

Town of East Kingston, New Hampshire
Zoning Board of Adjustment Meeting Minutes
April 23, 2020

The Town of East Kingston Zoning Board of Adjustment met remotely through a Zoom web conference, Thursday, April 23, 2020 at 7:00 PM. Due to COVID-19, and pursuant with NH Emergency Orders, no public meeting location was utilized.

Chairman Allen made a statement regarding video bombing:

If tonight's meeting is interrupted by outside sources, this meeting will be immediately terminated and public hearings will be continued and rescheduled to another date and time to be announced and published. This is the first of our video meetings and we ask for understanding and patience as we work thorough any technical difficulties that may occur during the meeting. People were asked to mute themselves during the presentation to eliminate background noise.

Mr. Allen explained the meeting procedure: He will open the public meeting, roll call of members will be called, other town officials will be recognized, and minutes will be approved. Mr. Allen will introduce the applicants, who will give a brief description of why they are before the board, followed by any presentations. Only board members will ask questions of the applicants at this point. Once the board has finished with their questions, the floor will be opened for public comments. Please announce yourself by name and address and make any comments to the board and not the applicant. When public comments are completed, the public comment portion will be closed. Then the board will deliberate and may ask additional questions of the applicant. A motion and second will then be asked for to accept or deny the application, and there will be a vote of the board members.

Members Attending: Chairman Tim Allen, Vice Chairman Ed Robbins, David Ciardelli, Paul Falman, Frank Collamore and Nate Maher.

Others Attending: Applicant Brian Graham, applicant's Attorney Daniel Muller, Esq. - Cronin, Bisson & Zalinsky, Kurt Meisner – Brem Corp. and various East Kingston residents.

Chairman Allen opened the meeting at 7:05 pm and Mrs. White called the role.

Mr. Allen asked for **MOTIONS** to approve the March 5 and April 9 ZBA minutes.

Mr. Robbins **MOVED** to approve the March 5, 2020 ZBA minutes as presented; seconded by Mr. Ciardelli with unanimous approval.

Mr. Ciardelli **MOVED** to approve the April 9, 2020 ZBA minutes as presented; seconded by Mr. Collamore with unanimous approval.

Mr. Allen opened the public hearing for Case #20-01.

Continuation: Case #20-01 – Brian Graham, 128 Newton Rd, Plaistow, NH requests variances for property located at 4 Cove Road, EK, NH (MBL 02-01-33) from the provisions of (a) Article VII.D.2 - minimum leach field size, Article VII.D.6 – septic leach field boundaries (setback from property line and private well) and (b) Article IX.A.1. – contagious frontage, Article IX.A.2. minimum lot size, and Article IX.C. building setbacks (front, side and rear) for construction of a potential new home.

Mr. Allen noted there will be no references to information pertaining to the 19-01 application coming forward for the #20-01 application. The applicant will present the new application and all abutters will be asked to restate their opinions.

Mr. Allen noted he had previously stated in error the variances requested for Article IX.A.1 (contiguous frontage) and Article IX.A.2. (minimum lot size) were not required as it is a grandfathered non-conforming lot of record. In reviewing Ordinance Article XXI – Non-Conforming Lots, Structures and Uses - paragraph A.4 Non-Conforming Lots states: *The building, structure, well and septic system to be constructed on the lot shall comply with all setback requirements of the Zoning Ordinance.* As they were listed in the request for variances, they would work through those items. Each of the variances will be voted on individually

Atty. Muller has withdrawn the variance request for Article VII.D.2 for minimum leach field size as the system has been redesigned to accommodate a 3-bedroom house as required by the zoning ordinance.

Mr. Allen asked Atty. Muller to present the application.

Atty Muller introduced himself as representative for the applicant, Brian Graham and Kurt Meisner, Engineer from Meisner Brem Corporation.

Atty. Muller explained Mr. Brian Graham is the owner of the property located at 4 Cove Road in East Kingston. The property was at one time part of an earlier camp lot subdivision. This particular lot has always been a separate lot and was sold to Mr. Graham. There is a Quonset-hut style garage presently on the property, built by the previous owner. Mr. Graham originally sought to convert the existing garage to a home, but the intent to do so did not meet building code requirements so their intent now is to remove the garage and build a 2-bedroom single-family home on the lot which meets the minimum size for a dwelling. Included in the application packet is an elevation plan and a floor plan.

The property is approximately 7,133 sf in size and is an irregular pie-shaped piece of land. The rear of the lot narrows down to a point, and there are wetlands in that portion of the property. The property has 65.46' of frontage on Cove Road and lies within the residential and agricultural district. The eastern portion of the property is located with the Wetlands Conservation District and has poorly drained soils.

Mr. Graham's intent is to remove the Quonset-hut building and construct a single-family dwelling on the western portion of the property which has a smaller footprint than the existing garage and will be further away from the road. The proposed dwelling meets the minimum size requirement of the Zoning Ordinance. It will be served by a septic system (the Clean Solutions Alternative) whose use has been approved by NHDES for similar small lots, including waterfront camp lots. The system is a 3-bedroom system which complies with the zoning ordinance.

The proposed leach field is 52' from the proposed replacement artesian well and 10' from the southern property boundary, which is adjacent to a town-owned lot. Given the limited building envelope of the property due to the size configuration, Mr. Graham requires relief from several ordinance articles to allow the construction of the home and installation of the septic system.

Relief is required from the following: Art. VII.D.6 – septic system leach field boundaries from property boundaries and proposed private wells; Art. IX.A.1. and A.2 – Lot Area and Yard Requirements - minimum frontage and minimum lot area; and Art. IX.C – front and side building setbacks.

Atty. Muller reviewed answers to the Variance Criteria.

1. *The proposed use would not diminish surrounding property values:* Single family dwellings are permitted in the residential district, in which this property lies. Smaller lots are the norm in this area which consists of a majority of camp lots. Other lots of similar size have been improved for single-family purposes. It abuts undeveloped town-owned property on one side, and an undeveloped piece of property on the other which was previously denied a variance.

As there are undeveloped properties on either side, it would not give a sense of overcrowding the area nor cause any adverse impacts to surrounding properties. Mr. Graham proposes to replace the Quonset-hut structure with a home more in keeping with the character of the neighborhood, and granting the variances would not diminish surrounding property values.

2. Granting the variance would not be contrary to the public interest and would not be contrary to the spirit of the ordinance: Granting of the variance will not unduly conflict with the objectives of the relevant zoning provisions as they would not alter the essential character of the area or threaten public health, safety or welfare. The lot is located within the residential district and located in a neighborhood where the majority of the lots do not meet current dimensional requirements of the Zoning Ordinance. There are improved lots within the neighborhood which are essentially the same size. A modest single-family home is more in keeping with the residential nature of the neighborhood than the current Quonset-style accessory garage. Allowing development of a modest single-family home will not alter the essential character of the neighborhood. With undeveloped lots on either side it will not give the appearance of overcrowding.

The footprint of the proposed dwelling is smaller than the existing structure, which increases the setback from the road as well as from the wetlands. Removal of the concrete pad at the front of the existing garage is also proposed, which will create a larger front yard. The dwelling is positioned as far as possible from the wetlands. A reduced setback would not locate the home in close proximity to any other development. It is proposed to install a state-of-the-art septic system designed for smaller lots which has been approved on similar lots. It creates less pollution and less issues than a conventional septic system. The leach field is smaller in size, but will support the 2-bedroom home and cannot be expanded without prior DES approval. Requiring a leach field for a house that cannot be built on the property does not serve any public interest. Fire and Police Department have served other properties further up on Cove Road. The proposed house would be an improvement over the existing structure, is more in keeping with the other houses in the neighborhood, and more likely result in long-term upkeep and improvement of the property to the benefit of the neighborhood. The proposed development allowed by the variances will not threaten the public health, safety or welfare.

3. Denial of the variance would result in unnecessary hardship to the owner owing to the special conditions of the land because:
*. – No fair and substantial relationship exists between the general public purposes of the ordinance and the specific application to the property:

The property with the principle structure served by the garage was sold separately by the previous owner of the property and is now owned and occupied by a third party. There appears to be no similarly-situated lot in the area of a similar shape with wetlands in the rear. The property was purchased with an accessory Quonset-style garage on it and Mr. Graham is trying to put it to a permitted use. The property owner has a right to enjoy his property. The proposed is a reasonable use of the property.

Conversion of the existing structure (Quonset hut garage) into a dwelling unit was determined not to be feasible by the Building Inspector under present codes. Mr. Graham is entitled to a reasonable return on his investment and the inability to do so may constitute an unnecessary hardship. The property is located in a district where residences and farms are permitted uses and located within a neighborhood characterized by camp lots improved by single-family residences. It is an existing lot of record which predates zoning regulations in East Kingston, and was created before minimum lot sizes and frontage standards were in place. Police and Fire have ascertained the ability to reach homes on Cove Road. There are vacant lots on either side of 4 Cove Road; one is town-owned and the other was previously denied a variance in 2004. The size and configuration of the lot and the wetlands at the rear of the property differentiates it from other lots in the area.

Due to minimum floor area requirements, there is insufficient room to permit construction of a single-family home adhering to the current setbacks. Mr. Graham's objective is to build a modest 2-bedroom home which meets minimum floor area standards, does not overwhelm the property and neighborhood nor encroach on the wetlands. The proposed home would be located further back from the road than the existing garage. The existing front concrete pad would be removed, allowing for a larger front yard. The footprint of the proposed home is smaller than the existing garage and a more pleasing structure aesthetically. The proposed septic system is state-of-the-art and designed for smaller lots. Approval would limit further expansion of the house. There is state approval for a new artesian well to replace the old point well near the wetlands.

Replacement of the Quonset-hut garage with a modest 2-bedroom home will not cause overcrowding, emergency access issues, or health concerns the relevant ordinances seek to prevent given the specifics of the property. Special conditions of the property make it reasonable to replace the Quonset hut with a modest 2-bedroom house with a smaller footprint served by a septic system designed for the same. Such a use would permit Mr. Graham a reasonable return on his investment thereby avoiding a hardship.

** – The proposed use is reasonable.*

Under zoning, a single-family home is a permitted use, and therefore is deemed a reasonable use in that zoning district. The proposed use is also in keeping with the predominant use in the neighborhood.

** – Alternatively, there is no reasonable use of the property without the relief requested.*

A variance is intended as a safety valve for zoning ordinances. The property is readily distinguishable from other lots due to the size and configuration and the wetlands at the rear, which does not provide a usable building envelope which adheres to the towns' residential minimum floor requirement. Taking into consideration the abutting properties are not developed, the 2-family home would not be in close proximity to other development which alleviates the potential of overcrowding.

Another distinguishing feature is the current garage building, which no longer serves any existing principle structure. An accessory structure alone is not an economically reasonable use of a property and given the current zoning, precludes conversion to a more gainful use. There is not a market for properties only improved by Quonset hut accessory structures in an area intended for residences and farms as principal uses. Strict compliance with relevant zoning ordinances would deprive Mr. Graham of any economically reasonable use of the property. The variances sought here would allow Mr. Graham to put the property to a reasonable use for which there would be some market (a modest single-family home), and not unduly undermine to basic objectives of relevant zoning provisions.

A denial will leave Mr. Graham with a property for which there is no meaningful market; a property with a standalone accessory garage which deprives him of a reasonable return for his investment. It would also deprive the area of a structure more in keeping with other development in the area. The present Quonset hut does not reflect the character of any development in the area.

Also, a denial of the variance would result in little gain to the public. It would leave the Quonset hut structure standing on a road with waterfront residential properties, and does not lend itself to betterment of the property or neighborhood. The proposed home will result in a larger front yard and a structure more in keeping with the neighborhood, without overcrowding any other development in the area. The intended septic system is designed for smaller lots and is a system which has been approved in the past.

Approval of the proposed septic system would also ensure it could not be expanded which could result in a home which would overwhelm the lot. Mr. Graham cannot make reasonable use of this property without the variances. We believe the variances sought here are appropriate and should be granted.

Mr. Allen stated they should discuss the actual variances they are seeking as he has noted discrepancies between the application and the plot plan. Applicants' answers in italics.

1. Septic leach field boundaries (setback from property line and private well) – *the septic plan shows the well 52' from the leach field.* Mr. Ciardelli noted the ordinance distance is 75' (a delta of 23'). *There is a 10' setback shown from the front and south side of the leach field to the property line.* Mr. Ciardelli noted the ordinance distance is 20' (a delta of 10'). Is the new well proposed to be in the same location as the existing point well? *Yes*
2. Building setbacks – front setback for the town is 30'; are you proposing 17.1'. *Yes. Atty. Muller noted the plan could be confusing as there are demarcations for both the existing building and the proposed building.* Mr. Allen noted there is a proposed set of steps in the front which sticks out approximately 3', reducing the front setback to a little less than 15'. *Atty. Muller agreed if you include the steps it was 14.8, but noted towns vary on whether the steps are included in the setback.*
3. Building setbacks – left side. Side setback for the town is 25'; you are asking for approx. 10'. The floor plan for the house shows a set of steps on the left side of the house; the septic plan does not show this. As the steps are part of the structure they should be shown. *Mr. Meisner noted a typical landing is 3.5', which would make it a 6.5' setback.* Mr. Robbins asked if the stairs are any wide than the landing. *Mr. Meisner noted they would be the same width.* Mr. Maher noted it appeared the number of steps does not relate to the elevation; they should extend approx. half the width of the house. *Mr. Meisner agreed.* After conferring with Mr. Graham, Atty. Muller stated he would be willing to redesign to eliminate them to gain the relief.
4. Building setbacks – right side. Side setback for the town is 25'; you are asking for approx. 19.5' (a delta of 5.5'). *Mr. Meisner pointed out the exiting Quonset hut is approx. 17' from the property line, so we are asking for a large setback than exists currently.*

Mr. Allen stated he is a licensed septic designer but has never utilized a clean solutions system. He opined 17" above seasonal high-water table with a 20-minute perk rate on a lot the size of some houses, seems very aggressive and asked Mr. Meisner to educate the board on the system.

Mr. Meisner explained the system is actually 2' above the high-water table. Elevation 98 bed bottom is 100 which is a 2' separation. The system is a state-of-the-art mechanical system. There is an aeration system inside the septic tank which pumps air into the septic tank, promoting bacterial growth inside of the tank. When the water comes out, in theory it is called 98% clear water, so you are putting almost clean water back into the ground. It takes a much smaller footprint than a conventional leach field as less filtration is necessary. When the power goes out the well also goes out, so water would not be flowing into the system to overtax it.

Mr. Allen for board questions.

Mr. Ciardelli noted it takes electricity to pump air into the system; what happens in the event of power outages? Is there a proposal for a back-up generator? *Mr. Meisner noted there was not one on the plan at the present time, but an additional 500-gallon pump chamber gives a few days of storage capacity. When the electricity came back on the pump would turn on and start pumping air into the system. There is an alarm for the system which would alert the owner the system was not receiving power. There is also a required maintenance contract for the system, requiring reports to the NHDES every 2 years.* Mr. Robbins noted there have been instances power has been out for more than a couple of days; would Mr. Graham be willing to install a generator to augment power loss? *Atty. Muller noted Mr. Graham would agree to install a generator as a condition of approval if it meant the variance would be granted.*

Mr. Ciardelli asked about removal of trees on the lot, as it appeared most of the existing trees would need to come out on that side of the proposed house to make room for the leach field. *Mr. Meisner agreed any trees within 10' of a leach field would need to be removed as per NHDES, so all trees up to the property line would need to be removed.* Mr. Allen asked within the parameters of the Shoreland permit there are specific numbers of trees that can be removed and asked if they would also need a waiver from that? *Atty. Muller stated they would not need a waiver as the distance is well beyond the 50' from the shoreline (actually 200') and they do have a current shoreline permit.*

Mr. Allen asked who performed the mapping of the wetlands? *Mr. Meisner noted it was Thomas Sokoloski, Soil Scientist - TES Environmental and his stamp is on the septic plan.* Mr. Falman noted it appeared the system pipe was only 6" below the soil line. Mr. Allen noted that was the minimum allowed depth. Mr. Falman commented that even though the water coming from the system is supposed to be very clean, knowing that the area is very sensitive with normal rain could there be surface ponding because of the closeness to the surface? Mr. Allen noted if it was designed properly, surface water would run off.

Mr. Meisner noted what is on top of the pipe is cover for the pipe. The pipe itself is 1' deep with sand underneath. It is a standard design for the leach field. The septic tank and bio-treatment tank are the special components of the system. They will get approval from the state, but since they need a variance from the town, they cannot send it until they receive that approval.

Mr. Maher asked where on the property the test pit was taken. *Mr. Meisner noted it was located at the front southern portion of the leach field and pointed it out. A test pit is mandatory to ensure the soils beneath the proposed leach field are as required.* Mr. Maher noted the test pit date shows water located 17" below grade. How much is that area being regraded, as it looks to be 1-1 ½'? *Mr. Meisner agreed that was correct. It grades away from the house.*

Mr. Allen asked the applicant to speak about the uniqueness of this property, other than the size and the presence of wetlands. *Mr. Meisner noted the side lot lines do not come off of the street line perpendicular, forcing the building envelope to converge upon itself, creating a wedge. On the south side it goes back 37' and then breaks back to a point, pinching off the rear of the property. Wetlands at the rear are inconsequential to the setback issue. Following the ordinance, setbacks would not allow any building on the property.*

Atty. Muller noted unique was defined as special conditions which make it different from others. Harrington vs Town of Warner made it clear that it does not need to be the only lot that has this feature to have a hardship. Does it have characteristics that are not shared by similarly zoned lots? If everything is equal to other lots, that is not a hardship. You need to take into consideration configuration, size and the environs. Mr. Meisner has also stated that the configuration of the lot distinguishes it from others in the area and makes it so the variances are necessary because of the limited building envelope. The variances are necessary for a reasonable use of the property. Unlike a number of smaller lots, this one is flanked by undeveloped land on either side which would preclude overcrowding.

Mr. Ciardelli noted for the history of the lot, this is one of two pieces of land previously owned by the same owner. The house lot was on the other side of Cove Road and this piece had the garage built on it. The owner then made a reasonable use of the land by erecting a Quonset hut on it and using it for storage. At a later date, the lots were sold separately. For one of the neighboring lots, a reasonable use would be a storage facility for a house nearby. There was never a house on this lot; it has never been a residential lot. We are discussing putting a house on a lot that has never had a residence on it.

Atty. Muller opined there were confusing issues. Even though owned by the same person, they lots were always separate lots of record thereby enabling them to be sold separately. He opined using it as an accessory use is not a reasonable use as there is not principle use to put with it. Bouley vs City of Nashua – finding hardship where no market existed for permitted use of property. There is no market for this piece of property as an accessory use with no principle use.

Mr. Allen noted although this is a lot in a residential area, it does not guarantee that every lot in this circumstance is a buildable lot. Being a lot of record does not ensure it is a buildable lot.

Mr. Maher asked Mr. Meisner to explain the extent of the regrading on the southern side of the house to accommodate the septic system and any impact or encroachment on the adjacent lot. The tank comes up to 99' including plumbing appurtenances so how much cover will be on top of the system?

Mr. Meisner explained the piping is shown going from the rear of the house on the southern end, and goes into the tank. The existing height is 99+, so there will be some cover over the pipe. There is no encroachment of the leach field on the adjacent lot. The 99' grade is extended just to the south side of the tank and along the edge of the property line. There is no grading where the tank is to be located, but it is around 1 ½' at the leach field. There is a 3:1 slope which is a standard state requirement and is fairly gradual, and it is only for the 1 ½'. At present, water drains to the rear of the property and it would continue to do so.

Mr. Maher noted it looks as if the architectural drawing exaggerates the slope. Mr. Meisner noted it would be approximately 7'; the same height as the garage door. It is intended to show a split entrance home with a little raise in elevation. As it is not sight-specific, the grading is subject to change.

Mr. Allen opened the floor for public comment.

Sara Glidden, 9 Cove Road – *She lives across the street and the appearance of the Quonset hut does not bother her at all. She can think of two people who would buy it (the property) right now just the way it is and not try to develop it. She is concerned about the water table and what the septic system could do to her property.*

Shari and Steve Ridlon, 13 Cove Road – They think it (building of the house) will cause overcrowding. Although there are non-developed lots on either side, one of those properties – 6 Cove Road – where variances had been denied, is nearly 3x the size of Mr. Graham’s lot. She is worried if the variances go through it will set a precedent and the lot next door will be doing to the same thing (asking for variances to build). That will constitute more overcrowding than exists at the present time. They feel it would diminish the property values of the surrounding properties, as it is already very congested. It will tax the natural resources even further than they have been.

They are concerned by the statement that the leach field will drain to the wetlands in the back, which has ponding water at this time. Ponding water is there almost all the time and to add to that sounds very cumbersome. There is no hardship as there are several people on the road who can use it as an accessory building and would be more than willing to give Mr. Graham 10% over what he paid for the property, so he would make a profit. As far as he (Mr. Graham) being distressed because he can’t build on it, he bought an accessory building that didn’t have a building to go with it. He knew what he was buying when he bought it, so she does not understand where the hardship is. How many variances are too many? Where do we lose the spirit of the ordinance?

Mr. Allen noted there is no true number of variances that can be sought; every application is reviewed on an individual basis.

Greg Mantham, 11 Cove Road – Atty. Muller alluded to hardship that Mr. Graham bought the property. He questioned if Mr. Graham had tried to sell the property. What is the definition of reasonable return? Does it include the outside costs of all the permits and regulation that has been incurred? He also questioned why Mr. Graham purchased the lot as an accessory lot and if he did his due diligence regarding the lot? Should he not be held accountable for the purchases he makes and why is it that the board is responsible for now “bailing him out” from that decision? He is on the record for offering to purchase the property before from the original owner.

At that time, he was denied and told he would have “first dibs”. Upon investigating further, he found the asking price was not in line with what the property was going to be allowed to be used for. As far as what the owner wanted for the property, Mr. Mantham’s offer was not reasonable. Mr. Graham came in from two towns over, swooped in and bought the property and now wants to erect a living establishment. Mr. Mantham asked if Atty. Muller or Mr. Graham could answer the question if they tried to sell the property and if that’s not the case, how can you talk about hardship?

Mr. Allen noted from a zoning board perspective, they are not going to define hardship on monetary value. Whether someone makes a profit or not is of no concern to the board decision to grant variances. Mr. Allen noted there were lengthy definitions of hardship in court cases, but they do not revolve around finances and profits.

Mr. Allen asked why Mr. Graham purchased the property; what was the original intent? Mr. Graham answered he bought the property to live in the building that was there. He found he could not convert it to a residence so they are here now trying to get variances so he can build a house on the property.

Mr. Mantham asked to speak and asked to show a visual of the property (he held up a picture) showing the installation of a porta-potty and posted signs. He believed this was in retaliation by Mr. Graham for previous denial of the variances.

He also noted that Mr. Graham was recording him and asked that he cease as he did not ask permission to record him. Mr. Allen noted pictures showing the property for a short period of time would not be put into the records.

Mr. Allen closed the public comment section of the meeting. He asked the board if they had any additional questions before the start of deliberation.

Atty. Muller asked to address some of the comments that were made. *As far as Mr. Graham's due diligence in purchasing the property – this is addressed in Hill vs Chester – knowledge is not a factor. In terms of economic hardship, he noted the Harrington vs Town of Warner case.*

The board will begin deliberation.

The first variance requested is from Article VII.D.6. – septic leach field boundaries – setback from property line. The leach field boundary for the town is 20'; they are asking for a variance of 10'.

Deliberation

Granting the variance would or would not be contrary to the public interest. Mr. Falman – *thinks it would be contrary to public interest due to soils conditions on the lot and in the adjacent areas. If there were ideal soils conditions and the distance was only a foot or so, the board might reasonably consider granting the variance, but the variance requested is half of the stated requirement and there are poorly drained soils. The conditions were established to look at a standard building lot. He does not think it is in the public interest to grant the variance.* Mr. Ciardelli – *noted cutting the distance in half is substantial. He is impressed with the proposed septic system, and would hope it would negate the problem but a 50% reduction in the setback is a lot.* Mr. Allen – *is concerned with the health, safety and welfare of the neighborhood and the people within it. It's a tiny lot with poor soils and a high-water table. His concern is if something goes wrong because of placing the septic system at a 2' minimum with a 20 min perk rate. He feels it is a health and safety issue.* Mr. Maher – *while one of the adjacent lots is currently owned by the town (the lot closest to the leach field), it is a much larger lot that that could be much more easily developed. It would not be in the public interest to substantially diminish that adjacent lot by allowing non-conforming construction.* Mr. Robbins – *in light of health and safety and looking at the map, it is closer than allowed to the artesian well. The well is at the edge of wetlands, and the leach field will be draining down into wetlands and no one can be sure what that can do to the well.* Mr. Allen agrees with the concern, but notes the applicant meets the setbacks from the wetlands by a few feet.

Poll of the board –

Granting the variance would / would not be contrary to the public interest: Mr. Falman -*would be contrary due to soil conditions;* Mr. Ciardelli – *would be contrary since variance asked for is half the distance of the requirements;* Mr. Allen – *would be contrary due to health and safety concerns;* Mr. Robbins – *would be contrary due to health and safety concerns;* Mr. Collamore – *would be contrary due to encroachment on the south side.*

The spirit of the ordinance would/would not be observed because. Mr. Allen – *ordinances are adopted to reflect the wishes of the town and the spirit of what the town would like. Setbacks and boundaries were created to avoid overcrowding, water pollution and soil saturation with septic systems that are too close to one another. Many of the board members are very familiar with the road and the neighborhood and all know how bad the road gets. In the spring it's barely passable with the people and their cars that live there now. Additional houses and cars would make the situation worse. Along with that, an additional house would certainly cause overcrowding and health and safety concerns. Everything is low there and whether or not*

the adjacent properties are developed or not, adding another house to that area does cause overcrowding. I feel the spirit is not met due to overcrowding issues and general health and safety.

Mr. Falman – *agrees zoning requirements exist to protect from over-development and infringement on sensitive areas. This is definitely a sensitive area based on personal knowledge of the area. He feels the number of non-conforming existing lots is not a valid reason to grant deviation from the zoning requirements. Zoning requirements were adopted by the town to protect certain areas for the health and safety of the neighborhood and the residents. Mr. Ciardelli – property owners should be able to reasonably use their property until it begins to infringe on other people’s reasonable use of their property. He opined this is what the spirit of the ordinance is about, he believes this crosses that threshold. He does not think the spirit of the ordinance would be observed. Mr. Robbins – agrees with Mr. Ciardelli’s comments. In driving through the area, he observed it appears to be crowded already and it would not good to add to that. Mr. Allen noted this comment appeared to be more directed to diminution of property values.*

Granting the variance would/would not do substantial justice. The guiding rule is any loss to the individual that it is not outweighed by a gain of the general public is indeed an injustice.

Mr. Ciardelli – *creating substantial justice for one would have to be outweighed by justice to another. Granting the variance and allowing the septic system to be half the distance from the neighboring property line than provided for in the ordinance only would do substantial justice if you are building a house there. Granting the variance would allow the applicant to put a house where there had never been a house before. They (the board) would be making accommodations for something that never existed before. The injustice created to the neighbors would outweigh any justice to the applicant. He doesn’t feel they need to do justice to something that did not exist before. To do justice here you have to acknowledge there was an injustice before; it was never a building lot, there was never a house there, so he says it would not do substantial injustice. Mr. Allen – any loss to the individual which is not outweighed by a gain to the general public is an injustice. Yes, it would be a loss to the individual but in this case, it may be outweighed by the health and safety of the remaining residents of the neighborhood. Mr. Falman - Atty. Muller stated there was no market for this property. In retrospect, then the applicant thought there was a market for it because he purchased this property in this condition recently. He does not feel the statement there is no market for this property stands.*

For the following reasons, the values of the surrounding properties will not be diminished. Mr. Ciardelli – *the proposed house looks a lot better than the existing Quonset hut, which is a positive. But that means a driveway, well, septic system would contribute to the overcrowding of the area. Mr. Allen – agrees the house would be an improvement, but injecting another house would cause more overcrowding which outweighs the improvement benefit. Mr. Maher – it would be hard pressed to say you would not be diminishing the value of lot 2-1-37 with the adjacent septic system being that close. Given the venting requirements noted on the septic design, specifically multiple protruding PVC pipes, one of which appears to come 13’ above the ground, it would be located approximately 10’ off the property line of the adjacent lot. One of the reasons for the ordinance offsets is to allow for physical space between adjacent properties. The neighbor would look out their windows and see all those pipes sticking out of the ground 10’ from the property line. Mr. Robbins – as far as improving the property, the proposed structure would look better. He agrees with Mr. Maher as to the closeness of the leach field to the adjacent property, and the protruding pipes. Mr. Falman - agrees the aesthetics of the proposed house versus the Quonset hut would be a positive, but feels the performance and result of the change would be a negative to the neighborhood and surrounding residences.*

Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because. Mr. Allen – *is trying to understand what kind of hardship this property has over and above other surrounding properties that have the same ordinances imposed on them. Does the board think the property has some unique characteristics that the towns' ordinance unduly burdens?*

Mr. Robbins – *agrees looking at the leach field and the septic system, because of the placement due to the shape of the lot.* Mr. Ciardelli – *yes, to use it as a residential lot.* Mr. Maher - *had it been in residential use before, if someone was proposing to install a new septic system that would be an entirely different situation. That is very different than the conversion of a non-residential use to a residential use regardless of the fact the lot is zoned residential. He agrees the owner has done a good job of proposing a conforming use, but the board needs to decide if it is within keeping with the ordinances and regulations.* Mr. Allen – *is in agreement with the rest of the board that information presented with regards to the relationship of the frontage and sidelines, he can see how difficult it is to orient the location of the structure and the septic system. Although he does not feel a small lot in this neighborhood that has wetlands on it has differentiating characteristics or is unique, the shape in relationship to the road is unique in this case.*

* There is or is not a fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property because:

Mr. Allen explained the board would need to decide if it is unique or not unique.

POLL - Granting the variance would or would not be contrary to the public interest: FAIL

Mr. Allen – *it would be contrary to the public interest for the health and public safety concerns expressed previously;* Mr. Robbins – *it would be contrary to the public interest for the same reasons;* Mr. Ciardelli – *it would be contrary to the public interest because cutting the required distance in half is too much of a difference;* Mr. Falman – *granting the variance would be contrary to the public interest because of the type of soils on the lot;* Mr. Collamore – *due to the close encroachment to the adjacent lot on the south side, granting the variance would be contrary to the public interest.*

POLL - The spirit of the ordinance would/would not be observed because: FAIL

Mr. Allen - *the spirit of the ordinance would not be observed for the health, public safety and general welfare of the neighborhood, for overcrowding, and additional traffic;* Mr. Robbins – *the spirit of the ordinance would not be observed;* Mr. Ciardelli - *the spirit of the ordinance would not be observed because cutting the required distance in half is too much of a difference;* Mr. Falman - *the spirit of the ordinance would not be observed because of infringement on sensitive areas in that development;* Mr. Collamore - *the spirit of the ordinance would not be observed due to overcrowding and additional traffic.*

POLL - Granting the variance would/would not do substantial justice: FAIL

Mr. Allen - *it would not do substantial justice;* Mr. Robbins - *it would not do substantial justice;* Mr. Ciardelli - *it would not do substantial justice;* Mr. Falman - *it would not do substantial justice;* Mr. Collamore - *it would not do substantial justice*

POLL - For the following reasons, the values of the surrounding properties would/would not be diminished: FAIL

Mr. Allen – *the values would be diminished because of overcrowding, lack of space for the septic system, and safety concerns;* Mr. Robbins – *the values would be diminished because of health and safety reasons in regard to the septic system;* Mr. Ciardelli - *the values would be diminished due to the proximity of the property line;* Mr. Falman - *the values would be diminished;* Mr. Collamore - *the values would be diminished.*

POLL - Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:

*** There is or is not a fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property because: PASS**

Mr. Allen – *agrees there are some unique characteristics regarding the property therefore there is not a fair and substantial relationship*; Mr. Robbins – *there is not because of the uniqueness of the property*; Mr. Ciardelli - *there is not a fair and substantial relationship*; Mr. Falman - *there is not a fair and substantial relationship*; Mr. Collamore - *there is not a fair and substantial relationship*.

*** the proposed use is a reasonable one because: PASS**

Mr. Allen – *the proposed house is a residential house in a residential neighborhood and it is a reasonable use*; Mr. Robbins - *it is a reasonable use*; Mr. Ciardelli - *it is a reasonable use*; Mr. Falman - *it is a reasonable use*; Frank Collamore - *it is a reasonable use*.

Mr. Allen asked for a **MOTION** for the variance on VII.D.6 – septic leach field boundaries (setback from leach field bed to property line) – the requested variance is 10 feet; town requirement is 20 feet.

Mr. Robbins **MOVED** to **DENY** the variance on VII.D.6 septic leach field boundaries (setback from leach field bed to property line) for all of the above-stated reasons, seconded by Mr. Falman. Roll call vote – Mr. Allen – agree with the motion; Mr. Robbins – agree with the motion; Mr. Ciardelli - agree with the motion; Mr. Falman - agree with the motion; Mr. Collamore - agree with the motion.

Motion is unanimous and the variance is denied.

The next variance requested is from Article VII.D.6. – septic leach field boundaries – setback from private well. The applicant has proposed 52', town requirement is 75'.

Discussion:

Granting the variance would or would not be contrary to the public interest: Mr. Ciardelli - *states the arguments for this variance are similar to the property boundary's in relation to health and wellness considerations due to the proximity of the leach field to the well, the town ordinance is 75' and they are asking for 52' for a delta of 23'*; Mr. Robbins – *has concern for the closeness of the leach field to the well, especially as the well borders on wetlands which do not drain well and does not think the distance is adequate and water would not percolate properly wetlands*.

Regarding the spirit of the ordinance - Mr. Allen – *the 75' setback is town requirement and was developed for health and safety reasons. They are asking for almost a 30% reduction in setback distance, and there is only one location where the well could be placed and what if it is not good? He feels it is a health and safety concern*.

Granting the variance would/would not do substantial justice. Mr. Maher - *has concerns with any system that requires a maintenance contract to meet performance requirements and as such operates near the margin of what would be acceptable or it wouldn't require such maintenance; and the situation where the board is asked to be consider more than one waiver of various setbacks the town put in place to protect the public; all standards on the design proposed meet minimum requirements (cover, size) and the board is asked to waive every one of the minimum standards for offset; although they have made a significant effort to propose something reasonable, there are too many requirements they are asking to waive*; Mr. Allen agreed. *Although they were voting on each variance requested separately, they need to be looked at comprehensively. They are talking about a septic system in close proximity to well with a septic system that would be pushed to its limit*; Mr. Falman – *it is not as if there was a small amount of difference they were being asked to consider; this is a reduction of almost 1/3 of the town requirement and he is not comfortable granting it; it is not the boards' purpose to redesign what is acceptable regarding every individual setback requirement; research, good practices and public input went into making the decisions for the ordinance standards; they also need to consider what would be good for a future home owner*.

Mr. Ciardelli -stated their charter is not to rewrite the zoning ordinances; Mr. Allen - agreed they cannot do that, although they can provide some relief from it. In this case, I think granting the variance would do substantial justice. Unlike to septic system which has ability to cause problems for other residents in the neighborhood, granting this particular variance would greatly help the applicant. His septic system being closer than necessary to his well would be more of a problem for him than the general public. For this item I think it would do substantial justice. Mr. Robbins - noted the septic system requires a pump that needs to be running all the time, and although the designer stated it could run for 2-3 days without power to process, he does not feel comfortable with that situation. He also has concerns regarding the necessity for a maintenance contract.

POLL - Granting the variance would / would not be contrary to the public interest: PASS

Mr. Allen – it would not; Mr. Robbins – it would not as it is only to this particular well and septic system and will not affect anyone else; Mr. Ciardelli – it would not; Mr. Falman – it would be, taking into consideration future owners of the property; Mr. Collamore – it would not.

POLL - The spirit of the ordinance would / would not be observed because: FAIL

Mr. Allen – it would not; Mr. Robbins – it would not; Mr. Ciardelli – it would not because of the large reduction in setback distance asked for; Mr. Falman – it would not; Mr. Collamore – it would not.

POLL - Granting the variance would/would not do substantial justice FAIL

Mr. Allen – it would; Mr. Robbins – it would; Mr. Ciardelli – it would not, taking into consideration future occupants; Mr. Falman – it would not; Mr. Collamore – it would not.

POLL - For the following reasons, the values of the surrounding properties would/would not be diminished:

PASS Mr. Allen – it would not be diminished; Mr. Robbins -it would not be diminished; Mr. Ciardelli - it would not be diminished; Mr. Falman - it would not be diminished; Mr. Collamore - it would not be diminished.

POLL - Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:

*** There is or is not a fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property because: FAIL**

Mr. Allen – there is not; Mr. Robbins – there is not; Mr. Ciardelli – there is not; Mr. Falman – there is not; Mr. Collamore – there is not.

*** the proposed use is a reasonable one because: PASS**

Mr. Allen – it is; Mr. Robbins – it is; Mr. Ciardelli – it is; Mr. Falman – it is; Mr. Collamore – it is.

Mr. Allen asked for a **MOTION** for the variance on VII.D.6 – septic leach field boundaries (setback from leach field boundaries to a private well) – The applicant has proposed 52’, town requirement is 75’.

Mr. Falman **MOVED** to **DENY** the variance for VII.D.6 septic leach field boundaries (setback from leach field boundaries to a private well) for all of the above-stated reasons, seconded by Mr. Collamore. Roll call vote – Mr. Allen – agree with the motion; Mr. Robbins – agree with the motion; Mr. Ciardelli agree with the motion; Mr. Falman, agree with the motion; Mr. Collamore - agree with the motion.

Motion is unanimous and the variance is denied.

The next variance requested is from Article IX.A.1. – contiguous frontage. The applicant has proposed 75.6’, town requirement is 200’.

Discussion:

Granting the variance would / would not be contrary to the public interest: Mr. Allen – *does not think it would be contrary*; Mr. Ciardelli - *does not think it would be contrary as the other lots do not have 200'*; Mr. Robbins – *does not think it would be contrary even though it is a large reduction; all the other lots have the same reduction in frontage.*

The spirit of the ordinance would / would not be observed because: Mr. Falman – *just because there are other non-conforming lots in the area is not a basis for deviation from the zoning requirements; the majority of the homes were existing and grandfathered; does not agree it is in the spirit of the ordinance to take every non-conforming lot and get a variance because it does not meet the standards. There is a need to protect from over development in sensitive areas.* Mr. Ciardelli – *agrees the spirit of the ordinance would not be observed by granting the variance.*

Granting the variance would/would not do substantial justice. Does the negative benefit to the public outweigh the benefit to Mr. Graham? Mr. Ciardelli – *it would not do substantial justice.*

For the following reasons, the values of the surrounding properties would/would not be diminished: Mr. Allen – *the reduction in frontage does not make the property any different than other properties in the area with similar non-conforming frontages. He is not sure granting another lot with lesser frontage would diminish the surrounding properties, but in theory it could create an overcrowding situation and cause additional traffic.*

Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:

* There is or is not a fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property because:

Mr. Falman – *just because other properties do not have the required frontage does not make this property unique.*

POLL - Granting the variance would / would not be contrary to the public interest: PASS

Mr. Robbins - *it would not, as all the lots have smaller frontages*; Mr. Ciardelli – *agree, it would not*; Mr. Falman – *agree, it would not*; Mr. Collamore – *agree, it would not*; Mr. Allen – *agree, it would not.*

POLL - The spirit of the ordinance would / would not be observed because: FAIL

Mr. Robbins - *it would not as the deviation is very large*; Mr. Ciardelli – *it would not for the same reason*; Mr. Falman – *it would not*; Mr. Collamore – *it would not*; Mr. Allen – *it would not, agrees the deviation is very large.*

POLL - Granting the variance would/would not do substantial justice. PASS

Mr. Robbins - *it would as it could give the lot the same boundaries as the other lots in the area*; Mr. Ciardelli – *it would for the same reason*; Mr. Falman – *it would*; Mr. Collamore – *it would*; Mr. Allen – *it would.*

POLL - For the following reasons, the values of the surrounding properties would/would not be diminished: FAIL

Mr. Robbins – *would not be diminished as they all have similar frontages*; Mr. Ciardelli – *it would be diminished*; Mr. Falman – *it would not be as the other properties have similar frontage*; Mr. Collamore – *it would be due to overcrowding*; Mr. Allen – *it would be due to overcrowding and impact on roads.*

POLL - Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:

*** There is or is not a fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property because: FAIL**

Mr. Robbins – *there is a fair and substantial relationship*; Mr. Ciardelli - *there is a fair and substantial relationship*; Mr. Falman - *there is a fair and substantial relationship*; Mr. Collamore - *there is a fair and substantial relationship*; Mr. Allen - *there is a fair and substantial relationship*.

* **the proposed use is a reasonable one because: PASS**

Mr. Robbins – *it is a reasonable use*; Mr. Ciardelli - *it is a reasonable use*; Mr. Falman - *it is a reasonable use*; Mr. Collamore - *it is a reasonable use*; Mr. Allen - *it is a reasonable use*.

Mr. Allen asked for a **MOTION** for the variance on Article IX.A.1. – contiguous frontage. The applicant has proposed 75.6', town requirement is 200'.

Mr. Ciardelli **MOVED** to **DENY** the variance for the setback from Article IX.A.1. – contiguous frontage, seconded by Mr. Collamore. Roll call vote – Mr. Allen – in favor of the motion; Mr. Robbins – in favor of the motion; Mr. Ciardelli - in favor of the motion; Mr. Falman - in favor of the motion; Mr. Collamore - in favor of the motion.

Motion is unanimous and the variance is denied.

The next variance requested is from Article IX.A.2. – minimum lot size. The applicant has proposed 7,333, town requirement is 87,120. Variance is approximately 12% of the requirement.

Discussion:

Granting the variance would / would not be contrary to the public interest. Mr. Falman – *opines statements regarding the other variances would also apply here*; Mr. Allen – *agrees and has the same concerns. The minimum lot size ordinance was put in place to preclude overcrowding, provides relief for wells and it all alludes to health and safety and the general welfare of the public, and the ability to enjoy ones' property.*

POLL - Granting the variance would / would not be contrary to the public interest: FAIL

Mr. Allen - *it would be contrary, as it is tiny and has all the health, welfare and safety concerns previously discussed*; Mr. Robbins – *agree it would be contrary*; Mr. Ciardelli – *it would not be contrary as it is basically the same reduction as the rest of the houses*; Mr. Falman – *agree, it would not be contrary*; Mr. Collamore – *it would be contrary.*

POLL - The spirit of the ordinance would / would not be observed because: FAIL

Mr. Allen - *it would not be observed*; Mr. Robbins - *it would not be observed for reasons stated previously*; Mr. Ciardelli – *it would not be observed*; Mr. Falman – *it would not be observed*; Mr. Collamore – *it would not be observed.*

POLL - Granting the variance would/would not do substantial justice. FAIL

Mr. Allen – *it would not do substantial justice as the benefit to the applicant would cause an injustice to the rest of the neighborhood (additional house, septic system, well, traffic and safety concerns)*; Mr. Robbins – *it would not do substantial justice*; Mr. Ciardelli – *it would not do substantial justice*; Mr. Falman – *it would not do substantial justice*; Mr. Collamore – *it would not do substantial justice.*

POLL - For the following reasons, the values of the surrounding properties would/would not be diminished: FAIL

Mr. Allen – *it would be diminished for the above stated reasons*; Mr. Robbins – *it would be diminished*; Mr. Ciardelli – *it would be diminished*; Mr. Falman – *it would be diminished*; Mr. Collamore – *it would be diminished.*

POLL - Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:

*** There is or is not a fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property because: PASS**

Mr. Allen – *there is not a fair and substantial relationship; the size and shape make it a unique situation*; Mr. Robbins – *there is not a fair and substantial relationship*; Mr. Ciardelli – *there is not a fair and substantial relationship*; Mr. Falman – *there is not a fair and substantial relationship*; Mr. Collamore - *there is not a fair and substantial relationship*

*** the proposed use is a reasonable one because: PASS**

Mr. Allen - *it is not a reasonable use*; Mr. Robbins – *it is not a reasonable use*; Mr. Ciardelli - *it is a reasonable use*; Mr. Falman - *it is not a reasonable use*; Mr. Collamore - *it is not a reasonable use*.

Mr. Allen asked for a **MOTION** for the variance on Article IX.A.2. – minimum lot size. The applicant has proposed 7,333; town requirement is 87,120. Variance is approximately 12% of the requirement.

Mr. Robbins **MOVED** to **DENY** the variance for Article IX.A.2. – minimum lot size for the stated reasons, seconded by Mr. Ciardelli. Roll call vote – Mr. Allen – in favor of the motion; Mr. Robbins – in favor of the motion; Mr. Ciardelli - in favor of the motion; Mr. Falman - in favor of the motion; Mr. Collamore - in favor of the motion.

Motion is unanimous and the variance is denied.

The next variance requested is from Article IX.C. – building setback – front. The ordinance requirement is 30’; the applicant is requesting 17’ to the corner of the building and 14.6’ to the corner of the steps.

The board will discuss the three setback variances together but will vote separately.

Discussion:

Mr. Collamore - *opines it is too close to the boundaries set by the town*; Mr. Allen agrees –*there is nothing built on the left at the present time, but it does not mean that will be the case forever; and to have a building 10’ from the property line or stairs approximately 6’ from the property line is contrary to the public interest, the general welfare and enjoyment for surrounding properties. On the right side, the septic system is crushed against the property line which is outside the ordinance spirit and a diminution of value for the surrounding properties.*

Mr. Falman – *even though Cove Road is not a major thoroughfare, there is not even a buffer of a sidewalk in the front; you are basically stepping out into the road which is not a safe condition*; Mr. Maher – *The applicant has attempted to make the condition in no way worse than it is presently by giving more footage in the front and one side. Mr. Robbins – agrees the applicant did a good job of lowering the footprint of the house even though it still encroaches on the sides. And removing the concrete pad would allow for more drainage. Mr. Falman – there are requirements in zoning to adequately protect the landowner and the public. When you greatly infringe on the setbacks you infringe on the landowner and other residents. Mr. Ciardelli – the applicant did as good a job as he possible could to make the best out of the situation; the spirit of the ordinance is a macro view for the whole town. It would not contrary to the public interest; but the spirit of the ordinance would not be observed. Mr. Allen - agrees with Mr. Maher in regard to the overall improvement proposed.*

POLL - Granting the variance would / would not be contrary to the public interest: PASS

Mr. Ciardelli – *it would not be contrary to the public interest*; Mr. Falman – *it would not be contrary to the public interest because it is similar to setbacks on existing homes*; Mr. Collamore – *it would be contrary*; Mr. Allen - *it would not be contrary to the public interest*; Mr. Robbins – *it would be contrary especially for the closeness of the steps to the road*.

POLL - The spirit of the ordinance would / would not be observed because: FAIL

Mr. Ciardelli – *it would not be observed*; Mr. Falman – *it would not be observed*; Mr. Collamore – *it would not be observed*; Mr. Allen - *it would not be observed*; Mr. Robbins - *it would not be observed*.

POLL - Granting the variance would/would not do substantial justice. FAIL

Mr. Ciardelli – *it would not do substantial justice*; Mr. Collamore – *it would not do substantial justice*; Mr. Falman – *it would not do substantial justice*; Mr. Allen – *it would do substantial justice*; Mr. Robbins – *it would not do substantial justice*.

POLL - For the following reasons, the values of the surrounding properties would/would not be diminished: FAIL

Mr. Ciardelli – *it would be diminished due to overcrowding*; Mr. Falman – *it would not be diminished as it would be a home of similar size as the rest of the neighborhood*; Mr. Collamore – *it would be diminished*; Mr. Allen – *it would be diminished*; Mr. Robbins – *it would not be diminished as it would be similar to the surrounding properties*.

POLL - Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:

*** There is or is not a fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property because: PASS**

Mr. Ciardelli – *there is not a fair and substantial relationship*; Mr. Falman – *there is not a fair and substantial relationship*; Mr. Collamore - *there is not a fair and substantial relationship*; Mr. Allen – *there is not a fair and substantial relationship*; Mr. Robbins – *there is not a fair and substantial relationship*;

*** the proposed use is a reasonable one because: PASS**

Mr. Ciardelli - *it is a reasonable use*; Mr. Falman - *it is a reasonable use*; Mr. Collamore - *it is a reasonable use*; Mr. Allen - *it is a reasonable use*; Mr. Robbins – *it is a reasonable use*;

Mr. Allen asked for a **MOTION** for the variance on Article IX.C. – front building setback. The ordinance requirement is 30’; the applicant is requesting 17’ to the corner of the building and 14.6’ to the corner of the steps.

Mr. Falman **MOVED** to **DENY** the variance for Article IX.C. – front building setback for the stated reasons, seconded by Mr. Robbins. Roll call vote – Mr. Allen – in favor of the motion; Mr. Robbins – in favor of the motion; Mr. Ciardelli - in favor of the motion; Mr. Falman - in favor of the motion; Mr. Collamore - in favor of the motion.

Motion is unanimous and the variance is denied.

The next variance requested is from Article IX.C. – building setback – left side. Town requirement is 25’, applicant is asking for 10’ to the building, 6 ½’ if there are steps.

Discussion

Mr. Maher asked if they were required to vote on each side variance individually. Mr. Allen noted it would be cleaner if they were voted on each separately.

POLL - Granting the variance would / would not be contrary to the public interest: PASS

Mr. Allen - *it would not be contrary to the public interest*; Mr. Robbins – *it would be contrary*; Mr. Ciardelli – *it would not be contrary to the public interest*; Mr. Falman – *it would not be contrary to the public interest*; Mr. Collamore – *it would be contrary*.

POLL - The spirit of the ordinance would / would not be observed because: FAIL

Mr. Robbins - *it would not be observed*; Mr. Ciardelli – *it would not be observed*; Mr. Falman – *it would not be observed*; Mr. Collamore – *it would not be observed*; Mr. Allen - *it would not be observed*;

POLL - Granting the variance would/would not do substantial justice. PASS

Mr. Allen – *it would do substantial justice*; Mr. Robbins – *it would do substantial justice*; Mr. Ciardelli – *it would do substantial justice*; Mr. Collamore – *it would do substantial justice*; Mr. Falman – *it would do substantial justice*;

POLL - For the following reasons, the values of the surrounding properties would/would not be diminished: PASS

Mr. Allen – *it would not be diminished*; Mr. Robbins – *it would not be diminished*; Mr. Ciardelli – *it would not be diminished*; Mr. Falman – *it would not be diminished*; Mr. Collamore – *it would not be diminished*;

POLL - Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:

*** There is or is not a fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property because: PASS**

Mr. Allen – *there is not a fair and substantial relationship due the unique shape and lack of options*; Mr. Robbins – *there is not a fair and substantial relationship*; Mr. Ciardelli – *there is not a fair and substantial relationship*; Mr. Falman – *there is not a fair and substantial relationship*; Mr. Collamore - *there is not a fair and substantial relationship*;

*** the proposed use is a reasonable one because: PASS**

Mr. Allen - *it is a reasonable use*; Mr. Robbins – *it is a reasonable use*; Mr. Ciardelli - *it is a reasonable use*; Mr. Falman - *it is a reasonable use*; Mr. Collamore - *it is a reasonable use*;

Mr. Allen asked for a **MOTION** for the variance on Article IX.C. – building setback – left side. Town requirement is 25’, applicant is asking for 10’ to the building, 6 ½’ if there are steps.

Mr. Robbins **MOVED** to **DENY** the variance for Article IX.C. – building setback – left side for the stated reasons, seconded by Mr. Falman. Roll call vote – Mr. Allen – in favor of the motion; Mr. Robbins – in favor of the motion; Mr. Ciardelli - in favor of the motion; Mr. Falman - in favor of the motion; Mr. Collamore - in favor of the motion.

Motion is unanimous and the variance is denied.

The next variance requested is from Article IX.C. – building setback – right side. Town requirement is 25’, applicant is asking for 19.5’ to the building.

Discussion

Mr. Ciardelli opines the same rational applies as for the left side. Mr. Falman concurs. Mr. Robbins noted it goes to the leach field.

POLL - Granting the variance would / would not be contrary to the public interest: PASS

Mr. Allen - *it would not be contrary to the public interest*; Mr. Robbins – *it would not be contrary to the public interest*; Mr. Ciardelli – *it would not be contrary to the public interest*; Mr. Falman – *it would not be contrary to the public interest*; Mr. Collamore – *it would not be contrary to the public interest*.

POLL - The spirit of the ordinance would / would not be observed because: FAIL

Mr. Allen - *it would not be observed*; Mr. Robbins - *it would not be observed*; Mr. Ciardelli – *it would not be observed*; Mr. Falman – *it would not be observed*; Mr. Collamore – *it would not be observed*;

POLL - Granting the variance would/would not do substantial justice. PASS

Mr. Allen – *it would do substantial justice for the same reasons as the left side*; Mr. Robbins – *it would do substantial justice*; Mr. Ciardelli – *it would do substantial justice*; Mr. Falman – *it would do substantial justice*; Mr. Collamore – *it would do substantial justice*.

POLL - For the following reasons, the values of the surrounding properties would/would not be diminished: PASS

Mr. Allen – *it would not be diminished for the same reasons as the left side*; Mr. Robbins – *it would not be diminished*; Mr. Ciardelli – *it would not be diminished*; Mr. Falman – *it would not be diminished*; Mr. Collamore – *it would not be diminished*.

POLL - Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:

* **There is or is not a fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property because: PASS**

Mr. Allen – *there is not a fair and substantial relationship*; Mr. Robbins – *there is not a fair and substantial relationship*; Mr. Ciardelli – *there is not a fair and substantial relationship*; Mr. Falman – *there is not a fair and substantial relationship*; Mr. Collamore - *there is not a fair and substantial relationship*;

* **the proposed use is a reasonable one because: PASS**

Mr. Allen - *it is a reasonable use*; Mr. Robbins – *it is a reasonable use*; Mr. Ciardelli - *it is a reasonable use*; Mr. Falman - *it is a reasonable use*; Mr. Collamore - *it is a reasonable use*;

Mr. Allen asked for a **MOTION** for the variance on Article IX.C. – building setback – right side. Town requirement is 25’, applicant is asking for 19.5’ to the building.

Mr. Ciardelli **MOVED** to **DENY** the variance for Article IX.C. – building setback – right side for the stated reasons, seconded by Mr. Collamore. Roll call vote – Mr. Allen – in favor of the motion; Mr. Robbins – in favor of the motion; Mr. Ciardelli - in favor of the motion; Mr. Falman - in favor of the motion; Mr. Collamore - in favor of the motion.

Motion is unanimous and the variance is denied.

Mr. Allen appreciated the board going through the variance individually for clearness.

Mr. Graham thanked the board for their time.

Mr. Allen closed the public hearing for Case #20-01.

Mr. Falman **MOVED** to adjourn the meeting/ second by Mr. Robbins with a unanimous vote.

The meeting was adjourned at 10:28 PM.

Respectfully submitted,

Minutes Approved _____

Barbara White

Tim Allen, Chairman