

**Town of Northwood
Zoning Board of Adjustment Meeting
March 27, 2023**

Cases heard at this meeting:

Case 23-06: Kenneth & Georgianne Elsen, 59 Lower Camp Road.

Case 23-05: Sharon & Michael Sirois, 8 Lufkin Drive.

Case 23-07: Patrick Blaisdell, First NH Turnpike at Spruce Cove Road.

Case 23-08: Kevin Graue & Taylor Curtis, 7 Faucher Lane.

Case 23-9: Jessica Torosian, 9 Overlook Road.

Vice Chair Sanderson called the meeting to order at 6:30 p.m.

PRESENT: Vice-Chair Pam Sanderson, Steve Kasanovich, Ted Wilkinson, Robin Guzofski (alternate), and Betsy Colburn (participating electronically).

Ms. Colburn's reason for not being at the meeting in person is medical.

VOTING DESIGNATION: Vice-Chair Pam Sanderson, Steve Kasanovich, Ted Wilkinson, Betsy Colburn, and Robin Guzofski.

TOWN STAFF PRESENT:

Land Use Specialist Linda Smith, and Land Use Administrative Assistant Lisa Fellows-Weaver.

MINUTES: February 27, 2023

On a motion made by Mr. Wilkinson, and seconded by Ms. Colburn, the Board voted unanimously, by a roll call vote, to approve the minutes of February 27, 2023, as written.

Continued Case:

Continue from February 27, 2023.

Case 23-06: Kenneth & Georgianne Elsen, 59 Lower Camp Rd. Map 125; Lot 57.

Applicants are seeking relief for the demolition of a seasonal dwelling and construction of a new seasonal dwelling within the existing footprint; frontage on two private roads, on an undersized lot of .33 acres, where 2 acres is required:

- A Variance from Article IV.B(1) Type of Frontage. This lot is on a private road.
- A Variance from Article IV.B.(2)(b), lot size. (Granted 2/27/23)

Scott Frankiewicz, of NH Land Consultants represented the Applicants. He noted that the owners were viewing on the live stream.

Mr. Frankiewicz stated that the variance for lot size was granted at the February 27th meeting. Per the Board's request at the February meeting, he submitted additional information and revised plans.

In regard to a road association, Mr. Frankiewicz referred to a letter provided in the original application packet written by Bill Todd, who does the road maintenance and does accept funds; however, there is no formal association for Lower Camp Road. He explained that the Applicant has proposed improvements; two areas on Lower Camp Road and a third area along the section of Upper Camp Road in front of the property. Improvements include grading, creating swales to culverts under the road, and the removal of four trees. He noted that there are 25 lots past the Applicant's lot; 16 are

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year-round residences. Ms. Elsen is the great granddaughter of the previous owners and is hoping to rebuild the family cottage. He stated that the proposal is to replace the structure in kind, and it will remain a seasonal home; closed for the winter.

Vice-Chair Sanderson read comments received from the Fire Chief as follows:

The Fire Department visited the sight. The sight is barely accessible with the Fire Department pick up, never mind a fire truck or ambulance. The fire department recommends significant shoring of the road base to prevent mud. And widening of the road way to ensure adequate fire department access.

Vice-Chair Sanderson asked if the Fire Chief reviewed the updated information; it was unable to be determined.

Ms. Smith stated that this is an unusual and unique situation as the Town of Northwood owns the land under the roads in this area; the lots have a right of way to pass. She explained that improvements to these roads would not be within the purview of the ZBA; it is the purview of the Selectboard as it is their responsibility, and they have the authority. She stated that the ZBA needs to look at the specific criteria for granting a variance and determine if the road meets all five criteria.

Mr. Wilkinson commented that he is glad there is an option for property owners to work with the Town and he is glad they are willing to do the work.

Mr. Frankiewicz requested a continuance to April 24, 2023, based on this new road information.

A discussion was held regarding denying the application. Mr. Wilkinson stated that a denial would be the most efficient action, which would allow the Applicant to work with the Selectboard. Ms. Smith stated that the Board may deny the application without prejudice and the Applicant may need to reapply and come back to the ZBA depending on the action from the Selectboard. Vice-Chair Sanderson stated that the Applicant deserves time to address the new road information. Ms. Colburn agreed and commented that she sees an advantage of the applicant taking the time.

On a motion made by Mr. Wilkinson, and seconded by Ms. Colburn, the Board voted unanimously, by a roll call vote, to grant the request to continue to April 24, 2023.

New Cases:

Case 23-05: Sharon & Michael Sirois, 8 Lufkin Dr. Map 223; Lot 4. Applicants seek relief to allow for the construction of a new dwelling within the setbacks:

- A Special Exception from Article VI.A(4)(a), structures within 20 ft. of a wetlands buffer/setback.
- A Variance from Article IV.B(4), structures within 10 feet of the setback, where 20 feet is required.

Sharon and Michael Sirois represented the application.

Mr. Sirois explained the proposal is to demolish the existing dwelling and build a new, two-story house with a walk-out basement, and a two-car garage, all within the same footprint. He stated that they plan to extend the porches by seven feet; some porch

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areas are proposed to be covered, not enclosed. The current deck is 10.1 feet to the water's edge; currently covered but not enclosed.

Vice-Chair Sanderson asked about the placement of the garage. Mr. Sirois explained that the proposed garage is not an issue as they have the acreage.

Ms. Smith stated that this is an existing seasonal camp on three acres. It can stay as is with certain rights; however, the conversion from a seasonal use to a year-round use takes away the non-conforming status. The lot is a three acre parcel and is a conforming lot of record; this could have a year round residence built without the need to come to the ZBA.

Mr. Sirois stated that the septic would not be able to fit, or they would need to do some major work to the lot. He explained that when they (originally) met with the (previous) building inspector to discuss what would be required to change the house from a seasonal dwelling to a year-round dwelling. They were told they would need to update to 200 amp service; nothing was addressed about the change of use.

Ms. Smith explained that the building inspector has reviewed the submitted information and determined that this is currently a seasonal structure; it is his decision. She stated that they could file an appeal to his determination and it would come to the ZBA; however, it does not have any bearing on this application tonight.

Vice-Chair Sanderson stated that this is a tear down and rebuild on the same footprint. Ms. Smith stated that doing that is a change of use from seasonal to year-round and the building inspector has determined it is a change of use.

Mr. Sirois noted that there is one existing shed that will be removed. They have received NHDES shoreland approval with the revised plan noting the removal of the smaller shed.

Mr. Wilkinson commented that a lot has changed in 20 years. The townspeople have voted and adopted regulations that are now more restrictive with proposals of conversions of seasonal dwellings; this is big project, and it is very close to the water.

Ms. Sirois stated that the building inspector was aware that the house was a year-round dwelling and has been for over 20 years. Ms. Smith stated that any evidence of the change would need to be shown to the building inspector. She noted that the tax card shows the property as a camp.

Mr. Sirois explained that the plans do not show the topography. There are currently three easements off the driveway into the property: electrical and septic. The proposed location is the only place where the house can fit.

Ms. Smith stated that the applicant can choose to build their house anywhere on the lot as the lot is conforming. They are proposing to build where the seasonal camp was and changing the seasonal use to be a year-round use; doing so is eliminating the non-conforming use.

Vice-Chair Sanderson stated that this is a conforming lot with a non-conforming structure and there have been upgrades over the past years.

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Ms. Smith stated that the Applicant can only go on the current building inspector's interpretation and the ordinances. There is no vested non-conformity use. She stated it is the Applicant's responsibility to show the Board why they are proposing this location.

Discussion ensued as to the footprint and other location options that may comply. Mr. Sirois explained that other locations would either encroach into the wetlands and/or affect the existing easements. He provided a larger plan of the lot for review.

Ms. Smith stated that the Board can request additional information.

Ms. Sirois stated that she spoke to NHDES and they are not able to move any closer to the water. She noted that there are two septic systems already on the lot.

Mr. Kasanovich referenced the deck on the water side and stated that roof lines create more runoff and impact.

Members indicated that they had all visited the site.

Mr. Wilkinson stated that the area is congested.

Ms. Sirois stated that given the easements of the existing driveways for the property to the left, and the wetland to the right, the area is minimized. She stated that they really want a two-bedroom home, 22' x 36' and it would be nice to have a garage. She stated that when they went to the State and gave them the plan; they were asked about the intent of the property. She stated that they do not feel this is an extravagant house; it is only two-bedrooms. The existing house has been occupied as a year round house for over 20 years. They feel they have followed the rules of the Town through this process and feel there has been a lot of miscommunications over the years with different building inspectors. This is a request to build on land that was appraised at \$750,000 and they are not able to do anything due to the many easements on the property. She stated that she does not know of any alternative locations for the house.

Mr. Sirois asked if the Board is suggesting to move the house back 10 feet.

Vice-Chair Sanderson states the lot is good sized and is capable of compliance. The proposed location is defined based on the footprint; however, this is not within the footprint mode as the proposal is to change from seasonal use to a year-round.

Mr. Wilkinson stated that the Board cannot design the project.

Mr. Sirois explained they met with Town staff, followed the directions and avenues, and this is where they arrived. He stated that the plan was not put together without thought. He stated that they have tried to stay within the existing footprint of the house. He noted that alternate options would require moving the septic and he expressed concern with blocking neighbors.

Vice-Chair Sanderson read the Fire Chief's comments, as follows:

After viewing the site, this roadway is very narrow and serves 4-5 houses, extremely limited access for fire trucks and ambulances. I recommend the roadway be widened to ensure adequate emergency access.

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Vice-Chair Sanderson read an email submitted by Abutters Michelle and Steve Curran, as follows:

Unfortunately as I mentioned earlier having just received this information today at 3pm and only having a short time to review and not being able to make this evenings meeting,

The follow question come to mind at first look.

- 1. First thing that comes to mind is that this would not be an issues if they were in fact only rebuilding on the foot print of the existing house as stated in the application and mentioned by the conservation commission. It appears that the garage and deck are larger than the existing footprint and its size / height and being attached makes me question if this will now or in the future be additional living space. Is this being considered?*
- 2. If the new house will be using the existing septic. Does the septic meet all requirements for the proposed project and if not will the current area be sufficient for any upgrades.*

There may be other questions or concerns but with limited time this is what came to mind.

Thank you again for your time.

Michelle and Steve Curran

Vice-Chair Sanderson read the memo received form the Conservation Commission's, as follows:

The Commission met on February 3, 2023, for our regular scheduled meeting. The special exception application for Sharon and Michael Sirois, 8 Lufkin Drive wetland setback project was reviewed.

The commission voted to issue a memo to the Zoning Board stating that they had no concerns with this project as long as the construction of the new home remains in the existing foot print of the original house.

Abutter Steve Lucy, 10 Lufkin Drive, stated that the camp has been there for many years. This is not a big change; it is taller with porches and the garage. He stated that he does not have any issues.

A discussion was held relative to the need for additional information. The Board requested to continue the case to April 24, 2023, and requested the following information, with new information received by April 10, 2023:

Plan showing the full lot size, all easements and wetlands delineated.

The Applicants agreed to the continuance.

On a motion made by Mr. Wilkinson, and seconded by Ms. Colburn, the Board voted unanimously, by a roll call vote, to continue Case: 23-05 to April 24, 2023.

Case 23-07: Patrick Blaisdell, C/O Donahue, Tucker & Ciandella, PLLC, First NH Turnpike at Spruce Cove Rd. Map 107; Lot 15-1. Applicant seeks a Special

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Exception from Article VII.C(3), Lot Size; lot has 1.039 acres, where 2 acres are required.

Christopher Boldt, Esq, from Donahue, Tucker, and Ciandella, PLLC, was present along with Applicant Patrick Blaisdell. Roscoe Blaisdell, of Blaisdell Survey, LLC was also present.

Atty. Boldt explained the proposal is for a single-family, three-bedroom home on a non-conforming lot. There is frontage on Rte. 4 and Spruce Cove Road. The lot was created in the 1970's and he referenced Exhibit A, which was Plan #D3039. The lot is 1.039 acres where two acres is required. He explained that a Special Exception is an allowed use if the zoning checklist provisions are met.

Criteria questions for a special exception from Article VII.C, Section 3

Dimensionally non-conforming lots which were created or existed prior to December 31, 2005 and which contain less than 80,000 square feet may be developed without compliance with the requirements established by Section IV(B)(2) of this ordinance for lot size if granted a Special Exception by the ZBA. The ZBA shall grant the Special Exception only if the following conditions are met (Rev.3/08):

Atty. Boldt stated that the lot was created in the 1970's. It is less than 80,000; it is 1.039 acres and has the ability to have both a septic and a well.

- (a) septic systems shall be located 75 feet or greater from open drainage or surface water, 50 feet or greater from hydric B soils, 75 feet or greater from existing wells; and septic systems must meet all other setback requirements set by the New Hampshire Department of Environmental Services, unless a waiver has been granted by the appropriate state regulatory agency.**
- (b) the well protection radius shall be 75' or greater and may not extend beyond property line.**
- (c) all other dimensional requirements shall be met.**

Atty. Boldt referenced Exhibits B and C, a septic plan and survey per the Blaisdell Survey, showing that the well and septic criteria have been met, as well as the side setbacks.

Atty. Boldt stated that the criteria have all been met.

Vice-Chair Sanderson noted that it appears the house is within the 75' well radius of the adjoining property. Atty. Boldt replied that it is irrelevant as the 75' well radius is for septic systems.

Vice-Chair Sanderson asked about the prior involuntary merger. Ms. Smith explained there was no evidence of a merger; however, she stated they provided information based on their understanding of it being two lots of record, based on the subdivision plan. Mr. Blaisdell paid to have the Town's attorney review the documents. That information was then provided to the Selectboard and the Town's assessor and the two lots were separated. She stated that there was a time where the Town did join lots if they were owned by the same person.

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Vice-Chair Sanderson stated that the un-merger was completed January 2022; she was not a part of the Selectboard at that time.

Ms. Smith stated the lots would be subject to RSA 674:41 relative to access via the private road. However, she referenced Exhibit A, which shows a Planning Board signature. She added that based on that plan, the Building Inspector felt the Applicant was exempt from RSA 674:41.

Atty. Boldt stated that the Board could make the confirmation of RSA 674:41 for the private road a condition of approval if they feel it is necessary.

Vice-Chair Sanderson read the Code Enforcement Officer's comments, as follows:

I have reviewed this and judging by the documents they provided, it does appear they could meet the requirements of this special exception. Code enforcement will be sure this continues to meet these requirements through the building process as they did not yet have a state approved septic design. Since this special exception is based heavily on septic location, this is important.

Vice-Chair Sanderson read that the Fire Chief had no objections to the proposal.

Vice-Chair Sanderson read comments submitted via email from Jaye Nardi, representative for the Spruce Cove Homeowners Association:

Linda,

Regarding matter Case 23-07 to be presented to the ZBA on March 27th meeting, we ask that you submit for consideration to the board our following concerns relative to the project being proposed on Map 107 Lot 15-1 in Northwood, NH.

It appears that this lot 15-1 was split away from lot 15 in January of 2022 by action of the Board of Selectmen. As the Spruce Cove Road Association members, we were deeply concerned to learn about this recently and were not notified in any way by the town of Northwood of its intention to consider and vote on this matter. We were not given a voice in this decision to split off this small one-acre non-conforming lot and would have wanted to have been a part of this process.

Also the owner of said lot has not been assessed or paid any dues for maintenance to the association on this lot since the establishment of the Spruce Cove Road Association in 2013. The owner of this lot paid only for only one parcel containing this lot and the adjoining lot which he purchased in 2013 at foreclosure and never expressed to us their intention or desire to have these lots split in two. It was only after he was in the process of selling the main lot and house last year that he, with the help of his father has moved to split the lots apart and try and develop this ill-situated small non-conforming lot. Again with this lot having access on Spruce Cove Road our association should have been notified of this well before now.

Our concerns about any development on this lot are real given the steep terrain of the lot along with is small non conforming size, adding a curb cut to Spruce Cove Rd on a bad curve of the road. Additionally the layout and steep slope of Spruce Cove Road along the boundary of this property and its tendency to experience drainage problems. Historically water does not drain well in this area, down by the mailboxes is

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typically wet with water leaching from the lot that is under review, it puddles and freezes and has led to complaints from NH Dot in the past.

As an association, we do what we can to have the road maintained as best we can but it is difficult for a small association of homeowners with a limited budget such as ours. We do not want and cannot afford to have the town dump on us added responsibility through the development of this lot. In addition to this we have real concerns about possible pollution to the watershed due to the proximity of this lot to Northwood Lake and the wetlands that are adjacent to Spruce Cove Road, all of which are within 250 ft and may require shoreland and possibly alteration of terrain permitting. As we know unregulated land development can increase the amount and rate of stormwater runoff which, in turn, can contribute to flooding in other areas. We do not see anything within the plans that you have sent that address any of this by any governing entity, such as the state DES. Has there been any notification or review on their part and how will these issues be managed in relation not only to Spruce Cove Road, Northwood Lake, and the adjoining wetlands? We ask that the Applicant's special exception request to the ZBA be denied or at the very least be continued until full evaluation and approval state DES authorities can offer assurances that construction on this lot will not disturb not only Spruce Cove Road but also the nearby lake and wetlands.

We invite ZBA members and building inspector are welcome to come and drive up Spruce cove and view the site with its challenges and proximity themselves.

Thank you for your time,

Representative for the members of Spruce Cove Road Homeowners Association.

Jaye Nardi

Ms. Smith stated that any issues related to the development of the lot are not a part of this application, those issues can be addressed with the Building Inspector when a building permit is applied for. At that time, any issues relative to normal development will be looked at and will be addressed.

Vice-Chair Sanderson stated that the un-merger was addressed by the Selectboard and was to rectify a deed issue.

Ms. Smith stated that the Board can ask that Staff forward the email to the Building Inspector to make him aware of the association's concerns should a building permit be applied for. Consensus of the Board was for staff to forward this email to the Building Inspector.

Abutter Jaye Nardi, representative for the members of Spruce Cove Road Homeowners Association, referenced her email of concerns. She spoke of the concerns of the curb cut onto Spruce Cove Road, the wear and tear to the road, and the fact that there was no notice received for the splitting of the lots. She stated that they are a small association that she is running currently, they do not even have a plow person at this time.

Ms. Nardi stated that the proposed curb cut is in an area that is very dangerous and on the corner. She noted that the area is typically icy and there are other drainage issues.

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Vice-Chair Sanderson stated that the building inspector could address some of the concerns and the Board could recommend the Applicant give consideration of that curb cut and mitigate the safety standards.

Atty. Boldt stated that the proposed curb cut is 120 feet above the curve.

Vice-Chair Sanderson explained the Board's role in granting a Special Exception; if it meets the criteria the Board must grant it;. The next means of recourse would be the Building Inspector.

Ms. Nardi asked why the association did not receive any notification with the merger process.

Vice-Chair Sanderson stated that the process was a rectification of a tax map error. The lots were always two separate lots from 1972. The Town merged neighboring lots that were undersized and owned by the same owner. This is not a common process.

Ms. Smith stated that these two lots pre-existed; it was not a subdivision.

Criteria questions for a special exception from Article VII.C, Section 3

Dimensionally non-conforming lots which were created or existed prior to December 31, 2005 and which contain less than 80,000 square feet may be developed without compliance with the requirements established by Section IV(B)(2) of this ordinance for lot size if granted a Special Exception by the ZBA. The ZBA shall grant the Special Exception only if the following conditions are met (Rev.3/08):

- (a) septic systems shall be located 75 feet or greater from open drainage or surface water, 50 feet or greater from hydric B soils, 75 feet or greater from existing wells; and septic systems must meet all other setback requirements set by the New Hampshire Department of Environmental Services, unless a waiver has been granted by the appropriate state regulatory agency.**
- (b) the well protection radius shall be 75' or greater and may not extend beyond property line.**
- (c) all other dimensional requirements shall be met.**

Atty. Boldt stated that the lot was created or existed prior to December 31, 2005, per the Sykes Plan (Exhibit A); the property was created in 1972. Per the Blaisdell Septic Plan and Survey (Exhibits B and C), the lot contains less than 80,000 sq. ft.; the property has 45,289 +/- sq. ft. Atty. Boldt referenced the Blaisdell Septic Plan and Survey (Exhibits B and C) and stated the proposed septic system will meet all such conditions. To assure the Board that such will be the case, the Applicant respectfully suggested the Board grant approval of the Special Exception with the normal condition that NHDES grant an approval for the septic system for the proposed three-bedroom, single family home before a building permit is issued. Regarding the well protective radius, the Blaisdell Survey Plan Per the Blaisdell Septic Plan and Survey (Exhibits B and C), the proposed well will meet the requirement. The Applicant also noted that these Exhibits show that the abutting property's well protective radius does not comply with this condition and does cross into the property thus creating a

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constriction on the property; however, the conditions for this Special Exception are still met. He added that all other dimensional requirements have been met and referred to the Blaisdell Septic Plan and Survey (Exhibits B and C), the proposed three-bedroom single family home will be in a fully compliant location.

Vice-Chair Sanderson read further commentary provided in the Applicant's written application materials; While not a "dimensional requirement", the Applicant has recognized that, despite the property being the first lot on this private road, which has a number of other homes built upon it, another condition of the approval can be a requirement that the Applicant obtain the Selectboard's approval of an Application to Build on a Private Road pursuant to RSA 674:41.

Atty. Boldt added if it were necessary.

Ms. Smith stated that this was not included but would be required to be signed and recorded at the Registry of Deeds; this is a Town requirement.

With no further comment from the Applicant or abutters, Vice-Chair Sanderson closed the public hearing and opened Board deliberations.

Ms. Colburn asked if there are any steep slopes. Vice-Chair Sanderson replied that would be the determination by the Building Inspector.

Ms. Smith suggested that if the Board grants the Special Exception, the following two conditions be added:

- Two copies of the approved septic design be provided to the Town; one provided to the Office of the Zoning Board and Building Department; and
- All local, state, and federal approvals be obtained.

With no further comments from the Board, Vice-Chair Sanderson closed deliberations for this case.

On a motion made by Mr. Wilkinson, and seconded by Ms. Guzofski, the Board voted unanimously, by roll call vote, to grant the special exception for lot size, Article VII.C, Section 3, based on the fact that all criteria have been met based on the testimony and evidence provided, with the following conditions:

- **Two copies of the approved septic design that meets the regulation be provided to the Town: one provided to the Office of the Zoning Board and one copy to the Building Department; and**
- **All local, state, and federal approvals be obtained.**

Vice-Chair Sanderson called for a recess at 8:13 p.m. Session resumed at 8:20 p.m.

Case 23-08: Kevin Graue & Taylor Curtis, C/O Shaughnessy Raiche, PLLC, 7 Faucher Lane. Map 103; Lot 10. Applicants seek Special Exception from Article VII.(B)(3)E to allow an upward expansion of a pre-existing, non-conforming structure due to the proposed reconfiguration of the proposed structure.

Atty. Brett Allard was present along with Kevin Graue.

Atty. Allard provided an overview of the three requests over the past year. He explained that a pipe had burst in the house, which rendered the dwelling to be a total loss. As a result of the rebuilding process, it was determined by the State of NH that the septic

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system needed to be replaced. The former Building Inspector had determined that a variance was necessary as the structure was proposed to be built within the same footprint; that was the only variance required. The variance was granted in May allowing the system to be partially placed within the setback. The current Building Inspector indicated additional variances were needed to build within the footprint; an Appeal to an Administrative Decision was applied for and granted by this Board, a few months ago. In addition, it was also determined that a Special Exception was necessary due to the 90-degree rotation of the structure, which will occupy more air space within the setback; it is still within the same footprint.

Atty. Allard stated that they are asking for a Special Exception from Article VII.(B)(3)E to allow for the expansion and the roof pitch within the setback.

Atty. Allard updated the Board regarding the prior condition of a voluntary merger needing to be applied for. There is a section of land by the road that was not conveyed. They have gone through the process to obtain a deed and will file for that.

Vice-Chair Sanderson read the Fire Chief's comments, as follows:

Access to this property is very limited. I recommend that Preve Road be re-graded as the road is very muddy and a number of areas are wash boarded. The area in front of the house to Preve Lane is very narrow and should be widened to allow FD access.

Criteria questions for a special exception from Article VII.B, Section 3

(1) If an upward expansion, it shall not have any adverse impact on any neighboring property, including but not limited to blocking of views and/or sunlight.

Atty. Allard stated that this upward expansion is a 90-degree rotation of the existing structure and just like the existing structure does not block the views or sunlight of other properties, neither will the proposed structure. There are no dwellings directly across Faucher Lane from the subject property whose views or sunlight would be impacted by this rotation. Nor will abutting properties to the north and south of the subject property along Jenness Pond be impacted.

(2) If an upward expansion, it shall not exceed the maximum height limitations specified in the zoning ordinance.

Atty. Allard stated that the Dimensional Table contained in Section V-1 of the zoning ordinance establishes a 35-foot maximum structure height. As shown on the provided elevations, the structure does not exceed 25-feet at its tallest point. Therefore, the proposed expansion does not exceed the maximum height limitation specified in the zoning ordinance.

(3) The expansion shall not increase any other non-conforming aspect of the structure or lot.

Atty. Allard stated that since they are rebuilding the seasonal structure in its same footprint, and only rotating the roof 90-degrees, they are not creating any new non-conformities.

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With no further comment from the Applicant, and noting that there were no abutters present, Vice-Chair Sanderson closed the public comment time and opened Board deliberations.

Vice-Chair stated that if the criteria has been met, the Board must grant the Special Exception.

On a motion made by Mr. Wilkinson, and seconded by Ms. Guzofski, the Board voted unanimously, by roll call vote, to grant the special exception for lot size, Article VII.B, Section 3, based on the fact that all criteria have been met based on the testimony and evidence provided, with the following condition:

- **All local, state, and federal approvals be obtained.**

Case 23-09: Jessica Torosian, 9 Overlook Road. Map 210; Lot 21. Applicant seeks a Variance from Article IV.B(4), for a garage within 2.1 feet of the setback, where 20 feet is required.

Vice-Chair Sanderson expressed concern with knowing the Applicant as did Ms. Colburn. After further discussion with the Board members, it was agreed there was no conflict and the voting designation did not change.

Ms. Torosian was present along with Francis Greenlaw.

Ms. Torosian stated the proposal is a request to build a garage as they are running out of space with their four children; they feel that the garage will make their property more aesthetically pleasing as well as make the neighborhood look more appealing.

Vice-Chair Sanderson stated that this is a setback issue as the property is not large enough. She noted that this is a private road.

Abutter Shawn Kelley, 7 Overlook Road, stated that this is a project they have discussed doing over the last year or so. He stated that there was an issue with the property lines with a previous owner and that has been resolved. The only question he had was if the 2.1 feet was the actual property line not the retaining wall that was put in by the previous owner, which has been answered.

Abutter John Gancarz, 17 Overlook Road, stated that there are not many details. He reviewed the plans and noted the placement of the garage will be added onto the mud room. He commented that the garage is close to the retaining wall, which is approximately four to five feet tall. He noted that the proposal does not largely impact him; however, he only had concerns relative to the design standard and asked if the garage is on a slab and asked about mitigation for the retaining wall. Vice-Chair Sanderson directed Mr. Gancarz to the Building Inspector for any issues relative to installation.

Abutter Patrick Wycoff, 4 Overlook Road, stated that he does not have any objections to the proposal.

Vice-Chair Sanderson noted that the Fire Department had no concerns with the proposal.

Vice-Chair Sanderson read the Building Inspector's comment, as follows:

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The lot is limited in usable space due its narrow nature it appears. Shifting the proposed garage backwards towards the wetlands at the back of the lot, and making the garage parallel with the residence could reduce the encroachment, but would likely drastically change the appeal of the new building.

Vice-Chair Sanderson asked about the placement of the garage as noted in the Building Inspector's comments, noting the encroachment and even a smaller proposal would still encroach into the setback. She noted the location of the existing retaining wall as well, which hinders other location options. Ms. Torosian stated that there is no other options for the garage.

Vice-Chair asked about the permeable land; it is at 0.92 acres with the driveway and roof of the proposed garage. They are within the percentage for permeable surface requirements.

Vice-Chair Sanderson does not see other location options. She explained that variances stay with the land.

Vice-Chair Sanderson asked if there was a shed in the rear of the property. Ms. Torosian stated that it should be noted on the plan. It was recently determined to be on the neighbor's property, as a result of the survey. Discussion ensued regarding the terrain of the property.

Ms. Smith asked if the road and driveway are paved as a paved driveway in a setback is a structure. Vice-Chair Sanderson noted that there is a shed, driveway, house, and garage.

Type of Frontage:

Criteria questions for a variance from Article IV.B, Section (1)(c)(1):

1. Granting the variance would not be contrary to the public interest because:

Ms. Torosian stated that the property is located on a private road; however, there are no issues with access to the property. Overlook Road is well maintained by all residents year round. It was paved in the summer of 2021.

Ms. Torsion granted permission for Abutter Shawn Kelley to assist her with the responses.

Mr. Kelley stated that the property lines are very similar. The lot is long but only 94 feet and 98 feet wide; the houses take up most of the width. The majority of the property is across the stream, which cannot be accessed without building a bridge across the creek. It is not feasible to build a bridge. With the Applicant's current dwelling, his dwelling, the middle of the property lines, width wise, they are limited to where they can build a garage. There are not many options. He added that he has worked with the Applicant and is agreeable to the proposal. He noted that there is a wetland behind the house, and it opens up right behind the house.

2. The use is not contrary to the spirit of the ordinance because:

Ms. Torosian stated that due to the current setback requirements (20 ft), the original plan for the home included a one car garage when the setback requirements were 10 ft. The land had already been prepped and the conduit for electrical ran through the

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mudroom to use in the garage build at the time I purchased the property. The direct abutting neighbors are in favor of the building.

3. Granting the variance would do substantial justice because:

Ms. Torosian stated that proposed placement of the garage would not impact the wetland, leach field, or septic system.

4. The proposed use would not diminish surrounding property values because:

Ms. Torosian stated that the proposed placement of the garage is not in the line of sight of the neighbors and will not be obtrusive to anyone.

5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship because:

The “special conditions “of this property that distinguish it from other properties in the area are as follows:

(A) Owing to the special conditions of the property, set forth above, that distinguishes it from other properties in the area:

(i) No fair and substantial relationship exists between the general public purposes of the ordinance and the specific application of that provision to the property because:

(ii) The proposed use is a reasonable one because:

(B) Owing to the special conditions, set forth above, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it because:

Ms. Torosian stated that the width of the property is very narrow. There are wetlands and steep slopes in the back of the property. She stated that substantial justice will be done when the project is completed. The property consists of ledge and wetlands. The location of their septic also restricts the garage from being built in any other location on the property. She noted that the proposed location would allow them to utilize the existing driveway.

Mr. Kasanovich asked if there is any evidence of other potential locations where the garage could be built.

Ms. Torosian referred to the plan and noted the ledge and the drop off, as well as the location of the leach field and wetlands. She noted that they would need to build a bridge to access the rear of their property.

Mr. Kasanovich asked if there was a designed plan. Ms. Smith noted that their plan is a stamped plan.

Vice-Chair Sanderson noted the retaining walls. Mr. Kelley stated that if the garage was proposed to be on the other side of their property, it would still have the same impacts just on the other side.

Ms. Smith stated that the Board has the right to look at what is being proposed in the sense that whether the proposal is a modest proposal.

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Mr. Greenlaw explained that the proposal is a single-car garage, with storage above. The height will not exceed 30 feet.

With no further comment from the Applicant or abutters, Vice-Chair Sanderson closed the public comment time and opened Board deliberations.

Mr. Wilkinson stated that this is a reasonable request and is not unusually large. He added that the property is a unique parcel with it being narrow, there are wetlands and a stream on the property with additional restrictions to access the rear of the property.

Ms. Guzofski commented that the proposal is for a one car garage.

Mr. Kasanovich stated he agreed with the other members; however, two feet is too close to the property line and not fair to future owners. He feels there is some flexibility in the plan with the location of the garage and it could be moved to not encroach on septic, wetlands, and be further away than two feet; two feet is too close, and he is not comfortable.

Ms. Colburn had no comments.

Vice-Chair Sanderson stated that after visiting the property, seeing the topography of the land, the retaining wall, the drop off in the rear of the property, and the narrowness, she understood the request. A retaining wall could be moved; however, that would infringe on the wetlands. She stated that it is not a structure with living space. It is borderline with permeable surface limits; however, not exceeded. The shed will be moved. She stated that she does not see a lot of other options. She noted that she appreciated the abutters working together.

Mr. Wilkinson noted that the current abutters are not objecting, and for any future buyer it will be built, and they can see the structure and encroachment. He stated that he is okay with the encroachment.

Ms. Smith stated that it is all about the finding of facts and whether all five criteria have been met, or not, and why.

Vice-Chair Sanderson made a motion to grant the variance, based on the fact that all five criteria have been met, determined by the testimony and evidence provided.

Vice-Chair Sanderson stated that she does not feel it is contrary to the public interest because the garage is not obstructing anything, the height of the garage and positioning is only blocking the owner's back yard. It is not contrary to the spirit of the ordinance in that it is within an agreement that the abutters house is far enough away; the garage and neighbors house are 30 to 40 feet apart even within the narrowness of the setback. Substantial Justice has been met due to the land; it is narrow. Wetlands and ledges were noted on the property as well as a drop off. The garage will not diminish surrounding property values because it would be increasing the property itself through the additional structure; it is within an agreement of the neighborhood, and it is not against what the neighborhood has in mind for their community. Literal enforcement of the ordinance would result in an unnecessary hardship because the lot is narrow. There are wetlands on the property, the location of

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their leach field is in the front of the property, which precludes the garage from being in the front of the house. This will not violate the spirit of ordinance about permeable ground area and the garage is intended to be a single car garage with storage space above; there is no living space,

And, with the following conditions:

- **Foundation certification be provided to the building department by a licensed land surveyor prior to the issuance of the building/foundation permit due to the proximity of the proposed garage, and,**
- **All local, state, and federal permits be obtained.**

Seconded by Ms. Guzofski.

Vote by roll call:

Mr. Wilkinson – yes

Ms. Guzofski – yes

Mr. Kasanovich – no

Ms. Sanderson – yes

Ms. Colburn -yes

The motion passed; 4/1.

INTERNAL BUSINESS:

Ms. Colburn asked about re-appointments. Ms. Smith stated that all appointments are being addressed by Selectboard staff. In addition, she noted that Staff is working to find alternate members for the ZBA.

ADJOURNMENT

Motion to adjourn was made by Mr. Wilkinson, and seconded by Mr. Kasanovich, and unanimously accepted, by a roll call vote, at 9:22 p.m.

Respectfully submitted,

Lisa Fellows-Weaver



Land Use Administrative Assistant