would have pushed them closer to the neighbors. They would be getting closer to the neighbors like a manufactured park. They are trying to keep the proposal balanced on each side.

P. Harris commented that when a family gets bigger the houses get bigger and they need a bigger lot. Mr. Carbonneau stated that there was an error in the size of the lot when he bought it. He stated that it is urgent to protect the lake. He is respectful of the Zoning Ordinance front setback but also noted that he understands DES need to protect the lake. He will be doing this by having a stormwater management plan, a dry well and water bars in the driveway. This will improve the lot.

Mr. Bob Boudreau, an abutter representing Lochmere Village District, stated that building houses to replace camps can overburden the sites along the lake but it does not change the use that happens on lake shore property on the weekends. Every weekend cars come and go and tents go up. Everyone comes to the shore front for the weekends. This proposal doesn't affect the District because there is a wooded lot between them and the applicant. He is not altering the use of the property and not affecting them as abutters. They are not encroaching into the setbacks on their property side.

P. Harris stated that it is a good proposal but what happens if the next buyer comes in and decides to add a second or third floor. The Board has to look at taking multiple small lots and redeveloping them and the impact that has on services, roads and the school.

Mr. Boudreau wanted to know if the property is seasonal or year round. Mr. Carbonneau stated that it will remain seasonal. P. Harris stated that the town doesn't control if a property remains seasonal. Mr. Carbonneau stated that the existing camp is small and this proposal is more conforming and is similar to others around the lake. If they can't move from the camp to a safer structure then they won't have room for the family. Mr. Boudreau stated that if it is a retirement home they need only one bedroom. They can add a loft so that they don't infringe in the setback. P. Harris stated that there could be a lot of additional children in future when their children have children. P. Harris stated that it could be more conforming if they stayed within the setback. He suggested redesigning the house bringing it out of the setbacks. He respects the fact that Mr. Carbonneau wants to keep his land similar to others in the area.

E. Hawkins stated that Mr. Carbonneau did a wonderful job and it is similar to others but there is available footprint behind the 50' setback to build. He reiterated the fact that Belmont citizens need to petition DES about having to meet the 50' setback even when they have a grandfathered footprint. The State has to realize it is not up to the town to provide all the relief especially if there is a grandfathered footprint that is available that would not have any adverse affects on the lake. E. Hawkins stated that the 18' gravel area from the road allows for the safe removal of snow. It is a favorable footprint with the added 18' available from the pavement.

M. Ford stated wanted to know what the reason is for having the home outside the existing footprint. Mr. Carbonneau stated that the 50' setback is in the middle of the existing cottage. They cannot push it back because of the sewer station. There are also pressure lines and a tank in that area. M. Ford stated that it is a good plan moving the house back where most people prefer being closer to the

lake for a good view. Mr. Carbonneau stated they could build a two-story structure but it would not be as nice but it is doable. Mr. Boudreau stated that the pumping station can be relocated.

The chairman asked if anyone in the audience had any questions or comments.

**BOARD ACTION – SYLVIE BRETON & JEAN F. CARBONNEAU:**

**MOTION:** P. Harris moved to deny the Variance of Article 5 Table 2 of the Zoning Ordinance to reconstruct a single family dwelling closer (31.1') to the front property line than allowed (50') for the follow reasons:

1. The variance would not diminish the value of surrounding properties but a better plan would increase values.
2. Fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property because the spirit recognizes that small camps converted to houses impacts the town's services.  
and
  - b. the proposed use is not reasonable one because there is no hardship. There is reasonable use of the existing footprint
3. It is contrary to the public interest because it is contrary to the goals of the Master Plan and maintaining the rural character.

The motion was seconded by P. Oberhausen. (2-2) E. Hawkins and M. Ford opposed. The motion did not pass.

E. Hawkins stated that the 18' strip of land to the pavement has to be taken into consideration. The proposal is not excessive and is in line with most applications that come before the Board. Consideration of the sewer pump station could also be a hardship of the property. M. Ford stated that this is one of the better proposals. P. Harris stated that they have to take future development into consideration. The intention is admirable but they can use the established footprint. P. Oberhausen stated that the applicant was not given the option of a full Board so they applicant should have the option of coming back when there is a full Board. Mr. Carbonneau stated that he would like to table the application for a full Board. It is tough to comply with DES requirements.

**MOTION:** P. Oberhausen moved to table the application to April 28, 2010 to allow the applicant to be heard by a full five-member Board.

The motion was seconded by M. Ford and carried (4-0)

**OTHER BUSINESS:**

**BOARD'S ACTION - MINUTES:**

**MOTION:** P. Oberhausen made a motion to approve the minutes of February 24, 2010. E. Hawkins seconded. Carried (4-0).

**ELECTIONS:**

**MOTION:** P. Oberhausen nominated P. Harris as the chairman.

The motion was seconded by M. Ford and carried. (3-0-1) P. Harris abstained.

**MOTION:** P. Oberhausen nominated N. Patten as vice-chairman.

The motion was seconded by P. Harris and carried. (4-0)

**MOTION:** M. Ford moved to appoint E. Hawkins as alternate for a three year term.

The motion was seconded by P. Oberhausen and carried (3-0-1) E. Hawkins abstained.

**STAFF REPORT:**

**COURT UPDATE:**

The Board received the Court Update of "Cases of Municipal Significance"

**MEMBERSHIP:**

The Board received an application from Mr. Mark Mastenbrook applying to be an alternate on the Zoning Board. E. Hawkins stated that he knows Mr. Mastenbrook, he was a district manager, is an educated man with good integrity. He would be an excellent member for the Board. It was the consensus of the Board to have Mr. Mastenbrook attend the April meeting to meet with the Board.

**ADJOURNMENT:**

**MOTION:** On a motion by E Hawkins, seconded by P. Oberhausen, it was voted unanimously to adjourn at 9:55p.m. (4-0).

Respectfully submitted,

Elaine M. Murphy

