APPROVED Minutes of 07/12/2023

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Zoning Board of Adjustment

Minutes of July 12, 2023

I. The Chair opened the ZBA meeting at 7:00 PM.

A. ROLL CALL

Board Member	Present	Absent
Jan Gugliotti	✔	
Beverley Howe	✔	
Barbara Marty (Chair)	✔	
Lucinda McQueen	✔	
Derek Narducci	✔	
Harry Seidel (Vice Chair)	✔	

Also present: Janice Loz, Land Use Administrator

Public Attendance: Mark Michie, Kristine Blanchette, Rhonda Rood, Nancy Martin, Ray Martin, Sam Carr, James McLennand, Attorney Derek Lick of Orr and Reno, Linda Dyment, Attorney Ariana McQuarrie of Alfano Law Office.

STATEMENT: The Chair said there will be three applications before the board tonight. Before each hearing the board will be asked to disclose any conflict of interest, if they have any financial interest in the projects, have any family relationship, legal or abutter status with the applicant.

II. NEW BUSINESS

A. Application for a Variance
Case: **2023-02**
Applicant: **Mark Michie**
Agent: Mark Michie
Address: 48 Farrell Loop
Map/Lot: Map 07, Lot 026-1
District: R-2
Details of Request: Requesting a Variance to replace the existing non-conforming structure (reference Article XIII.D.) with a non-conforming structure with an altered footprint.

The Chair asked if any board member had a conflict of interest with the first case for Mark Michie. Harry said no, no other member indicated a conflict of interest.

The Chair indicated Mark Michie should approach the table. The letter from the Building Department said the referral for this case was for the setback requirements. Mark said

no, there is a single wide on the property and they want to put a double wide on the property. The structure will be narrower but deeper.

The Chair said the submitted drawing indicates the setback is now 44-feet. The Chair asked about the drawing of the new manufactured house which indicated it should be 40 feet. Mark said, it should be 40 feet. The Chair said they should have a plot plan that shows where the house is going to be set and showing that 40-foot setback. The Chair asked if he had that plot plan? Mark said they show the distance itself, but no actual plot plan. The Chair noticed that in the deed in 1988 there was a plot plan prepared for a subdivision, prepared by Jeffrey Evans. She said that plan should be on file somewhere and he could use that plot plan to indicate where the house was on the lot. She said he doesn't need a survey, but they need something to shows where the house will be. Mark said the right side will be the same, it will be 16-feet shorter off the other side. Janice reminded the board they do not ask for a plot plan in the checklist. The Chair said they ask for a plan drawn to scale.

The Chair asked the board if they felt they could continue with the application without the drawing. The Chair added if he is meeting all the setbacks, they do not need a variance. The Chair said they are allowed to replace a manufactured home with a manufactured home. She added there is nothing that says it has to be in the same footprint, but they do have to meet the setbacks. Mark said the lot was over 300 feet deep.

Janice clarified the Building Department's letter said the building was being replaced with a structure with a different footprint and not in kind. There have been other cases before the board where an applicant needed a variance because a structure was not being replaced in kind on a non-conforming lot. The Chair said, it is a manufactured house being replaced with a manufactured house. Janice said, yes but, it is a nonconforming structure that was demolished and should be replaced with a conforming structure. The Chair asked if the structure was demolished. Mark said yes, it wasn't livable. The Chair confirmed that he just removed it. Mark said, yes. The Chair said you have 180 days to replace it. After 180 days you would need a variance to put a manufactured house on the single-family lot.

Janice suggested the whole board should chime in on this case, there have been similar cases where the footprint was being changed on a non-conforming structure.

The Chair said read the Article XIII.D. Limitations section of the manufactured housing ordinance, "After the effective date of this section, no manufactured housing shall be located other than in a manufactured housing park or manufactured housing subdivision approved pursuant to this section. A manufactured house lawfully existing as of the effective date of this Section on land outside of a manufactured housing park or subdivision, or a replacement thereof if such housing unit is destroyed by fire or casualty or is in a state of disrepair and its replacement is located on the land within 180 days after such fire or casualty, may be maintained as a non-conforming use, provided that when such use shall be discontinued by the removal of such housing unit for a period in excess of 180 days, the use of such land shall thereafter conform to the provisions of this ordinance." Mark interjected that the structure was in a state of disrepair. The Chair said the real estate listing said it was uninhabitable. She continued reading "and it is replaced on the land within 180 days after such fire or casualty and may be maintained as a nonconforming use provided that when such use shall be discontinued by the

removal of such housing unit for a period in excess of 180 days." The Chair noted it does not have to say anything about having to be on the same footprint. She said it has to be more than 500 square feet of living space, which the applicant's is approximately 1,300 square feet.

Harry asked Janice if there was a section in the ordinances referring to a nonconforming lot. Janice said on page 35, which was Article XIV.A. Harry read the ordinance, "When a non-conforming use (existing) of land or buildings has been discontinued for a year, the land or buildings shall be used thereafter only in conformity to this ordinance."

Harry said so if it is a nonconforming lot it must be used for residential purposes and it must conform to setbacks in the district. The Chair said that is why she was wondering about the frontage measurement. He said it would be nice to have a scaled drawing instead of the town tax map because they are notoriously off, but this lot is relatively square. Harry said the proposed is 48-feet and the depth of the lot, Beverley interjected is 600 feet. Harry said so he can clearly put this structure on the lot and be compliant.

Janice said he cannot put a manufactured house anywhere but in a mobile home park, also it is a nonconforming lot with not enough frontage. Janice was concerned the town has been telling the public consistently they have to replace structures in kind. The board pointed out that Article XIII.D. of the Manufactured Housing ordinance, item Limitations allows for a manufactured home to be replaced with another due to fire or disrepair within 180 days, as long as they meet the setbacks.

The Chair said as long as it is replaced within 180 days and they receive a scaled plot plan indicating they are meeting the front setback, which they will need for a building permit. The Chair asked if they had submitted a building permit? Janice said it was rejected because he wasn't replacing it in kind. The Chair said the front setback is a concern because they are so close. She told the applicant they could get that plot plan and drop the house on the plan to scale to be sure they are meeting the setback.

Harry said if it is a 40-foot setback he should not come any closer than 44-feet. The Chair said the setback is 40-feet in that district. Harry said that is the absolute requirement, but, if they are trying to satisfy replacing in kind. The Chair said it is unnecessary to replace in kind. Mark said he doesn't mind doing the 44-foot setback but that is pretty tight, it is already cut into the corner to get the depth. Mark said the 12-foot elevation height comes into play, he would have to put the structure on top of that height which changes everything.

The Chair asked the board if they had enough information to make a decision on what they have or should they continue this to the next hearing and ask for plot plan. Jan G. said she felt that it was wise to have a plot plan.

The Chair said first they have to accept the application.

Jan Gugliotti made a motion to accept the application of Mark Michie, Map 7, Lot 026-1 as meeting the requirements. Harry Seidel seconded the motion. Discussion: None. **Voice Vote Tally:** 5 – 0. The application was accepted as complete by the board.

The Chair asked if someone wanted to make a motion that the hearing be continued until they get a scaled plot plan.

Jan Gugliotti made a motion that we postpone the decision on the request by Mark Michie regarding Map 7, Lot 026-1 until he can produce a to-scale plot plan. Beverley seconded the motion. Discussion: The Chair suggested instead of postponing, they continue the hearing and they need to set a date for the continuance. The board noted the next meeting is August 9th. Mark Michie interjected and asked if he would have to wait. The Chair asked if he was worried about the 180 days or getting the building on the site. Mark said he is ready to go, within the next couple of weeks. Harry said the only issue is this manufactured house which is slightly larger needs to be shown to us that it is compliant in terms of the setback. The Chair agreed. Harry said if they were to vote on this conditional upon receiving a to-scale plot plan showing its proposed location, could that be a condition of the approval so they could make the decision tonight? Derek said he was okay, with that. The Chair asked if they could get the drawing done, which should have been required with the Building Permit.

The Chair said since it meets the requirements of the ordinances the board really doesn't have the authority to grant or not to grant a variance on something that doesn't require a variance. She said they would need to dismiss the application. Jan G. said the more she gets into this, the more ambiguous the statutes are. What does in-kind mean? The Chair said the ordinances do not say in-kind.

Beverley referred back to the Chair reading of Article XIII.D. she said that sounded perfect and made the most sense. The Chair said from her reading of the ordinance this application meets all the standards set in the ordinances. They are missing one thing, a scale drawing of the setbacks. Mark asked what is meant by a requirement of the Building Permit. The Chair said they should have had a plot plan when they submitted for a Building Permit. Beverley confirmed that the Chair said he did not need a variance. The Chair said, correct. Jan G. said with setbacks there is always a question of measurements, they would need a scaled drawing.

Jan G. resubmitted the motion, that in the matter of Mark Michie related to Map 7, Lot 026-1 that we provisionally grant … the Chair interjected that they should decide whether to dismiss the application because in reference to the ordinance this application does not require a variance. Jan G. asked if they do that will the Building Department automatically accept that and give them a permit, or will the onus be on the Town to make sure the setbacks are accurate. Derek said if not they would have to reapply for the variance. The Chair said he will have to submit the plot plan to the Building Department.

Jan G. made a motion in respect to Mark Michie, Map 7, Lot 026-1 that the board agrees that Mr. Michie does not require a variance in order to go ahead with his plans to replace the previous manufactured home with a new manufactured home as long as he meets the setbacks. Janice asked if the board wanted to deny the application or say that the Zoning Board does not have jurisdiction. The Chair said Jan G. had said they would dismiss the application. **Beverley Howe seconded the motion. Discussion:** Harry said he was fine with it however he would specify that the building permit would specify a 40 feet or greater setback. He said the existing setback is 44-feet and the front setback is unknown. **The Chair restated the motion to read, that the case of Map 7, Lot 026-1 to dismiss the application with the understanding that it meets all the ordinances and does not require a variance. The Chair said she would add Harry's suggestion that the plot plan showing the front setback must**

be submitted with the building permit and must be replaced within 180 days per the limitations of the manufactured housing ordinance. Harry seconded it. Voice Vote Tally: 5 to 0.

B. Application for a Variance

Case: 2023-03
Applicant: **Kristine F. Blanchette**
Owner: Geoffry and Maryan Lubien
Agent: Kristine F. Blanchette
Address: 33 School Street
Map/Lot: Map 30, Lot 010
District: R-1
Details of Request: Requesting a Variance to the required acreage for a 3-family conversion to the terms of Article IV.K. The lot is lacking 0.217 acres necessary in an R-1 for a multifamily development.

The Chair welcomed Kristine Blanchette to the table. The board evaluated the application for completeness. Harry said he felt the application was complete. The Chair asked the board if they felt the application was complete. No comment was made.

Harry Seidel made a motion to accept the application as complete. Jan G. seconded the motion. Discussion: None. **Voice Vote Tally:** 5 – 0. The application was accepted as complete.

The Chair said Kristine could present the application. The board will ask questions as she addresses each of the five criteria. Then abutters will ask questions. Then non-abutters that have standing would speak. Then the public hearing will be closed and the board will deliberate and come to a decision.

Criteria 1

Kristine said the property they are purchasing is in physical distress as well as in tax arrears. The public interest would be served by granting this variance so we can renovate the house and current apartment space in the current carriage house. During the renovation we would create one owner residence and one additional residential apartment in the house proper and renovate the current carriage house apartment. This property will increase in value substantially, create three safe and clean residential dwellings without changing the building's footprint.

Derek asked about the physical distress of the residence and what was actually wrong with it? Kristine responded it needs new siding, doors, windows, there is some mold in the soffits and there is mold in the back stairs of the carriage house which all need to be replaced.

Jan G. asked if they have plans to occupy the house, or to operate it as an Air BnB? Kristine said, no.

Harry asked if this proposal was for a three family or three additional family to make it a four-family residence? Kristine said it would be a three family. Kristine said the carriage house currently is an accessory apartment, which is attached to the house itself. The plan is if the variance goes through to create two apartments out of the one house, so it would be a three-family dwelling on the property. Harry said or a two family with an accessory.

The Chair asked the board if anyone had a conflict on this case. Harry said, no. No other comments were made by the board.

The Chair confirmed they were keeping the same footprint? Kristine said, yes. The Chair asked if there were additions. Kristine shook her head, no. The Chair asked if there were additional patios, garages, nothing in the back of the house. Kristine said, no.

Criteria 2, Spirit of the ordinance

Kristine said the spirit of the ordinance is density in relation to acreage. The subject property is located on a village street with town water and sewer, and is one of seven homes with residential rental dwellings and has sidewalks on which to walk to village services. The Chair said she did not have to read the rest of the statement on the spirit into the record, confirming that all board members had read it. Kristine continued by saying she didn't believe this would have a large impact on the water and sewer because they are not changing the footprint, they are not adding any bedrooms, it will remain the same. The Chair asked how many bedrooms were in the house now? Kristine said four bedrooms and two bathrooms. The Chair asked if they were doing two, two-bedroom units and Kristine responded, yes. The Chair asked if they were going to split the house horizontally or vertically. Kristine indicated they haven't decided. The Chair asked about the amount of bedrooms in the accessory apartment. Kristine said one, it is a studio apartment.

Harry asked if the existing single-family house would have two units and then there will be an accessory apartment. Kristine said, yes, which is existing. Harry said the number of bedrooms is still the same as they were before. Kristine indicated, yes. The Chair clarified she is applying for three apartments. The Chair said you are not going for a duplex with an accessory dwelling. Kristine said yes, that is exactly what it would be. Kristine said there is a house that has an accessory apartment attached to it which is pre-existing. The house itself is what is going to be modified to create a two-family house/apartment. Kristine said so that will be a total of three apartments. The Chair said there is a difference between a duplex with an accessory dwelling because that requires the owner lives in one of the units. If you decided to sell it or move you would no longer have an accessory dwelling if the owner wasn't going to live in the building. Kristine apologized and said she didn't understand. Harry said with an accessory apartment the owner must live on the property. If it was not an accessory apartment and was three units the owner would not have to live on the property. Kristine said that would not be a problem, they could live there.

Beverley asked if there was a difference in what a building was called? Harry said so if you have an accessory apartment and you decide you want don't want to live there, that is the problem. Beverley said so what if you have a house with two apartments what is that called. Harry said a duplex. Beverley asked why they could just call it a duplex. Derek said then you can't call it an accessory apartment. The Chair said if they call it three apartments and get the variance for the lot size, they have more flexibility.

The Chair said to Kristine when she read the application, she assumed they were going for three apartments not a duplex with an accessory dwelling. Kristine said it is no problem if they can make this 100% owner occupied, that is not an issue, whatsoever.

Criteria 3, Substantial Justice

Justice will be served to the whole community by increasing the value and beauty of the property, providing additional housing and getting it back on the tax rolls.

Criteria 4, Diminish Property Value

The property's current condition is diminishing the value of the surrounding properties and the neighborhood at large. We will remove the two huge pines in the front yard which are hazard trees which will definitely be removed because they are listing toward the neighbor's houses. The plan is to repair and paint the house's exterior and correct the current knob and tube electrical, leaking roofs and the stairs in the back of the carriage house.

The Chair said once you create the additional living unit you will have more cars and when you go to the Planning Board they may have lighting requirements, snow removal requirements. She asked Kristine if she had thought about how that might change the character of the building. Kristine said on the map that was drawn it shows six parking spots. Kristine said when you see the exterior of the house you can see that there is ample lighting there to light the six parking spots. The Chair asked if there was screening between the six parking spots and the neighbor's property. Kristine responded, yes. The Chair asked about fencing or trees. Kristine said there are trees and thier plan is not to invade the privacy of the neighbors and they can plant additional trees. Arborvitaes are nice and provide a nice barrier.

Criteria 5, Unnecessary Hardship

This property was previously on the market approximately a year ago. There were no potential buyers for the house because of the amount of work it's going to take to get it back to a livable state. Granting this variance would be beneficial to everyone.

The Chair asked if there was anything she wanted to add in addition to what was written in the application? Kristine said she didn't think so.

Derek asked if the current owner (inaudible, something about the tree).

The Chair opened the public hearing, hearing from abutter's first.

Rhonda Rood said she had been helping the Blanchette's because this would be very beneficial to the neighborhood. Rhonda said she came to Janice to figure out to how to legally go about this. Rhonda said what if it's an accessory apartment or if its three apartments with this acreage issue. She is coming to get a variance for 0.219 acres. Rhonda felt that according to what she was reading that it was an accessory apartment that was already grandfathered. All they really want to do is build 2 apartments and they would have enough land. She was told that it doesn't have enough land, they would need the extra .219 because there will be 3 dwellings. She said that has been very confusing.

Janice brought the boards attention to page 35 Article XIV.B. Accessory Apartments. The Chair asked about the land requirement. Janice said that was in General Provisions under the letter K. The Chair read the provision for the R-1 district. The minimum buildable area would be 20,000. She said they would have enough for two units, when they add a third unit they would need 40,000 feet, that is where they come up short. Rhonda said no matter what kind of units they are? Harry said the accessory dwelling is what's the issue. Harry said you either have three units or two units and an accessory

dwelling. Rhonda said that is right. Harry said if it's two units and an accessory dwelling unit, then it is a lesser requirement.

Janice said the accessory apartment ordinance in section a., states that the accessory apartment shall be clearly incidental to the single-family dwelling and then another section states only one accessory apartment shall be created within or attached to a single-family dwelling. So, therefore are they requesting two accessory apartments to one apartment. Derek said then it fails to become an accessory apartment, then it is no longer a single-family home it is a third unit. Janice agreed, that is how she read it. The Chair read another section of the ordinance which said the accessory apartment may not be established in association with manufacturing housing or townhouse style dwelling units. The Chair said they did think to put limitations on some types of dwellings. Jan G. said so the accessory apartment was fine as long as the house was for one family. Jan G. said the accessory apartment suddenly becomes non-conforming because they changed the house, but they aren't adding anything. Derek said it doesn't actually say that. It just says single family, it no longer says it isn't an accessory apartment. The Chair said it does say only one accessory apartment may be created within or attached to a single-family dwelling. Jan G. said they are not creating it, it already exists.

Rhonda says it doesn't say you can't put a two family with an accessory apartment. Jan G. said they aren't creating the accessory, they are creating a two family. Rhonda said since there is so much confusion about this they just went ahead and did the variance application.

Harry said Article b. says only one accessory apartment may be created within or attached to a single-family dwelling unit. The Planning Board intent was so you don't have two or three accessory apartments. Jan G. said that you don't create an accessory apartment. Derek agreed. Janice said when you put a second apartment on you create a multi-family unit.

The Chair said she agreed you are better off going through with an application, especially if at any time in the future the owner wants to move out of the apartment. Rhonda said you guys have to figure out what this means because no one seems to know. Rhonda said the google map shows how the accessory apartment building is connected to the house by a tiny breeze way.

The Chair said with ambiguity like this you are doing the right thing. Harry so we have decided to just continue with the variance process. The Chair said, yes.

Colleen Murphy of 24 School street spoke in favor of the project, they have been waiting for this for a long time, and please let this happen.

The Chair checked with Zoom online participants for comment, no one commented.

Ray Martin said if this could go through for one simple reason, they could get rid of those two large pine trees. They have had experience with part of the tree coming down on a piece of their property. Those are a hazard if someone can get in there to take them down, god bless them.

Rhonda said this piece of land, which needs .219 acres abuts up to 10 Town owned recreational land. It is superfluous land with plenty of land for people to enjoy. The Chair said the density of the neighborhood is what it is.

The Chair closed the public hearing and opened the board meeting for deliberations.

Derek said in his opinion it is in betterment of the community and the neighborhood.

The Chair said they would go through the criteria in determining the findings of fact.

Contrary to the Public Interest

The Chair said the public health, safety and welfare as far as public interest goes and it will create additional housing which is needed. Harry agreed it was very badly needed. The Chair said it will not change the footprint so it will not encroach more than it already does on any of the setbacks. It will not create additional density.

Spirit of the ordinance

The Chair said the ordinances they were discussing is about the minimum buildable lot size. This is not going to bring any additional density.

Harry said the spirit of the ordinance allows the residents to have a benefit as long as it does not create a detriment to the public. In this case there will be a benefit to the owner, but, there will also be a benefit to the town because there is a housing shortage. There is nothing here that is going to cause something negative that is going to detract from it. It is positive. The Chair said that applies to substantial justice as well. Harry agreed.

Surrounding properties are not going to be diminished.

Derek said the opposite will happen.

The Chair said the addition of the house the removal of the trees, the general upkeep of the property.

Jan G. said the avoidance of a burned down house, referencing the outdated electrical system.

Harry noted there will be a safety benefit as well. He said the big pine trees that are old rot and fall over.

Hardship

The Chair for a home this size, people just aren't building homes in a downtown area of this size. It seems logical to have them split and make good use of them.

Derek thanked everyone who came to the hearing to support their neighbors today.

Harry made a motion to grant a variance to Christine Blanchette for article IV.K. to allow the splitting of the existing house into two units with an accessory apartment that currently exists for Map 30, Lot 10. Beverley Howe seconded the motion. Discussion: The Chair said they were actually granting the variance to the owner. The Chair suggested putting in the Lubien's name. Janice suggested noting just the property address, as the variance will run with the property.

Harry amended the motion to grant the variance for Article IV.K. for the property as Map 30, Lot 10 for splitting a residence into two with a pre-existing accessory dwelling. Jan G. asked if they should reference 33 School Street. The Chair said they can just reference case number 2023-03. The Chair said instead of saying split the property she suggested a variance from the buildable area requirement for a three-unit dwelling. Janice suggested a variance for 0.217 acres, which is what they are short. The Chair noted Beverley had seconded the original motion. **Voice Vote Tally:** 5 to 0.

The board took a five-minute recess before the next hearing.

C. Application for an Equitable Waiver of Dimensional Requirements

Case: **2023-01a**
Applicant: **James McLennand**
Agent: Derek D. Lick, Attorney, Orr and Reno
Address: 225 Couchtown Road
Map/Lot: Map 15, Lot 053-3
District: R-3
Details of Request: Request a rehearing for an Equitable Waiver to the terms of Article VII.C.b. Case: 2023-01 was denied by the Zoning Board of Adjustment on April 12, 2023.

The Chair asked if any board members had a conflict of interest. The Chair referenced a letter from the Alfano Law Firm representing the abutter, Linda Dyment. The letter states their belief that Beverley Howe, board member, had a conflict of interest they believed she had prejudged the case and was not impartial.

Beverley said she had nothing to say she would like to hear the vote. She went on to say, that everybody has an opinion and that is what was discussed. The Chair said so you don't feel you have a conflict of interest. Beverley said, no. The Chair said you are open-minded about the evidence presented. Beverley said absolutely.

The Chair said they will take a roll call vote. The Chair said the motion would be whether or not Beverley Howe should recuse herself from the hearing on this case. Jan G. questioned if the word recuse was the right term. The Chair offered the word disqualify. Jan G. agreed that was appropriate. The Chair clarified that even if they vote that she should be disqualified from the case, she can refuse to recuse herself. The Chair said the objection is they are concerned that Ms. Howe is not unbiased and when the board ruled on the rehearing prior to the presentation of additional evidence she expressed her opinion about the rehearing. Also, since the board acts under the same rules as a jury trial this is grounds for recusal. **The Chair made a motion that do you feel that Beverley Howe should recuse herself based on the letter submitted by Alfano Law.** Harry confirmed that the motion is asking if she should be disqualified? The Chair said, yes. **The restated the motion saying that Beverley Howe should disqualify herself from sitting on case 2023-01a. Harry seconded the motion. Discussion:** Beverley said when three members voted to rehear the case that was saying all three members were of the same opinion, so maybe all three members should be disqualified. She asked, what is the difference? No comment was made. Derek said in the letter it says statements made on the record at the May 10th hearing. Derek asked what exactly were those statements?

Janice put the May 10 minutes up on the video screen scrolling to the board deliberations portion of the meeting. Derek said it is not up to the board to find the statements, it was up to the lawyer to reference those statements. Janice agreed, then referenced Beverley statements in the minutes that the town is a wonderful place to live. Derek said you can't accuse someone without any evidence.

The lawyer for the abutter, Attorney McQuarrie said this is an awkward thing and she has never done this before. She was a trial prosecutor for six years. The rules state that any matter that a juror would be disqualified on and this is kind of the same standard, 500 Section 8, 12, under Section 1.D. "has directly or indirectly given his or her opinion or has formed an opinion." She said it is a little different as it relates to member Howe,

because everyone is discussing and giving their opinions as they deliberate. But line 52 through 55 (in the ZBA minutes of May 10, 2023) “Ms. Howe stated that she believes the board shouldn’t have made the decision and certainly doesn’t think they should deny it again.” The lawyer said the statement saying “they shouldn’t deny it again” is giving an opinion prior to hearing any additional evidence and she has certainly asked that jurors be disqualified on jury trails for much less than that. She hates to make such an awkward motion, but she is trying to do her job to preserve her clients’ rights before the inevitable appeal. The Chair thanked her. Lucinda said she didn’t think the request for recusal was necessarily derogatory, but a question of prejudgment.

Janice asked if Beverley would vote on this motion. The Chair said, no. Janice said then you would have to elevate someone to fill her spot. The Chair said it would be the remaining members. Beverley said Derek voted at that hearing. Lucinda mentioned that she was not at the hearing and therefore did not vote. **Roll Call Vote:** Beverley Howe – No. Harry Seidel – No. Jan Gugliotti – No. Lucinda McQueen – Abstain. Barbara Marty – Yes. **Vote Tally:** 3-to-1-to-1. The motion to require Beverley Howe to recuse herself failed.

The Chair made a motion to incorporate the prior evidence from the original hearing and allow witnesses to present new information. Harry Seidel seconded the motion. Discussion: None. **Voice Vote Tally:** 5 – 0. The motion to incorporate the prior record passed.

The Chair asked the board if they want to accept the new application as complete. Harry said he believed it was complete. **Harry Seidel made a motion to accept the application as complete. Jan Gugliotti seconded the motion. Discussion:** None. **Voice Vote Tally:** 5 – 0. The application was accepted as complete.

Derek Lick of the law firm of Orr & Reno introduced himself as representing James McLennand. Attorney Lick said in response to the board’s request after the determination for a rehearing, they have two separate things. One is a supplement to the application, which he will be going through. The goal is to supplement information that was asked about in a prior meeting. Also, the board should have received a plot plan which shows more specific dimensions with respect to the setbacks and the lot line, which is the focus of tonight’s meeting.

Attorney Lick asked the board to allow him to divert and speak about the recusal issue for the record. In respect to the disqualification request, he understands and respects why Attorney McQuarrie made the request. For the record he thinks ultimately the board made the right decision as well as the individual member in question. Tonight they are talking about a rehearing, every member of the board who sat on the prior application and made a decision already has come to one decision on this application. Everyone has already had a vote. The whole point of deciding a rehearing is whether or not perhaps some information might come to light. In his view, it is appropriate for a member when considering whether to rehear a case they would reiterate the position he or she has already taken initially. It is not like a jury where there is a clean slate, or nobody has previously made a decision. It is like calling the jury back in and saying we know you made a decision would you mind reconsidering, and we will provide some more information. He thinks ultimately the decision was appropriate and he wanted to make that statement.

Attorney Lick thanked the board for allowing them the opportunity to present again and he appreciated that many of the board members did a site walk, which is important and helpful. To refresh everyone's memory and to focus the issue, the question before the board is whether or not to grant an Equitable Waiver of Dimensional Requirements for a garage that is nearly complete. One corner of the garage is over the 40-foot buffer line. He said to be absolutely clear this garage does not cross the property line and it does not touch the other person's property. It is not encroaching on their property. It does not inhibit the use of their property in any way. The only question is whether or not this corner of one part of the garage which does encroach and reach into the 40-foot buffer, should in fact be allowed to stand given the circumstances. In the initial part of the written narrative, he identified the nature of the request and pointed out a couple of things. What they are really talking about tonight is a 17.5% entry into the buffer, which is 7 feet out of the 40 feet. This application, if granted and he ultimately is allowed to keep his garage in place, 82.5% of the buffer will remain in place even in that one limited corner of the garage. The rest of the garage is all outside of the buffer area. That is what they are here to talk about tonight. They will get into the details as to how it impacts the neighbors. The best way to do that is to walk through the criteria, at least those where there is an issue.

Attorney Lick moved to criteria 2.B., which was relative to this case dealing with whether or not the nonconformity was discovered after the structure was substantially complete. He doesn't think there is really any dispute about that. To refresh everyone's memory about what occurred, Mr. McLennand hired a contractor, he started the work and poured the foundation. The town inspector came out and inspected the foundation. There was no notice of any concerns with respective setbacks. It wasn't so clear that the inspector came out and stated they were too close to the setback. He and his client understand that the town takes the position that it is not the Building Inspectors job to go out and undertake the measurements, they are not saying that. However, they think it is clear that a contractor such as Tom Baye, who Attorney Lick knows personally, he is a professional and knows his stuff. When Mr. Baye shows up to a site and he doesn't notice any encroach as he looks around the site it's not like Mr. McLennand and his contractor should have either. He will get into how this happened in a moment. Those of the board who went to the site saw the framing done, the sheathing done for the walls on the outside as well as the roof. It was ready to be roofed and in fact what happened was a neighbor expressed a concern to the Town, then Tom Baye went out to take a look and at that point it was discovered that one corner of the garage did in fact encroach into the 40-foot buffer. There was a discussion at that time that the encroachment was in fact 4-feet based on Tom's measurement when he was there. James McLennand took more detailed measurements as was requested and found that it was actually 7 feet into the buffer and most at the tip of that rear corner. That is shown on the plans that are provided to you. Attorney Lick said the board can see one corner of the garage is within the encroachment area and the other rear area is not.

Attorney Lick said ultimately here, the question is whether question number 3, was this discovered after it was substantially complete and the answer is yes.

Attorney Lick said once Mr. McLennand realized there was a potential issue, he stopped construction and in fact the garage doesn't have roofing on it now. It is just asphalt shingles with all the rain we have been experiencing there is potential water damage to

what is already in place. But, he recognized the board had an issue and the town had an issue and he appreciated that and did not go forward because of that concern.

Attorney Lick addressed the second part of 2.C. of the criteria, which was to explain how the violation was not an outcome of ignorance of the law or bad faith and resulted in a ligament mistake. He said based on his review of the minutes from the Zoning Board of the initial hearing, it was his understanding that this was the area where the board was most concerned. He appreciated that and explained this was where they want to clarify. After this issue came up and James reached out to Attorney Lick, they had a discussion with the contractor. The contractor was aware of the setbacks, it is not a case of ignoring or not caring, or not wanting to know. The Chair asked if this is Mr. Paquette(?) Attorney Lick concurred it was Mr. Paquette(?). Rather this is a simple mistake on Mr. Paquette's part, who was the one charged with doing this. Because it is attached to the house, which is outside the setback, he thought that ultimately the garage was in a fine place and indeed the corner closest to the house is alright. It is merely because of the angle at which the boundary conforms to the building where the setback became an issue.

Attorney Lick said those of you who went to the site can appreciate how difficult it is to notice that the angle is different than the rest of the boundary line because the property sits on a knoll and there is a drop off to the rock wall, in some places there isn't a rock wall, it varies. In any event they were not flaunting the law, or thumbing their nose at the town and saying they don't care. This is a case of they thought they were fine and ultimately, they proceeded and learned after the fact that they weren't.

Attorney Lick said given what they have presented here is not a fact of a situation of the ignorance of the law. He knows that James' testimony previously was he didn't know what the setback was, but his agent did. His agent ultimately undertook the work. He understands that James signed the application saying it wasn't going to be in the setbacks. They understand that, but, again it was based on the agents knowledge. It was an error, that is the bottom line.

Attorney Lick said had James been aware or the contractor was aware that in fact one corner was going to encroach they could attempt to rearrange things. There is an issue with that by the way, which for those of you who visited the site there is a steep incline to get up to the garage. If you move the garage forward, there is an issue about whether you can get in or whether you can actually drive into the garage. Which is why it was placed where it was in the beginning because of the unique nature of the property.

Attorney Lick said in respect to 2.C. it was not a matter of ignorance of the law, it was a mistake based on a misunderstanding as to the property line running at the current level to the buildings.

The Chair asked if the first time a measurement was taken was when Tom Baye came to the site? Attorney Lick said that was his understanding, yes. The Chair asked if they knew the date of that visit. Attorney Lick did not know. Jan G. said she believed it was January 29th.

Attorney Lick continued on to item number 3 of the criteria, explaining how the non-conformity does not constitute a nuisance or interfere with the future uses of the property in the area. Attorney Lick said it does not constitute a nuisance or interfere with the neighbor's use of their property. An example of interference or nuisance would be the production or emission of dust, smoke or refuse, noise, vibrations similar to

conditions that are dangerous to the comfort, peace, help and safety of the community and will tend to its disturbance or annoyance. He understands that a concerned neighbor has raised an issue with this. However, he thinks the issue really is not the 7 feet that it encroaches on the property line, but rather the structure itself. He supposed if ultimately the board does not grant the Equitable Waiver and Mr. McLennand has to somehow tear down and start over or figure out how to cut off the back corner and keep it structurally sound. That will not in any material way change the concerns of the neighbor, they will still see the structure, it will be just as tall. They would still experience it just as they would today.

Attorney Lick said to the extent the concerns raised, in our view, it's probably a concern with where its located generally and the height of it. He understands that, but ultimately it's not the 7-foot encroachment that is clearly causing this issue.

Attorney Lick addressed the last point of the criteria, diminishing the value of the property. It's been argued there is no evidence for and there is no evidence now this encroachment would in any way impair the value of the neighborhood or the parcel. It (the structure) is still 33 feet from the property line. For this particular district it is supposed to be 40-feet and they understand that, but they also think the zoning board understands that throughout other areas of town there are other setbacks such as 30 feet or 20 feet. That in and of itself is not deemed to be somehow diminishing the value of all the properties in the area. In this particular case the property has a significant mature tree buffer between the garage and the structures of the neighbor's property. He has not been there but, his understanding is looking through the trees what you see is, he believes, the garage maybe the second floor of the garage. So, essentially you can see a view of one garage from another garage and they don't believe that in any way diminishes the value. For those of us that live in the area, we can see lots of houses and garages.

Attorney Lick said it is important to note that there is one person that controls the buffer, it's the neighbor. It's not like the trees that are roughly 200 feet away from the garage, can be cut down by Mr. McLennand and the neighbor could be looking directly at the garage. It is all in control of the neighbor and they can keep the buffer in place to their liking and they control their own destiny with respect to whether they can see the garage.

Attorney Lick concluded by saying that he wanted to clarify one thing to really show in his view how minimal the encroachment is and let the board see it on a plan with measurements. Also, to identify the facts that they think are important.

Attorney Lick said there is one last criteria item dealing with the cost of correction outweighs the public benefit. He believes there is very minimal benefit to tearing down the corner of the garage. It's going to have a very minimal impact on any neighbors or on the town. Mr. McLennand has testified that the garage was about a $100,000 venture and it is done except for the siding and roofing. If forced he has two choices, tear it down and start over, which is a significant expense. Or somehow retain a structural engineer to do an analysis based on the framing and roofing that is in place. Determine whether or not he can cut off the corner of the garage and do it in a way that it can remain structurally sound and redesign it. That certainly would be cost prohibitive, and they have significant concerns about whether in this environment where engineers are very difficult to get, it could take a few years to get a structural analysis, at which point the rest of the garage still sits un-roofed and un-shingled. They understand this impacts the neighbor;

they appreciate the feedback. But given the minimal impact materially it doesn't make sense to require him to tear down the garage or to figure out how to cut off one corner of the garage to address the 40-foot setback. He offered to answer any questions from the board.

Derek asked if it is 11 yards into James' property. Attorney Lick said exactly 33 feet into his own property.

The Chair opened the public hearing, thanking the applicant for their presentation.

Attorney McQuarrie approached the board and said that some of the things that have been raised are insignificant for the board's consideration and that was exactly how far into the setback the garage was. The question was whether there was an encroachment and whether the Equitable Waiver should be granted. To remind the board she said under RSA 674 section 33 the board must find all parts to grant the Equitable Waiver. She doesn't have comment for the other portions of the statute other than to say under subsection B that still today we are not hearing anything that does not amount to the fact that this was just an outcome of ignorance or failure to inquire. She and her client, Linda Dyment, have reiterated that this is a failure to inquire.

Attorney McQuarrie said the most important fact to incorporate into everyone's memory from the last time was McLennand said essentially that nobody took measurements until Tom Baye came out and inspected the building site. Attorney McQuarrie submits that was not the Building Inspector's job to essentially determine whether or not private owners and their agents are conforming with requirements to get their projects done. She said they find themselves here essentially again with an application which was orally presented by Attorney Lick claiming this was a "simple mistake" it was "an error" claiming that was the bottom line. There was a case on point with this application. The plain language of the ordinance states in order for the board to find for Mr. McLennand it needs to find that either there was a good faith error in measurement or calculation. The case of Taylor vs. the Town of Wakefield 158 NH 35 was cited in the last board hearing. In that case the Supreme Court overturned both the trail hearing the appellate court opinions. The Court essentially stated that the term "honest mistake" or "legitimate mistake" in describing the requirements of the subsection are overly broad. She recognized there was a comment at one of the prior meetings that was what the application said. However, the application is bound by the RSA, what we are looking for here is a miscalculation or good faith error in measurement. The Town of Wakefield vs. Taylor case describes the legislative intent of that statute "to calculate" means to ascertain by mathematical method or to compute or to determine by mathematical processes. She said here they have the opposite of that, it was a misunderstanding about the property line. Everyone assumed that because it was in line with the home that it met the requirement. But, they have heard no evidence to support that and that is exactly why the Town of Wakefield vs. Taylor case was overturned. The record of the evidence did not support that the person had made a mathematical error resulting in a miscalculation. While there is equitable jurisdiction granted upon the Zoning Board of Adjustments, in the case of Dynbeck vs. the Town of Holderness, 167 NH 130 that general equitable jurisdiction is not conferred upon the board. For this Equitable Waiver of Dimensional Requirement, the board is only able to confer equitable remedies when the person has met all the sub-parts of the statute, which here the record does not show.

The board has heard nothing about math, they have only heard about assumptions, which is tantamount to a failure to inquire.

Attorney McQuarrie said she understood this is a very difficult decision for the board to make given the very unfortunate economic circumstances that people find themselves in, in this case. She suggested the board could fall back on the law such as the case of Taylor vs. the Town of Wakefield which is exactly on point. The record does not support an error in mathematical processes not being followed and therefore the person could not bear the burden of their standard of proof that it was a good faith error in measurement or calculation made by the owner or the owner's agent. In fact, it was just an overlook which is a failure to inquire which the board cannot grant equitable relief to in this circumstance.

Attorney McQuarrie said the record is completely devoid of any of that evidence that is necessary to make a finding in favor of Mr. McLennand. At this point, she asked the board to deny the Equitable Waiver request again and she thanked the board.

Derek asked Attorney McQuarrie what the client's optimal outcome was, what do they hope to achieve? Whether to take the garage down, what is the optimal outcome? The Chair responded that was not up to them, that was up to the Select Board, to determine. Attorney McQuarrie said she and her client understood people have opinions that they have expressed openly on this, and her client has the right to object to this and that was where she stands. The Chair said the board would be here even if Tom Baye had said they are outside the setbacks. Derek said he asked an inappropriate question. The Chair said that was alright and asked if the board had further questions.

Beverley said the 7-foot encroachment does not constitute a nuisance or diminish the value of neighboring properties. Also, the cost of correction outweighs the public benefit, if any, gained by doing that. The Chair said they would go through each of the criteria.

Attorney McQuarrie made a follow up remark, she was not arguing that point, although the board needs to find each and every element of the statute and there was one element missing.

Linda Dyment, the abutter, said she believes that building does decrease the value of her property by at least $20,000 to $30,000. She has not had it appraised to see the difference. When you come up her driveway you can see the building very clearly and it is very close. She feels like if they had done the right thing and done a plot plan and measured correctly, they wouldn't be here. She felt like it was affecting her ability to maybe sell it because someday there will be a problem with the property line because of the setback problem. She wondered if the original house being built in line with the stone wall, even though it curves a little, but it was less than 50 feet now for two buildings how can it just be 17 feet closer to the property which was supposed to be in line with the original house. It just doesn't make sense. Because the garage was 33 feet from the corner and the original house was 50 feet and the stone wall just doesn't curve that much, it was rather straight there. She just doesn't understand how it got messed up like that, how it got to be encroaching like that. Attorney McQuarrie said because no one measured before, that was the point.

The Chair thanked the abutter and her attorney and asked for questions from the board and comments from other abutters and the public.

Attorney Lick approached the board and addressed the point as to whether or not there were any measurements. He said this is what attorney's do but, he thought it was a matter of semantics. The reason for that is, if he plopped the garage down where there was not a structure, and no reference to another structure being well outside the boundary line or well outside the buffer area, then they would have a legitimate point. They didn't take any measurements, how could they possibly know that it was outside the boundary line and outside the buffer area, that was not what they have here. They have a case where there is already a structure which everybody acknowledges was in fact outside and well outside the buffer area. The neighboring owners say it was a 50 feet property line instead of 40. This garage was set back a couple of feet from the house but not 10 feet from the house. He thinks the contractor had a legitimate basis to say if this structure was well within the outside buffer area and then when they attach something to that house it too would be outside the buffer area. To the extent that it was a mathematical mistake in measuring the angle of the rock wall in relation to the house. It was as if he put a table right next to the one, he was currently sitting at and then he reference the wall in the room and how the angle would not be at quite the same angle. He believed both tables were appropriately placed, however, if that wall is somehow angled and he was looking down on it from a knoll of a second of third story and ultimately its an angle he did not appreciate then in fact it was a mathematical mistake. It was not a situation where nobody had any reference whatsoever where the buffer area was, they had a reference they had the house. They thought by using that house they were going to be perfectly fine. They were right except for one corner, because of the angle. They had a reference point; the problem was the reference point was not perfect when it came to the far end of the garage.

Sam Carr said he was listening during the Farrell Loop property application and there was a question about the plot map being submitted to the Building Department. Was there such a thing done for this case? Is this case in conformance with that map that was submitted to the Building Department? The Chair stated there was a plot plan required for a Building Permit. She said when we went to look in the folder for the Building Permit we did not find a plot plan.

Janice asked for clarification from Derek Lick, does the angle of the house determine the angle of the placement of the garage. Attorney Lick said yes, the garage is essentially parallel with the garage, it was used as the reference point.

Attorney McQuarrie wanted to make a comment about the semantics of the case. They do not have to deal with semantics because the Supreme Court has already addressed this issue. It literally said in the Wakefield case that calculate means to ascertain by mathematical methods, compute or to answer to or determine by mathematical processes, seeing an angle of a house was not determining anything by a mathematical process. It was failure to inquire.

Jason Dyment said he has seen the addition of the garage and it was very visible from the master bedroom at 207 Couchtown Road. He couldn't see the residence for about 40 years and now he can look out the master bedroom window and see a good-sized building. It is clearly visible, especially in the wintertime when there is no foliage.

The Chair thanked him for his comments and asked for further comments from the public and questions from the board. No comments or questions.

The Chair closed the public hearing and open board deliberations.

The Chair noted that she and Harry went on a site visit. The Chair noted for members who were not present, that standing on the corner of the garage you can see the stone wall which is the boundary line. She said it was visible from the house. She wasn't sure if there were trees or some impediment from seeing where the stone wall was, but the property line was visible from the garage structure. Personally, she felt it would not have been a difficult feat to measure from one to the other. She said they had repeated that no measurements were taken until Tom Baye went out on the 29th.

Harry said he had a different impression when he was at the site. He said looking across a distance, and let's say you know something was compliant, you see that something was 50 feet and there is a cutting of the vegetation on the property on the right up to the property line. The new building is high up on a knoll and the property line is 40 to 50 feet away and it has been cleared. You see a property distance that is skewed because the grade plummets down. Something that is a lesser distance looks greater when the ground goes away. If you have two parallel lines and one is way down, it appears further. When he stood there and observed it, he has actually drawn this up. He knows the math, he knows the 33, he knows the 43, he has set it on his drafting board and drawn it. But, when there you don't see it. He does this for a living. He could not see the nonconformity.

The Chair said that was so funny because the wall actually appears closer than 33-feet, and she thought it's because you are standing above it looking down on the wall. So in a horizontal measurement it's probably closer than 33, if you are doing horizontal but, if you were measuring the contour you would get to the 33.

Harry said if you wanted to measure the property line you could not measure on the ground and have an accurate measurement, you would have to measure horizontally from up on a step ladder, potentially 12 feet up in the air. To get a straight measurement.

The Chair said which would make it even shorter. Harry said which makes it even shorter, but very difficult to measure. The Chair said she did not think the Town of Warner requires a horizontal measurement. Harry said, yes they do, it is a horizontal line, it is not by the contour. No property line is measured on the contour. It is measured on the absolute horizontal. Contours are not part of a footprint. We had one tonight where they did not have an accurate surveyed drawing. When discussing mathematics this is what you get when you do not have a surveyed drawing. We do not require that in this town. That causes a disservice to anyone in a situation like this. The building is compliant and the house is compliant. But, the property line is not actually parallel, it is slightly unparallel.

Jan G. said they voted initially no because it sounded like nobody even bothered to look up the statute and it turned out that now he knew what he was supposed to do. But, he didn't get a 12 foot ladder or get a surveyor. The only thing she thinks the board could agree to was there's an issue with criteria number 2, was it an honest mistake or not. She said none of us are lawyers, she has respect for the lawyers who go through legal documents like the Wakefield and Holderness cases and come up with an argument about how precise the statute is. But, in her opinion, there is a 50/50 probability that this was an honest mistake, or it wasn't because of the ambiguity of the law or the statute. It was not clearly stated as to what is and what isn't with examples. She believes the board

has the right to not try to become lawyers and understand what Wakefield really does in this context. She thinks the board needs to decide whether this was an honest mistake.

The Chair said failure to inquire … they never argued that a measurement was taken. A foundation was poured, a frame was put up, and never once; even though they could see where the stone wall was that designated the property line, was it measured to be sure that they were within the setbacks. To her that was a clear failure to inquire. They never measured once until January 29th when Tom Baye came out and took a measurement. She said the RSA is very clear. ZBA members do not have to be lawyers, but they also can't ignore what the RSA says. She does not want her opinion to drown out anyone else's voice. She can't change her vote from the way she felt about this and voted the first time. She was thinking when they said they were going to give more information about how this was an honest mistake. The plot is a rectangle, the stone wall is perfectly straight from the beginning of the lot to the end of the lot. There is not some weird turn in the wall or something that would make somebody not realize where that property line was. The house sits off-center, off parallel with the wall. That is a clear defined area. There was never once a measurement taken.

Jan G. asked if Harry is saying that Warner doesn't require that measurement? Harry said what the Town of Warner doesn't do is require a site plan, that will locate the building on the site, by a surveyor. Harry said, the town has a map of the lot and a sketch done by the Builder and a measurement taken as best he could to the property line. Jan G. said Harry is saying there was a measurement, and the Chair is saying there was never a measurement. The Chair said no, Harry is saying what the town should require. Jan G. said didn't he just say they tried to take a measurement. The Chair and Lucinda both said, no. Jan G. said so the Chair and Harry are in an agreement that he never took a tape measure and did whatever he had to do. The Chair said the testimony is until Tom Baye showed up there was no measurement taken. The Chair doesn't know how this could lead to an error in measurement or not a failure to inquire, when there was never a measurement taken.

Attorney Lick tried to make a public comment. The Chair said the public comment portion of the hearing was closed. Attorney Lick said the board has misunderstood one key fact, which would be happy to clarify, or not. The Chair asked the board how they felt about reopening the hearing for one statement, although it would have to be opened for a rebuttal. Jan G. said she would be okay with it being opened for both, Beverley agreed with this statement.

Attorney Lick said he heard the Chair say the 33-foot measurement would be shorter if it were measured parallel as opposed to along the ground. That 33-foot measurement is indeed parallel as if someone was standing on a ladder 12 or 20 feet up. The measure along the ground would be longer. The Chair asked if there was a rebuttal. There was none.

Lucinda said she tends to agree with the Chair. She felt it was an awful situation all around. She respects abutters rights. If you are used to living in an area and something comes into view, it would be upsetting to me. The fact that somebody was spending a lot of money to put an addition on, she would think in agreement with the Chairwoman that, they measured it properly before they did anything. She does not think it was an impossible task. There are many ways of making measurements, with an array of measurement tools, even when considering a slope. She thinks it was presumptuous to

go ahead and do this when measurements were not taken. She thinks it is unfortunate that people have spent money on it. However, the fact remains it just wasn't done properly at the beginning.

Beverley said it is probably a case where everybody had assumed that somebody already performed measurements. Consequently, that is why they went ahead with it. She does not think anyone tried to do anything sneaky or to put something in that wasn't supposed to be there. It is very unfortunate, and she feels sorry for everybody. She thinks asking somebody to remove something like that fixture is an unreasonable request. Beverley said she doesn't know any of these people. Stating that she is not involved with anyone involved. Nevertheless, she would never ask anybody to do that.

The Chair asked Beverley about the issue of failure to inquire, does she believe they should have measured before the pouring the foundation. Beverley responded yes, she does believe that and that everybody does usually. Probably someone did and said it was okay. The Chair said that is not the testimony. Beverley said maybe nobody wants to say it is okay now because it wasn't okay. Beverley said we do not know. The Chair said we must go on the testimony received at the meetings. Beverley agreed.

Derek said he knows what his heart says and he knows what is fair and he is glad he is not voting today.

Harry said he agrees with Beverley that it is an unfortunate situation. An error was made, and he understands how the error happened. As a professional in the trades and he does this type of work, and he deals with this all the time. He has actually sketched up something, which the Chair has seen. He referenced a piece of paper in his hand which the board can use in the future, as sort of an example. He can pass it around. He showed it to Beverley. Harry explained it is a drawing of a property line with a little bit of an angle. There is a building there and that building is close to being parallel to the property line. As the line continues it gets closer and closer, not to the property line but to the setback. At one point it is just over the setback. Harry said the crowd can't see this, but it is only a slight difference in the angle from the building to the property line. Harry confirmed again the Chair had already seen this. Then he brought the drawing to Jan G. and spoke to her about the drawing. The Chair turned to Janice and said she would get a digital copy of the drawing to Land Use for the record.

Speaking to the Chair, Beverley said if this building was over the property line, she would agree with what was said previously. But this is the defined setback. The Chair responds back to Beverley, but this is the ordinance. Beverley explains she understands this statement, but we are the Zoning Board of Adjustment. The Chair said we are bound by the RSA's. Beverley said we are, but there are exceptions. Beverley responded saying otherwise we don't need to be here if we followed everything exactly, we are the Board of Adjustment. The Chair said the RSA clearly states what criteria are allowed. Beverley said she understands that.

Jan G. made a motion that the board grant an Equitable Waiver of Dimensional Requirements for Map 15, Lot 053-3. The Chair asked what was the basis of the motion. Jan G. said she was actually going to vote against it. The Chair said she could make a motion against it. Jan G. said her heart is not in it. The Chair said there is a motion on the floor. Janice agreed they could let it stand, for now. **Harry Seidel seconded the motion. Discussion:** None. The Chair clarified a vote in the affirmative is

to grant the waiver. **Roll Call Vote:** Beverley Howe: Yes. Harry Seidel: Yes. Jan Gugliotti: No. Lucinda McQueen: No, Barbara Marty: No. **Vote Tally:** 3 to 2. The motion failed. The Chair stated that the motion failed, and the waiver is denied. Janice said she thought they had to keep going until a motion passes. The Chair disagreed. Janice clarified that the motion to grant failed. The Chair and Harry said, they agreed it failed. The Chair said it was a denial and she was sorry it even got to this point, but the waiver is denied.

Derek Narducci withdrew from the meeting at 9:25 PM.

III. REVIEW OF MINUTES OF PREVIOUS MEETING: June 14, 2023

The Chair made a motion to approve the minutes as amended. Beverley Howe seconded the motion. Discussion: None. **Voice Vote Tally:** 5 – 0. The minutes of June14 were approved as amended.

IV. **COMMUNICATIONS AND MISCELLANEOUS**

The Chair went through the six recommendations by the town lawyer on the Rules of Procedure document. She handed out paper copies for discussion at the August meeting.

Janice said she went to training for municipal employees and they were discussing what could be posted online and what could not in reference to 91:A. She asked about posting an abutter's list with addresses. The trainers/lawyers said they would not post the abutter's list online. She sent the abutter's list to the members but, not online.

V. ADJOURNMENT (Motion, Second, Vote)

Beverley Howe made a motion to adjourn. Jan Gugliotti seconded the motion. Voice Vote Tally: 5 – 0. The meeting was adjourned 9:30 PM.

/jll