

**TOWN OF HOLDERNESS**  
**Zoning Board of Adjustment**  
**Meeting Minutes November 9, 2021**

**Members Present:**

Bob Maloney, Chairman  
Eric Macleish, Member  
Bryan Sweeney, Alternate

Bill Zurhellen, Member  
Judith Ruhm, Member

Kristen Fuller, Member  
Robert Dorff, Alternate

**Members Not Present:**

**Staff Present:** Town Administrator, Michael Capone

**Others Present:** Michael Bagge, David Driscoll

**CALL TO ORDER:**

The meeting was called to order at 6:21 P.M.

**PLEDGE OF ALLEGIANCE:**

B. Maloney led the pledge of allegiance.

**APPROVAL OF MINUTES:**

**Motion: "To approve the minutes of October 12, 2021 as presented."**

Motion: B. Zurhellen

Second: K. Fuller

Discussion: None

Motion Passes: 5-Yes            0-No

**Continued Hearing Case 465-10-12: Application submitted by Michael Bagge for property identified as Tax Map 241-077-000 located at 230 Shepard Hill Road in the General Residential District for a Variance from Section 400.8.1.1 to allow the location of a new 28" X 28" garage within the setback.**

B. Maloney reintroduced a case continued from last month's meeting noting that it was continued to afford individual Board members to make a site visit to the property. Member Jude Ruhm recused herself from the hearing given her proximity to the property. Bryan Sweeney took her place on the Board. Robert Dorff participated, but was not a voting member.

The applicant, Michael Bagge was present to review their application with the Board.

Mr. Bagge mentioned that he had only received two calls to visit the property and asked if the other members had come by to see it. Those present responded that they had.

The issue of hardship was the focus of the continuing discussion.

Mr. Bagge noted that if he were to put the garage against the house it would block a bedroom window and make the building unsafe.

B. Maloney asked if Mr. Bagge had explored the option of adjusting the property lines with the abutting property owner to provide him sufficient room to meet the setback. Mr. Bagge commented that he had concerns with that approach as he thought it would be too forward of him to do so. B. Maloney noted that others had done so successfully.

B. Zurhellen asked if the garage could be moved back on the property. Mr. Bagge commented that the drop off on the property prohibits moving the garage back. Attaching it directly against the house would be the only option and the cost to make that work safely is prohibitive.

E. Macleish noted that the Board always tries to help people and would like to in this case, but they are constrained by setting a precedent. Are there any unique characteristics of the property to which Mr. Bagge could speak? Mr. Bagge commented that the location of the house on the property has limited all of his options.

E. Macleish mentioned the option of speaking with his neighbors about a boundary line adjustment.

B. Zurhellen asked if it was to be a two-car garage? Mr. Bagge replied in the affirmative.

B. Maloney mentioned that there was always the option of withdrawing the application to consider other possible approaches.

B. Zurhellen asked about the size of the doors. Mr. Bagge responded that they are eight-foot doors and making them smaller would still not help meet the setback.

At this point, Mr. Bagge withdrew his application.

**Continued Hearing Case 466-10-12: Application submitted by David Driscoll of David Driscoll designs Agent for Pookie Property Holdings LLC for property identified as Tax Map 245-080-000 located at 66 White Oak Pond Road in the General Residential District for a Variance from Section 700.2.1.2 to allow for the enclosure of a three-season porch as conditioned living space.**

B. Maloney reintroduced a case continued from last month's meeting noting that it was continued to determine if a quorum of the Board had been present to consider the application at the last hearing. Bryan Sweeney recused himself from the case given that he is an abutter to the property. Robert Dorff participated in the hearing, but not as a voting member.

The applicant's agent, David Driscoll was present to review their application with the Board. He briefly reviewed some of the earlier information supplied to the Board and noted that the issue in question was with regard to conditioned space.

B. Maloney asked if all the space would be enclosed. Mr. Driscoll replied that yes, it would be. The volume exists already. It would now be an all-season space versus a 3-season space.

B. Zurhellen asked if having a deck above would change things. Mr. Driscoll mentioned that that circumstance is not applicable because you would need to have a roof over the space below.

B. Maloney confirmed that the walls would be dropped to the ground and the space would be conditioned. Mr. Driscoll commented that the living space definition is nebulous and adding the additional conditioned space poses a challenge in that regard.

B Maloney read section 700.2.1.2 of the Zoning Ordinance aloud to the other Board members. He asked if the work was being done within the setback. Mr. Driscoll replied in the affirmative.

E. Macleish commented that this does not appear to meet the definition of an expansion.

B. Maloney commented that he is not certain a hardship exists in this instance.

E. Macleish reread the definition of living space and agreed that what was proposed meets the definition of living space.

Mr. Driscoll commented that the variance should speak to the uniqueness of the property.

B. Maloney asked if Mr. Driscoll had anything else to add. Mr. Driscoll replied that he did not.

B. Sweeney asked what defines living space.

There were responses from the Board members. B. Sweeny asked what if it was a yurt?

Mr. Driscoll replied that it would be conditioned space for indoor living.

E. MacLeish questioned whether a variance was needed at all. More discussion was needed regarding the structure. If any ambiguity was present in the ordinance, it would be against the Town and not the property owner.

B. Maloney closed the public hearing at 7:01PM.

The Board took up discussion of the application.

E. Macleish did not think a variance was needed in the first place. He also pointed out some ambiguity in the definitions of living space and expansion.

B. Zurhellen asked if Counsel could be contacted for a legal interpretation.

B. Maloney commented that the hearing would have to be continued. He asked Mr. Driscoll if he was amenable to that. Mr. Driscoll replied in the affirmative.

**Motion: "To continue the public hearing for case 466-10-12 to December 14, 2021 at 5:30PM.**

Motion: B. Zurhellen

Second: J. Ruhm

Discussion: None

Motion Passes: 5-YES            0-No

The Board continued their discussion in an effort to determine what material to provide to Counsel. The Town Administrator commented that he would supply a copy of the application and the minutes to Counsel for her review and comment. He had an earlier conversation with her regarding the case so she has some of the background, but would need the additional detail to provide further guidance. Once she has reviewed the material, he will set up a consultation with counsel to review this case and any other procedural questions the Board may have.

**OTHER BUSINESS:**

Next meeting: December 14, 2021 for the continued hearing. No additional notice will be provided.

The Planning Board will hold a public hearing on their proposed Solar Collection Systems Ordinance beginning at 5:30PM on Tuesday, November 16, 2021.

**ADJOURNMENT:**

At 7:25P.M. the following motion was made:

**MOTION: "To adjourn."**

Motion: B. Zurhellen

Second: K. Fuller

Discussion: None

Motion Passes: 5-YES            0-No

Respectfully submitted,

Michael R. Capone  
Town Administrator