

## ZONING BOARD OF ADJUSTMENT

Wednesday, March 23, 2005  
Belmont Corner Meeting House  
Belmont, N.H.03220

Members Present: Chairman J. Olmstead; N. Patten, B. Paquette and B. Arey.  
Members Absent: P. Harris (E).  
Alternates Present: P. Oberhausen and E. Hawkins.  
Staff: C. Daigle and E. Murphy.

The chairman opened the meeting at 7p.m. and appointed P. Oberhausen as a voting member for tonight's meeting.

### **Abutters' Hearing – Fred and Kathy Larson:** Requests for:

- Special Exception of Article 10 A.3.c of the Zoning Ordinance to add useable space (2<sup>nd</sup> floor) within preexisting nonconforming footprint.
- Variance of Article 4 of the Wetlands Ordinance to replace a single-family home closer (18.9') to the highwater mark than allowed (50').
- Variance of Article 5 table 2 of the Zoning Ordinance to replace a single-family home closer (41') to the front property line than allowed (50').

Property is located at 177 Gardners Grove Road in an "RS" Zone, Tax Lot 119-013, ZBA # 0605, 0705 & 0905.

At least three members have viewed the site.

Mr. & Mrs. Larson and Mr. David Krause presented the application.

Mr. Larson stated that they are looking for variance because they had to move the house back from the water and bring it closer to front setback to meet the State's requirements. The existing house was closer to the water but it was narrow so to square it off they had to move it 7' that is why is why they are 41' from the road instead of the 52' it used to be. Mrs. Larson stated that it is a 23.8' x 40' modular home and they are hoping to put a deck on the back to access the water with a 4' deck on side. They received their DES permit and were told they had to be away from the water and the only way to get the permit was to move the house closer to the street. They tried to stay within the original footprint. The second floor is a loft. The State doesn't include decks as living space but the town does and that is why they are here. They did receive the department's comments.

B. Arey stated that when he viewed the site there were no stakes. Mrs. Larson stated they were there before but may be under the snow or knocked over by snowmobilers.

E. Hawkins stated the letter from the State is confusing. In the State's letter the square footage stated

that previously it was 687 square feet and now it is 947 square feet. Mrs. Larson explained that when G. Boisvert went out there was a three season porch that is not closed in and that may be where the discrepancies come in. E. Hawkins just wanted the discrepancies noted. He stated that G. Boisvert's comments stated that there is not an increase in nonconformity, but that doesn't seem to be accurate because there is a new variance required. C. Daigle stated that his original letter was written before they moved the building and they moved the building in response to the State's mandate that they do. The State's setback is 29' because they measure from the primary building and the Town's setback is 18.9' because we require that they measure from the deck. This is an amended letter from the State dated March 10<sup>th</sup> stating that they measure from the primary structure. J. Olmstead stated that the 18.9' is the town's requirement and it is from the deck and the 29.2 is the State's requirement and measured from the primary structure. C. Daigle explained that the State allows a 12' extension out from the building for decks. Mr. Krause, Darbyshire Associates, stated that the 29.2' is consistent with the former building portion and the current building. C. Daigle stated under the town's regulations the building is moved closer to the high water mark. J. Olmstead stated that he didn't see the location of the well on the plan. Mr. Larson stated that it is in the corner of the shed. E. Hawkins wanted to know if there was any information of what the difference is between the mean low water and mean high water of the Winnepesaukee River in this area. Mr. Krause stated that in the area where they are asking for the variance, there is not much difference because of the steep banking in that area. The surface elevation of the pond is 465.7' and was done when they did the sewer lines in that area. E. Hawkins stated that the reference line should be mean high water not mean low water. C. Daigle stated that it is mean highwater in the great ponds but Mr. Darbyshire is indicating that he is using the mean low water, which is the Winnepesaukee River. The State agreed with it because the plan before them is the one the State approved. The State sets the water level.

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

P. Oberhausen stated that the shoreline waiver has been approved. E. Hawkins stated that based on application the primary building structure will be about 65% increased in the developed footprint of the property. The previously building was about a 49% increase with the decks. The shed was not included in the calculation.

#### **BOARD ACTION – FRED AND KATHY LARSON:**

**MOTION:** P. Oberhausen moved to grant the Special Exception of Article 10 A.3.c of the Zoning Ordinance to add useable space (2<sup>nd</sup> floor) within preexisting nonconforming footprint as it meets all the criteria.

1. The Ordinance specifically allows the use when a Special Exception is granted.
2. The specific site is appropriate for the use.
3. No factual evidence is found that property values in the district will be reduced.
4. There is no valid objection from abutters based on fact.
5. No nuisance or hazard is involved.
6. Adequate and appropriate facilities will be provided.
7. There is adequate sewage disposal.

8. Structures must otherwise meet all dimensional requirements of the Ordinance.
9. All property bounds/existing footprint certified during construction as required.
10. No structure or additions that do not meet setback, except for those approved herein are allowed.

The motion was seconded by N. Patten and carried. (5-0)

**MOTION:** P. Oberhausen moved to grant the Variance of Article 4 of the Wetlands Ordinance to replace a single-family home closer (18.9') to the highwater mark than allowed (50') as it meets all the criteria.

1. The variance will not be contrary to the public interest.
2. A. An area variance is needed to enable the applicant's proposed use of the property given the special conditions of the property.  
B. The benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance.
3. The spirit of the ordinance is observed.
4. Substantial justice will be done.
5. The variance would not diminish the value of surrounding properties.
6. All property bounds/existing footprint certified during construction as required.
7. No structures or additions that do not meet setback, except for those approved herein are allowed.

The motion was seconded by N. Patten and carried. (5-0)

**MOTION:** P. Oberhausen moved to grant the Variance of Article 5 table 2 of the Zoning Ordinance to replace a single-family home closer (41') to the front property line than allowed (50').

1. The variance will not be contrary to the public interest.
2. A. An area variance is needed to enable the applicant's proposed use of the property given the special conditions of the property.  
B. The benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance.
3. The spirit of the ordinance is observed.
4. Substantial justice will be done.
5. The variance would not diminish the value of surrounding properties.
6. All property bounds/existing footprint certified during construction as required.
7. No structures or additions that do not meet setback, except for those approved herein are allowed.

The motion was seconded by B. Arey and carried. (5-0)

**Abutters' Hearing – Ronald & Elaina Shuten:** Request for:

- Special Exception of Article 10.A.3.d of the Zoning Ordinance to allow a 10' x 11' deck closer (40.6') to the front property line than allowed (50'), but not closer than the existing structure.
- Special Exception of Article 10.A.3.d of the Zoning Ordinance to allow a 6' x 9' deck closer (39.2') to the front property line than allowed (50'), but not closer than the existing structure.
- Variance of Article 5 Table 2 of the Zoning Ordinance to allow a garage closer (43.2') to the front property line than allowed (50').

Property is located at 663 Union Road in an "RS" Zone, Tax Lot 222-045, ZBA # 1005, 1105 & 1205.

At least three members have viewed the site.

Mr. & Mrs. Ronald Shuten presented the application.

Mrs. Shuten explained that when they moved in they were anxious to make improvements and were ignorant of where the property lines were. They also were not aware that decks needed building permits. They thought that building permits were only needed when creating for living areas. Mr. Shuten explained that when he built the garage he measured from the road and not the property line. When G. Boisvert came to look at it and I told him what I had done, he assumed that I measured from the property line and not the road. Mr. Shuten stated that he did not know the property line was 7' from the road until they did an addition and they had it surveyed. He stated that he measured from the road back and had everything at 52'. When he went for another building permit to put up another building in the existing footprint and tear down the existing porch and make it living space, that permit was approved. In the mean time he had a surveyor survey his property and that was when they found out they were too close to the road. The surveyor located the property line and they informed us that we were too close to the property line and then he informed G. Boisvert. G. Boisvert told them that they would need a variance for it. The garage sits back further than any structure on the property and they are trying to keep uniformity of the lot. They do not want it behind the house because of the driveway and trying to access the house in the wintertime. The deck cost less than \$325 each and in Laconia they didn't require a building permit for anything under \$400. One deck has been there 5 years and is 4" off the ground so it can be changed to patio block if not approved. Concerning the other deck they took the door off the front of the building, which made the entrance to the house a lot closer to the road and moved it behind the structure. They placed a 6' x 9' platform it can be removed or made smaller but they still want to keep the deck. It sits about 1.6' off the ground. They are trying to keep the property looking good. It is close to the road and very visible.

E. Hawkins wanted to know when they purchased the property. Mr. Shuten stated that they purchased it in 1999 and built the garage in 2000-2001. E. Hawkins stated that Mr. Boisvert went out in August of 2002 and that is when it was decided that it was in violation. Mr. Shuten stated that is when they both agreed that it would need a variance. E. Hawkins wanted to know when the two new decks put on. Mr. Shuten stated one deck was put on in 1999 and the second one was put on when they got the permit for addition 2002- 2003. E. Hawkins wanted to know if that was before G. Boisvert and Mr. Shuten agreed that there was a violation. N. Patten stated that in 2003 they received a permit for an addition. The Shutens stated that it was March 2002. N. Patten stated that they added a deck at that time. Mr. Shuten stated that it was actually done in 2003. E. Hawkins wanted to know about the lean to at the back of the garage. Mr. Shuten stated about a year later and they have a permit for

that as well as the other two decks. Mr. Shuten used the plan to show where the original house and decks were located. E. Hawkins stated that the original square footage of the primary structure was about 900 square feet. The expansions of the structures to the 32' x25' cape are about 900 square feet. E. Hawkins wanted to know about the concrete pad along side the garage. Mr. Shuten stated that it was poured at the same time as the garage.

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

E. Hawkins stated that he appreciated applicant's discussion about timing and his intent to satisfy the requirements of the ordinance. The Boards should not have to take on the burden of having these units already constructed and should view them as proposed structures. The special exception of Article 10.A.3.d states there is the requirement that all the expansions not exceed 40% and they may not be able to meet that requirement. C. Daigle clarified the calculations by stating that special exceptions that have been granted under that article. Expansions that occurred prior to that would not have been regulated, as they would have been allowed. The 40% is calculated for any previous special exception that had been granted as part of the 40%. The only expansions are part of the 10' x 11' deck and the entire 6' x 9' deck. E. Hawkins stated that the variance is the criteria and whether they exist given the enormity of the buildable space that is available on that lot. J. Olmstead wanted to know the date of the letter of deficiency was issued. C. Daigle stated that on August 5, 2002 G. Boisvert conducted an inspection and found the garage to infringe on the front setback and he informed Mr. Shuten that a certificate of use would not be issued until such time as compliance is achieved or a variance was requested. This was a verbal commitment by Mr. Shuten to apply for variance or cure the nonconformity. On December 27, 2004, G. Boisvert wrote letter to Mr. & Mrs. Shuten and outlined the history and reminded them that the violation was still outstanding. B. Arey stated that the deck doesn't do anything for the house. It should be removed and will rot with time because it is close to the ground. P. Oberhausen stated that many houses along Union Road have decks.

#### **BOARD ACTION – RONALD & ELAINA SHUTEN:**

**MOTION:** P. Oberhausen moved to grant the Special Exception of Article 10.A.3.d of the Zoning Ordinance to allow a 10' x 11' deck closer (40.6') to the front property line than allowed (50'), but not closer than the existing structure as it meets all the criteria.

1. The Ordinance specifically allows the use when a Special Exception is granted.
2. The specific site is appropriate for the use.
3. No factual evidence is found that property values in the district will be reduced.
4. There is no valid objection from abutters based on fact.
5. No nuisance or hazard is involved.
6. Adequate and appropriate facilities will be provided.
7. Structures must otherwise meet all dimensional requirements of the Ordinance.
8. No structures or additions that do not meet setback, except for those approved herein are allowed by this approval.

The motion was seconded by B. Paquette and carried. (4-1) B. Arey opposed

**MOTION:** B. Paquette moved to grant the Special Exception of Article 10.A.3.d of the Zoning Ordinance to allow a 6' x 9' deck closer (39.2') to the front property line than allowed (50'), but not closer than the existing structure as it meets all the criteria.

1. The Ordinance specifically allows the use when a Special Exception is granted.
2. The specific site is appropriate for the use.
3. No factual evidence is found that property values in the district will be reduced.
4. There is no valid objection from abutters based on fact.
5. No nuisance or hazard is involved.
6. Adequate and appropriate facilities will be provided.
7. There is adequate sewage disposal is not necessary for a deck.
8. Structures must otherwise meet all dimensional requirements of the Ordinance.
9. No structures or additions that do not meet setback, except for those approved herein are allowed by this approval.

The motion was seconded by N. Patten and carried. (5-0)

**MOTION:** J. Olmstead moved to grant the Variance of Article 5 Table 2 of the Zoning Ordinance to allow a garage closer (43.2') to the front property line than allowed (50') as it meets all the criteria.

1. The variance will not be contrary to the public interest.
2. A. An area variance is needed to enable the applicant's proposed use of the property given the special conditions of the property.  
B. The benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance.
3. The spirit of the ordinance is observed.
4. Substantial justice will be done.
5. The variance would not diminish the value of surrounding properties.
6. No structures or additions that do not meet setback, except for those approved herein are allowed.

The motion was seconded by N. Patten.

E. Hawkins wanted to know what the reasoning and justification for the fact that an area variance is needed to enable the applicant proposed use of the property given the special conditions of the property. The enormity of the allowable building footprint to place this garage and there are not special conditions of the property such as high bedrock or steep slopes. How is it justified that an area variance is needed. J. Olmstead stated because of the proximity to the house and the garage and that they would be forced to move it. E. Hawkins stated that you have to rely on the five criteria and not the fact that the structure is there. It will not be contrary to the public interest. E. Hawkins stated that he doesn't see how an area variance is needed to enable the applicant proposed use of the property. B. Paquette asked Mr. Shuten how he made a 7' mistake. Mr. Shuten

stated that he measured from the road. He didn't know where the property line was. He has taken care of all the bankings along the road in front of his house. 7' of their driveway is on Belmont's land. Mrs. Shuten stated that they didn't realize that their property started that far back. When the town redid Union Road they reset their lines before they bought the property. They went off the property lines that the previous owners had given them. The setback would have been done correctly if he had known where the property line was. B. Paquette wanted to know if it was explained to him when he received his building permit. Mr. Shuten stated that he drew the sketch and showed G. Boisvert where he measured. N. Patten stated that there were no pins there. He assumed the property line was from the road back where his driveway started. E. Hawkins stated that his view point is that whether it existed or not is not the issue. The issue is that there is large piece of property. Mr. Shuten stated that there are wetlands behind the garage and he had to conform to those guidelines too. P. Oberhausen stated that Mr. Shuten looked at the house and went back further than that and assumed he was at the right distant. Mr. Shuten stated that he went back as far as possible. Mrs. Shuten stated that Mr. Shuten measured 2' back from the house to make sure it met the setbacks. J. Olmstead stated that this is information that they did not have. C. Daigle stated that the wetlands could be a special conditions of the property if it required him to build it there. E. Hawkins stated that they have no knowledge of any wetlands. C. Daigle stated that if the applicant has new information then the Board could consider tabling the application. J. Olmstead stated that with the new information he withdraws his motion.

**MOTION:** J. Olmstead moved to Table the Variance of Article 5 Table 2 of the Zoning Ordinance to allow a garage closer (43.2') to the front property line than allowed (50') to the April 27, 2005 at 7 P.M to allow the applicant to provide new information.

The motion was seconded by P. Oberhausen and carried. (5-0)

**Abutters' Hearing – Lawrence & Jacqueline Derosia:** Request for a Special Exception Article of 10.A.3.c.of the Zoning Ordinance to add useable space (2<sup>nd</sup> floor) within preexisting nonconforming footprint. Property is located at 165 Shaker Road in an 'R' Zone, Tax Lot 244-001, ZBA # 1305.

At least three members have viewed the site.

Mr. Larry Derosia presented the application.

Mr. Derosia explained that he wants to build a second story within a preexisting footprint. It is a preexisting nonconforming structure located on the northeasterly corner of Shaker and South Roads. Its nonconforming setback from South Road is 40'. The setback from Shaker Road is about 48'. There are no pins in front of the house the only concrete boundaries is the stonewall across Shaker Road. C. Daigle explained that the distances are not on the plan because they are not expanding the footprint they are going straight up.

P. Oberhausen wanted to know if he is adding any more bedrooms upstairs. Mr. Derosia stated that he is just moving the bedrooms not adding any. E. Hawkins wanted to know what the square footage of the upstairs is. Mr. Derosia stated roughly 1000 square feet. He has a cathedral area so it is not actual floor space. E. Hawkins stated that there is 1600 square feet there now. P. Oberhausen wanted to know if there would be a bathroom upstairs. Mr. Derosia stated that he would have a bathroom upstairs. B. Paquette wanted to know if

they are covering the entire house. Mr. Derosia stated just the south side. J. Olmstead stated that there is a jog in back is that going to be part of the expansion. Mr. Derosia stated that it is not part of this application.

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

E. Hawkins stated that this application meets the criteria and he supports it.

**BOARD ACTION – LAWRENCE & JACQUELINE DEROSIA:**

**MOTION:** N. Patten moved to grant the Special Exception Article of 10.A.3.c.of the Zoning Ordinance to add useable space (2<sup>nd</sup> floor) within preexisting nonconforming footprint as it meets all the criteria.

1. The Ordinance specifically allows the use when a Special Exception is granted.
2. The specific site is appropriate for the use.
3. No factual evidence is found that property values in the district will be reduced.
4. There is no valid objection from abutters based on fact.
5. No nuisance or hazard is involved.
6. Adequate and appropriate facilities will be provided.
7. There is adequate sewage disposal.
8. Structures must otherwise meet all dimensional requirements of the Ordinance.

The motion was seconded by P. Oberhausen and carried. (5-0)

**OTHER BUSINESS:**

**A. BOARD'S ACTION - MINUTES:**

J. Olmstead made a motion to approve the minutes of February 23, 2005. B. Paquette seconded. Carried (4-0-1) P. Oberhausen abstained.

**B. ELECTIONS:**

**MOTION:** P. Oberhausen nominated J.Olmstead for Chairman of the Zoning Board of Adjustment.

The motion was seconded by B. Arey and carried. (5-0-1)

B. Arey second (5-1) J. Olmstead abstained and E. Hawkins voted.

**ADJOURNMENT:**

**MOTION:** On a motion by N. Patten, seconded by P. Oberhausen, it was voted unanimously to adjourn at 8:30p.m. (5-0).

Respectfully submitted,

Elaine M. Murphy