

**TOWN OF HOLDERNESS  
Zoning Board of Adjustment**

**Regular Meeting Minutes August 13, 2019**

**Members Present:** Robert Maloney, Chairman; Bill Zurhellen, Member; Kristen Fuller, Member; Jude Ruhm, Member; Eric MacLeish, Member

**Staff Present:** Linda Levy, Land Use Boards Assistant

**Others Present:** Anne Field, Walter Field, Sara Lewis, Thomas Michel, Patrick Kane, Alice Field, Matt Barnard, Regina Nadeau, Alan Barnard, Nancy Ramsdell, Jackie Prince, Nick Leschly, Rick Hahl, David Ames, Robert Ritz, Cris Salomon, Romy Maurer, Chris Boldt, Gabrielle Crandall, Lucien Cote, Millicent Mason, Daniel O'Neill, Patty O'Neill

**CALL TO ORDER:**

The meeting was called to order at 6:15 P.M. A roll call of the members was taken and a quorum was present.

**APPROVAL OF MINUTES:** June 6, 2019

MOTION: "To approve the minutes of the June 6, 2019 meeting as amended."

Motion: K. Fuller

Second: B. Zurhellen

Discussion: None

Motion Passed: 3 – Yes, 0 – No, 0 – Absent, 2 – Abstain

**Case #437-07-09:** Application submitted by Ames Associates as agent for the Glidden 1994 Children's Trust for the property located at 4 Glidden Rd. identified as Tax Map #239-068-000 in the General Residential District, Town of Holderness, for Variances to the degree necessary from Articles 400.8.1.1, 400.8.1.2 and 400.8.2 (Minimum Side Setback, Wetlands Setback and Well Setback) and the installation of an upgraded septic system.

R. Maloney opened the public hearing at 6:16.

D. Ames introduced the case saying that the Glidden property is a 1-acre lot, the system needs to be replaced and there is only 1 spot for the septic. It meets the State setbacks, but does not meet the setbacks to the lake (60' instead of 75'), from the well (75' instead of 125'), from the property line (5' instead of 35'). He showed a large plot to show where all parts of the system will be located. The tank will be close to where it is now.

B. Maloney: This was denied 9/10/18, correct?

D. Ames: It was rejected when we submitted it to the town, so I am here presenting it to you.

B. Zurhellen asked if it would be a downflow.

D. Ames: It goes downhill, then flat ground, then it goes up. I'm actually pumping downhill and uphill.

B. Maloney: The size and shape of the lot is non-conforming. Can I assume, in your judgement, that there was no better place to put this?

D. Ames: There are wetlands on the property, there is no better place that I could find.

B. Maloney: Any questions from the board?

B. Maloney went through each of the criteria.

D. Ames replied to each criterion by reading his statements from the application form.

B. Maloney asked the board if they had any questions after each criterion was read. None were posed.

B. Maloney asked L. Levy if the abutters had been notified and if there were objections.

L. Levy: Yes, abutters have been notified, and there were no objections.

There were no comments or questions from the audience.

The public hearing was closed at 6:24.

**MOTION:** "To approve the request for the variance."

Motion: E. MacLeish

Second: K. Fuller

Discussion: None

Motion Passed: 5 – Yes, 0 – No, 0 – Absent

**Case #438-07-10:** Application submitted by Nancy Ramsdell as agent for Gertrude M. Greenwood for property located at 12 Range Rd. identified as Tax Map # 236-025-000 in the Rural Residential District, Town of Holderness, for Variances to the degree necessary from Articles 400.8.1.1 and 400.8.2 (Minimum Side Setback and Well Setback) and the installation of an upgraded septic system.

R. Maloney opened the public hearing at 6:25.

N. Ramsdell introduced the case. Mrs. Greenwood needs a new septic system, there is a constrained lot, we don't need any shoreland permits, but needs a new tank.

B. Maloney: Is it a failed system or is it failing?

N. Ramsdell: It is distressed. It will need a new updated system, but needs variances from the well.

B. Maloney went through each of the criteria.

N. Ramsdell replied to each criterion from the application.

B. Maloney asked the board if they had any questions. None were posed.

B. Maloney asked L. Levy if the abutters had been notified and if there were objections.

L. Levy: Yes, abutters have been notified, and there were no objections.

The public hearing was closed at 6:29.

**MOTION:** "To approve the request for the variance."

Motion: B. Zurhellen  
Second: K. Fuller  
Discussion: None  
Motion Passed: 5 – Yes, 0 – No, 0 – Absent

**Case #439-07-10:** Application submitted by Regina Nadeau as agent for Anthony J. Abbiati, Trustee of The Bluebird Realty Trust for property located at 71 Finistere Rd. identified as Tax Map #235-009-000 in the Rural Residential District, Town of Holderness, for Variances to the degree necessary from Articles 400.8.1.1 and 400.8.1.2, (Minimum Side Setback, Wetlands Setback and Well Setback), and Article 700.2 (Reconstruction of a Non-Conforming Dwelling Outside Existing Footprint), and the installation of an upgraded septic system.

B. Maloney opened the case at 6:30.

R. Nadeau gave the history of the request that the property owner presented and withdrew at the February meeting (renovate existing cottage, put in a new septic system, relocate existing barn/shed toward the northerly property line). During that hearing there were challenges brought by various abutters regarding the scope of the plan, and the owner and agents decided to withdraw the plans to consider the comments of the abutters. They went back to the drawing board. As a result, we've gone through a couple of iterations. From what I understand, there have been a couple of meetings with the abutters and I also understand that when I submitted the application, Linda contacted the abutters to tell them and that they've probably been in to see this. I think that most everybody has seen this plan. From an overview perspective, we are still going forward with the functional changes that we've proposed. Physically they are a little different. We tried to relocate the proposed leach field and we went with one particular design that we showed to our abutters which pulled it more into the center of our property, but based on the availability of design, which Matt could explain, we had to revert back to our original location. What we did however do, was eliminated the aeration portion of the design, which was a concern to some of the neighbors, which had to do with noise from the system. So that's been eliminated. With regard to the proposed well, we became aware that the abutters who cross our property and who go up to Camp Finistere sometimes have septic trucks coming through here. So, we relocated the location of the proposed well. We also had concerns raised by the abutters (Lewis & Michel) regarding views. We don't have a view easement that would entitle them to claim a view easement, but as a courtesy to them we proposed pushing our dwelling back another 10' from the shore so that it would provide more of a view to those people than what is currently there. I'd like to explain the physicality of this property and the limitations that we have. This property has 2 shorelines and because of that and because of the size of the lot, there is no building envelope on this property.

B. Maloney: When you say no building envelope do you mean to avoid the setbacks?

R. Nadeau: Correct. There is no building envelope at all.

E. MacLeish: I'm sorry, I don't understand. There is an existing building there.

R. Nadeau: Well, that's the footprint of our grandfathered structure. But if we were starting from scratch today and tried to site a building...

E. MacLeish: I understand.

R. Nadeau: So, the limitation on the property is, if we wanted to make anything conforming, we could not do that. There is nowhere on the property where we could make these structures meet setbacks. In coming with the ultimate design, we've tried to take into consideration the concerns of the abutters. The cottage is a 2-bedroom cottage and will remain a 2-bedroom cottage. What we feel is very reasonable, whether on the lake or elsewhere, is to be able to have a laundry room or utility room and not to have to walk somewhere away from that building to another property. And that was the reason why the plan they proposed last February showed relocating one building from the westerly property line and put it adjacent to the existing building near the northerly property line.

B. Maloney: Is that the one you are calling the Utility/Storage?

R. Nadeau: Yes. The proposal last February was to have it be attached to this dwelling so that, like any other traditional house, you'd be able to walk into a utility room. But because of the concerns raised by the abutters, again we do not concede that there is a view easement, they do have their own views of the lake, they created a separation where all lines between the 2 buildings will be underground.

B. Maloney: Is the location of the Utility/Storage brand new?

R. Nadeau: Yes

B. Maloney: And where was it before this?

R. Nadeau: Roughly in the location where the leach field is proposed, where is says Barn.

B. Maloney: Is the barn going to remain there?

R. Nadeau: No. That's gone. It is going to be the location of the leach field. So, the barn was entirely non-conforming due to the setbacks. We propose to move it over. It will be smaller in size. The Utility/Storage will be smaller than the barn. The proposed cottage will be smaller than the existing cottage. It is being pushed back. We are reducing the amount of impervious area on the property. We are minimizing within the 50' setback by pushing the structure back. We also lowered the proposed ridge height of the dwelling, going from 16 to 18', instead of 20'. I believe the ridge height is lower than our neighbors ridge height. Those increases will not create a second floor.

B. Maloney: Questions? The barn is going to be moved back and will be a little smaller?

R. Nadeau: Correct.

B. Maloney: The Utility/Storage is a brand-new building in a new location?

R. Nadeau: I didn't say that. Because they are called different things, I guess this is a barn. We are getting rid of the barn.

B. Maloney: Is there any other structure intended to go there?

R. Nadeau: No

B. Maloney: Instead of having 3 buildings, you'll have 2?

R. Nadeau: Correct

B. Maloney: That's important.

R. Nadeau: There were 2 buildings before, there will be 2 buildings now.

B. Maloney: I misunderstood. I thought there were 3 buildings to begin with.

B. Zurhellen: When we discussed this in February, the leach field was going to be where the road is, but the water table is high enough and my question is, is the septic system going to have to be mounded?

M. Barnard: It is.

B. Zurhellen: That is why they are going to raise that and move it to where we suggested doing that. But they're asking that they be allowed to construct a new building in non-conforming setbacks.

R. Nadeau: In a different setback so that we can make reasonable residential use for utilities and mechanics for this building. They are uses that are customarily associated with a dwelling. Usually they are incorporated into the structure. In this case, the only reason they are separated on this plan was an attempt to accommodate the neighbors' concerns. It is not the best layout for us. So, in doing all of this, we have multiple variances that are requested. We met with the Fire Chief and we asked about what types of variances would be required. For the house, which is one of the bigger ones, there's multiple setbacks that we're in, but the overriding provision of the ordinance that we're dealing with, says you cannot expand an existing non-conforming structure beyond its existing footprint. So, we're asking for a variance of that provision about expanding and within that come the sideline setbacks (800.1.1), the shoreline setbacks and whatnot. I tell you that up front because that will be at the very end, I want you to know that is our ultimate goal. So, I'd like to start with the septic system. Our septic tank, which is currently in the ground, is located between the 2 buildings, which is roughly 3-4' off the property line. We intend to remove that and relocate it to over where you see the 2 cars over near the northerly property line. Obviously, the existing septic tank is grandfathered non-conforming. We are proposing to relocate it; it will still be the same distance from the reference line because of the configuration of the shoreline. It will be a bit further away from the northerly property line by about 6 or 7'. I'd also like to address the leach field at the same time because they are interrelated. The leach field, which is going to be over in the northwesterly corner in the location where the barn is now, we're asking for variances from the sidelines. They pretty much range 10-10.1' depending on the property line. We're also asking for a variance for the setback of the reference line of the lake which would be the southerly boundary of the property. For that one we're requesting a 37.6' variance. We're going to be 87.4' from the water. We believe that these 2 locations require the fewest variances. It will upgrade the property. We're not asking for any more bedrooms; we're asking for a State approved system in a location that makes the most sense based on the layout of this property. We've spoken with our neighbors; we've tried to modify the septic design and we've agreed to potential screening by trees along the westerly property line for the benefit of the Field property. I'm happy to answer questions.

B. Zurhellen: First, it shows a deck on the front which doesn't exist currently. Is that an expansion?

R. Nadeau: Yes. I can get into the house. What you're looking at, the purple is what's there now.

B. Zurhellen: It's not on the map, that's the problem.

R. Nadeau: You're looking at the septic plan.

B. Zurhellen: Currently, the house has an overhanging deck that literally overhangs close to the water on the eastern side.

B. Maloney: The dimension is 10.26 off the house toward the water, do you see it?

R. Nadeau: Yes.

B. Maloney: Is that an existing deck?

R. Nadeau: No, that is an enclosed 3-season room. That is existing.

B. Zurhellen: Not that one. This one is not enclosed. This is just the front entry-way deck. There are no plans on enclosing it or changing it?

R. Nadeau: No. For that dwelling, what you see the 10.26, that is an enclosed 3-season porch and if our plan goes through, that will be removed. The other thing that I neglected to mention is that the barn that we plan to remove actually encroaches over the property line so that will eliminate that non-conformity as well.

B. Maloney: Ok, so one of the questions that we're going to have to address is the new shed. The question is, does the new shed effectively encroach and/or improve the overall property as it relates to moving the barn and adding a shed in another location, but it's going to be within the setbacks? And, it's going to be new. It is not the footprint of the house. So, my question is, is there a way to improve the Utility and Storage Shed for the benefit of the petitioner? Any thoughts, Eric?, Bill?

B. Zurhellen: My concern – the old barn is being torn down because you need that spot for the leach field. There is no other spot for the leach field. So, if we said no to the new Utility Shed, it would be decreasing the non-conformity. But they would have to do that to have a septic system, no matter what.

B. Maloney: Agreed

B. Zurhellen: I can't tell you what the law says about trading. Maybe you would know.

B. Maloney: I know that we have on occasion accepted the fact anything that improves the overall setbacks can be viewed, in our opinion, in a positive fashion.

B. Zurhellen: Even if it increases...?

B. Maloney: No, it cannot increase any additional space within the setback. I think the barn, in its entirety is in the setback.

B. Zurhellen: So, we can trade it.

B. Maloney: I believe trading works. I have no problem with the swap. Jude, any thoughts?

J. Rhum: They have to have utility storage in order to have a washer and dryer? They bought the property knowing what the property was.

W. Zurhellen: Are you converting this to a year-round house. It formerly was seasonal.

R. Nadeau: It formerly was seasonal. It's going to be built to standards for winterization. If they do convert it, they will go through the proper channels. But at this point, it is not year-round because there is no well. We would come back to this board if we wanted to make it year-round.

B. Zurhellen: No well?

R. Nadeau: There is presently no well.

B. Zurhellen: Presently; but there has been one.

R. Nadeau: No, there has never been a well. So, because of that, by definition, we're not year-round. We are proposing a well that will be constructed under energy code. We discussed this with Eleanor and she said that we would have to come back and speak with the Board of Selectmen and go through the process to make sure everything complies if we want to go year-round. I wanted to go back to this thing that kind of sounds like horse trading; about swapping impacts. If you viewed this as, let's say we were not bifurcating these buildings, we didn't have a separation, and we just came in and said, we want to push this building back but we also want to add on 600 or 400 sq. ft. for our laundry room. We could ask that without trading anything, I suppose. And, if it was a reasonable use of the property and met the other criteria, you wouldn't require any kind of trade-off. I consider these mitigating factors.

B. Maloney: I'm not sure we're going to approve an additional 600 ft, knowing that you're going to have to abide by the existing footprint. That's where I'm hung up at the moment.

R. Nadeau: Right, and that's why we end up by default, looking at one of the things we're doing to mitigate to justify that, so that it's within the spirit of the ordinance.

B. Zurhellen: I have 2 concerns. Why not, instead of building an 18x18 laundry room, why not as you redo the building, redo the existing sunporch rather than getting rid of it and use that as laundry space?

R. Nadeau: That enclosed porch is a 3-season porch, just like the rest of the building is 3-season. And, we're keeping that square footage, we're just pushing it back. So, we're using the purple outline of the enclosed porch, we're just pushing that whole structure back.

B. Zurhellen: So, you're keeping the porch.

R. Nadeau: We're keeping the footprint, but we're pushing it back, yes.

B. Maloney: Are you saying that the house is going to be a little bit further from the setback, the northern setback?

R. Nadeau: Yes. And, it's going to be somewhat reduced in size. I thought it was by 220 sq. ft.

E. MacLeish: Yes, but you're only reducing the setback by a couple of feet.

R. Nadeau: Correct, we're reducing the setback by 220 sq. ft. Each setback has a reason. The setback from the water is obviously to decrease impact on the embankment. We did that for purposes for our neighbors to the north to have more of a view from their home contiguous with the rest of their view which they already have of the lake. In doing that, we did pull the structure back from the northerly property line. I believe there was a comment that historically, because the building was on the property line, the prior owners have routinely done maintenance from the northerly owners' property. This would actually remove the need for that. And, the utility shed is smaller than the barn. It is reasonable because it is not just washer/dryer, it's also mechanicals; hot water tank. If you look at the dwelling itself, it is a pretty modest sized dwelling. It is one story with 2 bedrooms, there is very little room for anything else. So, the other thing is, as a result of the overall plan, we are reducing impervious area from 33% to 20% which is significant under the environmental laws. We're improving the septic system. We're trying to

accommodate the neighbors. We're not increasing septic loading. We're just trying to make it work, trying to come up with a solution to make reasonable use of the property with a mechanical room.

B. Maloney: Matt, want to share your thoughts?

M. Barnard: The septic meets State setbacks. The existing septic that is there now is, most likely, into the water table. The water table is 18". So, that's why we have to raise this field up to make everything work, in trying to meet State setbacks. We can't meet Holderness setbacks. This is the only place this could work.

B. Maloney: That's what we needed to hear.

M. Barnard: And, if that's the only place that it can work, then we have to take the barn.

E. MacLeish: If the application for the variance on the utility shed and the home were denied, would you intend to proceed with the improvements to the septic system?

M. Barnard: I'd have to confer with my client. It would be his decision.

B. Maloney: Kristen, any thoughts?

K. Fuller: Yes, I am struggling with the new construction of the utility storage inside the setback. I know it is sort of like a trade, but it feels like new to me. And, the footprint is different on the cottage, it is moving. Our zoning regulations say very clearly that you can't expand or construct new within the setback. I'm struggling with that.

E. MacLeish: Are we talking about all the conditions just now or are we talking about...

B. Maloney: I think everything but the well.

E. MacLeish: I like the design of this property; the renderings look nice. I haven't heard from the neighbors yet. We're constrained by court decisions and by regulations and by precedent. My question to you, under the simplex test, you have to show a couple of things under criteria 5. You have to show that due to special conditions on the property, which has been interpreted in a number of decisions, that there are conditions on this property that are different from others; that would be an undue hardship. You've got to show special conditions and undue hardship. If you can't show special conditions, then you can't get to the undue hardships test. And, the court has over time, retracted that simplex test a little bit, but it basically still is the law in the State of New Hampshire. So, I'd like you to tell me first, what special conditions there are that apply to this lot as opposed to other lots that would support the granting based on criteria 5 for the variance.

R. Nadeau: I do agree with you that decisions of the court have modified the simplex criteria. But I will tell you that what makes this property unique is that it does not have a building envelope. If we wanted to try to make any one of these buildings conforming, we cannot do it. We cannot make a single one of these improvements conforming.

E. MacLeish: And how is that realistically different than most of the lots in the area? I imagine they are all smaller lots.

R. Nadeau: I think you can take into consideration that the improvements that are on the property as opposed to just working with what is there and trying to make it the most environmentally or sensitive or the most consistent with what the purpose of the what the ordinance is.



E. MacLeish: I agree with you, it is good to do this in an environmentally sensitive way. Most of these lots are non-conforming and couldn't meet the setback requirements or other criteria of the zoning ordinances on most of the lots on Squam Lake, on many of the lots.

R. Nadeau: I think that is true. But there gets to be a point where you could ask about whether everyone on the lake did something similar to what we are proposing, there would be a net benefit to the lake.

E. MacLeish: I agree.

R. Nadeau: Because then everybody would have a conforming septic system. All of the buildings would be pushed further away from the lake. Everything would be brought code compliant. In fact, if you look at our neighbors to the north, they have at least 6 variances for their septic system. They have a slew of variances for their house, they have a handful of variances for their garage. They have a larger piece of property. We are dealing with something much less and we're asking for fewer variances.

E. MacLeish: Do you know the name of that application?

R. Nadeau: Yes, I have a whole bag full of them. It is the...

E. MacLeish: I've just come on the board, so I don't know of prior variances. How is this different from the others?

R. Nadeau: This is different because ours is one of the smallest lots and we have 2 shorelines. That makes it different.

E. MacLeish: Does that make it different in a special way?

R. Nadeau: Yes, it's different because most of these lots have only 1 shoreline setback which is the most rigid setback of 50'. Whereas we have 2 of our 3 property lines are shoreline, so we have a 50' setback all this way which takes away our building envelope.

E. MacLeish: I didn't see anything addressing court decisions and look at special criteria for special conditions. All that I know is that it is a very difficult test to meet. Yes, there are unique characteristics to a lot of these lots and you have Squam Lake on 2 sides. Yes, that's different. But, most of the lots in the area would not be able to put up new construction without violating the zoning code.

R. Nadeau: The only reason that we're calling it new construction is to accommodate the abutters. In other words, if we stuck with our original plan, we're adding on. That might be considered new construction, but it's adding on. And if you look at the intent of the ordinance is not to prevent reasonable expansion of these non-conforming structures. So, the only reason we're not requesting to expand onto this structure is because we're trying to accommodate the neighbor. We had a proposal here where it was adjacent to; it would have been expanding this structure.

E. MacLeish: You'd still need a variance for that.

R. Nadeau: Exactly.

E. MacLeish: Let's go to undue hardship. I'd like to hear what you have to say about undue hardship. This was purchased with this particular property as it is right now. It was a reasonable use at the time, people knew what they were getting into. Why is there an undue hardship for this lot to remain as is?

R. Nadeau: I've already answered your question, but I want to get it on the record too. There are 2 different tests associated with that prong of the criteria. One is whether there is something unusual with this property that distinguishes it from others. We've got 2 sidelines which have the most stringent setbacks, which are the 2 lakefront setbacks. We also have one of the smallest lots in the area, and we have no building envelope at all. I don't know that you can say that about the other lots in the area. So, that's what makes us unique. The hardship is that we have no building envelope. No matter what we put on this property, there is no building envelope. We have to ask for a variance to do anything other than what is there. We have to show is it reasonable for the Town to prevent us from doing it under these circumstances. Is this a reasonable use under this zoning district? A utility room is a reasonable use, it's permittable in this zoning district. And, is there a legitimate reason not to enforce these setbacks.

E. MacLeish: Do you have any cases that stand for the proposition that you just cited; that you can show undue hardship because there would be no way that you can build outside the building envelope and be in compliance with the zoning law? Any cases that recognize that as legitimate criteria for showing undue hardship?

R. Nadeau: The fact that you don't have a building envelope?

E. MacLeish: Right.

R. Nadeau: I could say that I've done 30 in my career.

E. MacLeish: Court cases?

R. Nadeau: Court cases that I've defended. Not having a building envelope, is by definition, a hardship.

E. MacLeish: Is there any court decision that says that?

R. Nadeau: I can't give you one at this moment. If you look at your own application, it spells out what the criteria is for this, "Literal enforcement of the provisions would result in unnecessary hardship". Actually, your application isn't up-to-date. I can't think of a worse hardship than not having a building envelope.

E. MacLeish: Staying where you are in the house as it is.

K. Fuller: Why is it an undue hardship to mimic the current footprint?

R. Nadeau: We go back to the reasonableness of why the Town will force us to do that. According to the fire chief, we are able to stay within our existing footprint, go up and not ask for any relief from you at all. We are trying to do this so that we can get our utility room and in exchange make all of these concessions to the abutters. There is a hardship here. In the old days, if you could put up a duck blind on your property and shoot ducks from there, then you had reasonable use of your property. But the pendulum has swung quite a bit. Back in that day, 99 out of 100 applications should have been denied. Under the current law the pendulum has swung the other way. It is a question of reasonableness. In this particular rule, in this particular set of circumstances. As much as it gives you a right to look at what other properties in the neighborhood would do, and gives you the right if everybody else was granted this relief, what you'd probably see is a net gain to the lake. We're not increasing the number of buildings; we're not increasing the number of people. We are changing the impact on the northerly line, but reducing it elsewhere and creating views. The hardship is, absent of variance, we are unable to have a building to have common

elements that you would expect in most residential buildings which is a laundry facility and a mechanical room. It is not a lot to ask. That is a reasonable request.

E. MacLeish: There are cases that say that? That your inability to have a laundry room, for example, a utility room, that that constitutes an undue hardship?

R. Nadeau: There are cases out there that say if can't have a garage, it's an undue hardship.

B. Maloney: Are there any comments from anybody in attendance?

C. Boldt: I represent Thomas Michel and Sarah Lewis, the abutters to the north. Pointing to a map, he pointed to Finistere Point. This parcel is very much burdened like the other lots. It is not a unique problem. I have copies of the tax card and the tax map so that you can refer to it. The applicant also owns lot 13.1, which is significantly larger lot. The Fields own lot 10. Not every property that comes before you are entitled to full development rights. You have to evaluate everything by the 5 criteria. You are given a very long list of variance applications to have the property come out the way the applicant wants it to come out. I'd think we'd have a very different conversation if it was just for the septic. If it was one that they were going to take down the barn and put the septic there, I'm not sure the neighborhood would have too much of a problem. But if that is the reason to get expansion of these 2 buildings in this non-conforming setback locations and claiming that there is an overall improvement, that tends to irk the neighbors. We have a situation where the tax card shows the actual footprint in square footage of the existing cottage. It does not show the square footage of the existing barn, but it's on a new slab, it's not exactly pristine and historic, but it is where it is and it does overlap by a couple of inches at one corner into the Fields property. The second page shows that the house itself is a 648 sq.ft. The 3-season porch on the right side is 160 sq.ft. There is a deck that is not enclosed. There is also a small storage area that is 20 sq.ft. that is on the side of the building. I don't see a standpipe, so it's not a hot water heater, to my knowledge. It's storage, not living space. The reason this is important is that you have an express definition of living space in your ordinance. It states, "this area includes 3-dimensional, fully enclosed space used for indoor living, calculated in cubic feet in area including dormers and lofts, and does not include crawl spaces, screened-in porches as long as windows are not installed. So, you have here, when the applicant calculates the square footages, you're counting things that don't count. I ask you to look at the math when we...

E. MacLeish: How much are they including?

C. Boldt: They are including the screened in porch, the storage shed.

E. MacLeish: What is the difference in total square footage?

C. Boldt: I think they are entitled to 648 square feet. They're asking for 1400 sq.ft.

B. Zurhellen: The screened in porch has windows?

R. Nadeau: Yes

C. Boldt: By definition that would come into...3-season.

B. Zurhellen: The whole house is 3-season.

C. Boldt: The change to the house being year-round is another provision of your ordinance. Looking at all of the 5 criteria for all of these variances, I ask you to remember the law that you have required us to apply when we were in front of you for an application for a property owner. Consider the spirit of the ordinance as you remember that is the test for unduly, and a marked degree, conflicts with the State purposes of the zoning ordinances. Here you have at least the provisions of 700.2, 400.8, and 400.14 that are in play here. The expansion of a building in a setback when you expressly say, thou shall not. The expansion of the change of the footprint, not building on the footprint, not even keeping that footprint. You're removing and claiming the same square footage. Historically, you have not allowed that. Right now, the barn is a completely a barn, and it is intended to become living space to be able to accommodate that utility room. Washer/dryers that are stacked on each other maybe total 9 sq.ft. To have the argument that we need to have an 18x18, 16x14, whatever it ends up being for a laundry room, does not make sense to me or to my clients. The volume – you have before required us to come in and prove to you, about a year and a half ago for dormers, to show the exact square footage of the prior footprint and the exact square footage of the new living space to make sure there wasn't more. And, it included volume. This plan of going from 14, and now 18 instead of 2'. It violates your ordinance, increases living space volumetrically. I want to go through some of these allegations that they're doing this for the abutters.

E. MacLeish: Do you agree with counsel's statement that in showing criteria 5, undue hardship, that you have to take a look at what uses would be permitted in this small lot, what construction could happen within a lot. Do you agree with that as a criterion for showing undue hardship?

C. Boldt: No. I think the allegation that there is no building envelope on this lot is incorrect. You have the 2 existing footprints of the buildings.

E. MacLeish: Are you aware of any cases where variances have been granted or overturned on appeal or been denied when someone couldn't build a garage in conformity with the setbacks.

C. Boldt: Not to my knowledge. I know of cases where they have required garages to be removed.

E. MacLeish: It was not an essential part of the house, so it was overturned by the courts.

C. Boldt shared examples of a court case then photos. The first of these slides shows the views from my clients' porch. There is no view out there. There is a view to the lake and Shephard Hill. It is 14' wide and 18' high, without the chimney. Pointed to 20x20' outbuilding. There is desire is to move the structure 9' along the line and increase it to 18' high. More importantly, they're asking to move the barn over. That is a significant change. If it was truly to put a utility room in, I think keeping it in the prior location and asking to make it a bump out of the one shed would more than accommodate and would be a reasonable request. This is just flat greedy. It does significantly impact on the neighborhood. If this was just the septic, if they were just wanting to take the barn down and put the septic in a better location, that would be wonderful. The alternative is that they could put the leach field on the 3+ acre lot.

B. Maloney: We have to deal with the existing request on the existing lot. The other lot does not come into this.

C. Boldt: It actually does come into play because the overall 5 criteria bring in substantial justice, no demonition of the surrounding property owners and the reasonableness prong of the hardship. It is important to remember the reasonableness of all of these criteria.

B. Maloney: Do you represent more than 1 client?

C. Boldt: Others may be aligned. Substantial justice is the balancing test. The loss to the applicant must be outweighed by benefit to the abutters and the public for getting that denial. Here, part of it is rejecting this, comes into play. Without doing the expansions comes into play. You are the constitutional safety valve. Part of that is to be consistent in the application of justice. The last several years, I can't find any notice of decision where you've allowed this to happen. I do find one where you've denied the applicants (Curry Place Cottages, Case #426-05-18).

E. MacLeish: Do you see adverse precedent if this were denied in terms of what we could do with similar applicants from other property owners?

C. Boldt: I have probably a list of 6 folks that will want the news tomorrow that you've changed course. Each job is unique, but is one where you have inconsistencies (another case with shed in setback and dormer case). Consistency must be a rule of law. That is a substantial prong. Criteria #4, no demonution of property values. This clearly has a demonution of my clients' property values. It is one where there are buildings they currently don't exist. That is not what your zoning ordinances intend to do. The overarching goal of zoning is to get rid of non-conforming, to try to bring non-conformity into conformity wherever possible. Here it's possible to include that requirement to build on the existing footprint, stay within the existing height, and put the new septic in. If they need new storage, they have 3.5 acres with a 7-bedroom house. Surely, there is storage close by. Having a washer/dryer unit stacked in the corner of the building will allow them to have utilities right there. My clients purchased their property in 2000 and did get a variance for 80 sq.ft. and steps coming into the porch; nothing near the intensity of the application before you right now. There is also a disruption to the neighborhood as a result to the change of the parking location and the reconfiguration of the loop of Finistere Rd. that is there at the end. Right now, deliver trucks and EMS can make the loop through this property and come back in.

R. Nadeau: Point of order, are you talking about interfering with your clients' access right to their property or are you speaking on behalf of people that you don't represent?

C. Boldt: I'm speaking impact to the neighborhood.

E. MacLeish: The turn-around is entirely on the applicant's property, right?

C. Boldt: I'm not sure it is entirely on the applicant's property. I think it goes over into the Field's.

A. Barnard: The turn-around is allowed, it is private, not public.

B. Zurhellen: The turn-around belongs to?

A. Barnard: The Bluebird property. It is at the end of the road.

C. Boldt: As you know relative to unnecessary hardship, special conditions exist for this property that distinguish it from other properties in the area such that enforcement of these zoning ordinances create an unnecessary hardship.

E. MacLeish: Do you agree that it is a 2-part test that has to have special conditions?

C. Boldt: Yes. You have to have special conditions. It is a small lot, but you've got other equally burdened lots that are adjacent, you have other places like that on the lake. It does not meet the special conditions

prong. Strict enforcement of the zoning ordinance may mean that they don't get to do what they want to do. But the issue is an unnecessary hardship. They have options, just the septic, rebuild on the existing location. Those options indicate the combined effect is not reasonable. It is .36 acres. It is a situation of self-created hardships. They bought in August of last year and it has been used as it has been, it has lake frontage that it has, it has the limitations that it has. It is not something that the zoning ordinance changed on them. It is just not fair. We have a self-created hardship here. It is a prong that you can evaluate. Not every property gets to change. Allow the septic change, if you wish. The rest has to be denied.

B. Maloney: Is there any other property issue that has an issue to raise?

A. Field: We own property on 68 Finistere Pt. Rd. She pointed to the map and the entrance to their property. She asked what is the width of the entrance to their property. They are proposing to move parking from the circle, back. This is our current view (handed out photos), turning it over, will be the view if parking is moved. What is the rationale of moving the parking? Why can't the parking remain as it is? It will prevent access to our property. There is a parking space that cannot be blocked. The turn-around has been in existence for many years, I've been on the lake since 1957.

E. MacLeish: Are you saying that the turn-around could not take place or are you saying....?

A. Field: No. We need to have emergency vehicle access. What kind of trees will be taken down? The barn affords us a certain amount of privacy.

B. Maloney: Are you saying that the existing shed, if removed, would remove that privacy?

A. Field: Yes, because the leach field would be there. The leach field/barn to our window is 37'. Why can't the leach field be put in the middle of the turn. The septic design proposal had it in the middle of the turn-around. The leach field, will have an adverse effect as our bedroom will look right out onto the leach field. As Attorney Boldt stated, there is no hardship. When he purchased the property, he knew the setback requirements.

B. Zurhellen: On the original, you are including the floor space from that storage shed. My recollection is that that is simply a wooden shed added to the side of the house. It doesn't go up to the roof and there is no entry into the house. It is simply an exterior shed. Correct?

A. Barnard: We would have to look at the pictures, but there is a storage shed, there is a water pump, a hot water heater may be there. That is one of the reasons why the overall square footage is reduced.

B. Zurhellen: The key is the proposed square footage is larger than the current house. You can't include the outside storage house.

A. Barnard: The new square footage is still less.

K. Fuller: What is the new square footage?

B. Zurhellen: It is 851 sq.ft.

A. Barnard: You have to remember the 3-season porch.

B. Zurhellen: I included the 3-season porch in that.

B. Maloney: The house itself is 648'.

A. Barnard: Plus, the 3-season porch. Some of those pumps are utilized for utilities now, so, it is part of the structure.

B. Maloney: But it is living space.

A. Barnard: No, either is the utility space.

B. Zurhellen: You have a net increase from 808 to 851 sq.ft.

A. Barnard: The original cottage we had 1035 sq.ft. within a 50' setback, with an additional 122 sq.ft. beyond the 50' setback, giving a total of 1157' sq.ft.

B. Zurhellen: Where are you getting those figures?

A. Barnard: From my client.

B. Zurhellen: What are the dimensions of the house as it exists now? You can't include the front deck because that is just a walk in...

A. Barnard: We have to include this for impact....

B. Zurhellen: I'm asking about the living space.

A. Barnard: The original plan is...

B. Zurhellen: I have 36'x18'.

B. Maloney: That's what I have.

A. Barnard: Does that include the porch?

B. Zurhellen: 36'x18' gives you 648 sq.ft. If you include the screened in porch, you get 808 sq.ft. If you look at the dimensions, 18.5'x46', that's 851, so you are actually increasing the floor space by 40+ sq.ft. You can't include the 20 sq.ft. for the outdoor shed because that is not living space. You can't include the exterior deck because that is not living space. One thing is that you are increasing the living space by 40 sq. ft. The other thing is, someone mentioned that the current barn now has a concrete pad. Do you know when the pad was put in because that was a dirt pole barn.

A. Barnard: It hasn't been a pole barn since I've been there.

B. Zurhellen: When we were there, it wasn't finished space. If it didn't have a concrete floor, what would you call it?

A. Barnard: I'm not going to answer that because it is not germane.

B. Zurhellen: It actually is because you're asking to create a finished product 18'x18' and at a future date could be converted into living space.

A. Barnard: It was a concrete floor when we purchased it so that's why we're saying it is not germane.

R. Nadeau: That building that is referred to as a barn is an accessory structure. It is not living space and probably serves as storage. The utility building that we are proposing, we are happy to put a provision on

there that it is not living space, it's utilities. Not just for washer and dryer, for hot water tank, for fuel, if they need it, and for mechanical.

B. Zurhellen: But it would still be adding space.

R. Nadeau: Yes, it would. This board wouldn't exist if people didn't have the right to come in front of you and ask to expand.

B. Maloney: Not so much to expand. Our biggest concern is the setbacks. There is a steadfast rule that you can't increase space within the setbacks. You're asking to put an entire new shed within the setback.

A. Barnard: That is true. Going back to the hardship criteria. The hardship boils down to the uniqueness of the property. One of the uniqueness's of the property is to get a State approved septic system on this property to make it environmentally sound, which I still feel is one of the most prioritized functions of this board. What we're trying to do is keep the purity of the water.

B. Zurhellen: I don't think any of us dispute the need for a new septic system.

A. Barnard: That being said, the hardship is that we have to remove the existing shed to do that. Since it's an existing conformity, we just want to move it over to the other boundary line, which cuts the actual setback, which the Chair just said the setbacks are very important, this cuts the setbacks in half. Where the existing shed is, is completely non-conforming to the 2 property lines. Moving it is only non-conforming to 1. The footprint of the cottage – why we slid it back – one of the main reasons of sliding that back is to aid the NHDES shoreland water quality rules. Within the 50' setback pulls it back making it more conforming to the shoreline. The reason we couldn't slid it further away from the Revocable Trust is because we wanted to make sure we had the main structure beyond the 50' setback of the lake. Also, in Mr. Boldt's presentation, relative to the views, I have not seen any easements for views across this property. Tomorrow I could go out and plant a row of evergreen trees across the entire property line and completely hinder their view or block their view legally. So, the views across this property is a little exaggerated.

B. Maloney: Let me add a comment. When you first made your presentation, the abutters had been considered and placed within this new plan. We have 2 abutters that said this is not true. I was concerned about the view that is going to be cut off from the lake. Speaking for myself, I see that as somewhat major. It is not an overriding factor, but one I would not have seen without the picture. So, we have to take the abutters issues into consideration. In this situation with this one abutter losing a view of the lake, would you comment on that please?

R. Nadeau: I have to say that we did try. Some of the things that we are hearing tonight are coming out of left field; that could have been discussed at other meetings and we were not aware of them. That is frustrating. I do know that the issue of the view from the Field's and the parking spaces was raised and I also know that the issue that the view of the leach field was raised because my clients have agreed to plant some bushes. But if you also look at the tax map that Attorney Boldt handed out, the Field's property has all of these views. There is no view easement over our property. And so, we're doing our best to accommodate.

B. Maloney: I believe that you are to the best extent you can.



R. Nadeau: At some point, it gets to be a point where we do have the right to plant trees all around our property line. So, nobody has a right to a view over our property. To say that what we are doing is diminishing their property values, an appraiser can't take into consideration the fact that they have a view that they don't have a right to.

B. Maloney: I think from a tax perspective, you are correct. They tried to do that a few years ago in the State of New Hampshire, put in a view tax that was defeated.

R. Nadeau: I just feel that if any of us had property, we could do something legally and because they didn't like the view, there is no standing there.

B. Zurhellen: You still haven't explained the extra 48 sq.ft. Secondly, I'm concerned that you want a 16-18' cathedral ceiling. Most cathedral ceilings are not 16-18' high. Also, that leaves it open at a later date to add a 2<sup>nd</sup> floor.

R. Nadeau: I have an application here for Attorney Boldt's client where they got a cathedral ceiling several feet higher than the one that we're proposing.

A. Barnard: I want to point out that the cathedral ceiling is not unique because that is the ridge height to the floor, not from the top of the wall to the top of the ceiling.

B. Zurhellen: I understand that.

A. Barnard: Also, the existing building is 16' tall from the ground to the ridge right now.

B. Zurhellen: But at the height of 7.5 or 8', you decide at a later date to put lofts in or put in a floor, you wouldn't have 6', you'd have 8' of height. So, you'd have a second floor. You wouldn't have an attic; an attic is less.

P. Kane: We more than meet the energy code. The thickness of the roof is 16" so...

B. Zurhellen: But if you went 18' high, and took off the 16', you'd still have room for living space.

P. Kane: There isn't space for a 2<sup>nd</sup> floor, but there could be a loft. There is also the thickness of the loft floor system. When you subtract to meet energy code, there isn't as much space inside that you assume there is to accommodate what you are suggesting.

R. Nadeau: I would also like to point out that, before our neighbors got the variance to go up prior to what we're asking, we were required to get a variance. Now it is allowed as a matter of right. So, to deny it on the basis that somebody violates their permit going forward doesn't seem right.

E. MacLeish: The cathedral ceiling is a matter of right?

R. Nadeau: Yes. We're telling you as a matter of courtesy to consider that the relative height. We're not asking for relief because we don't need it, right?

B. Zurhellen: Right?

R. Nadeau: To say that we could potentially turn it into living space, well, we'd have to come back and ask you for that. We don't have an intention. To deny us on that basis is too forward looking.

K. Fuller: You're asking to increase the ridge height from 14 to 18, which our zoning regulations say you can't expand volume or ridge height.

R. Nadeau: But they do say that you can increase the ridge height as long as you are not adding a floor which would mean that you're creating living space. That was an amendment to the ordinance. And, I've run that by your code enforcement officer and she confirmed that's their interpretation, which is because that section of the ordinance is more specific and it says it is not considered living space and you're allowed to increase the ridge, and she said that if we build in the exact same footprint that we're in now, she'd give us a building permit and we'd be able to raise the ridge without any ruling.

B. Maloney: Without in any way infringing on anybody's rights, do you want to proceed tonight or do you want to withdraw? Do you want to talk to your client?

R. Nadeau: I would like to try to address a lot of these allegations because I don't want them left in your mind.

E. MacLeish: Speaking for myself, I regard the setback issues and the proposed use as an unnecessary hardship and whether or not there are special circumstances that make it different. I regard those as the central issues. I've heard enough information on that. But, I'm happy to have you withdraw or talk to your client. You said a couple of things that were particularly interesting to me. For example, the zoning board would have to grant a zoning ordinance for a garage on a non-conforming lot because it is an essential part of the living space. I would like to see those cases.

R. Nadeau: I want to be careful because Attorney Boldt threw out cases and you can't just throw out cases based on one fact and say it applies here or there. And that's why I'm reluctant to throw out any case without having a brief.

E. MacLeish: You didn't try any case.

R. Nadeau: Right.

E. MacLeish: If there are in fact cases that say that if you could not, within the existing building envelope, build anything that would be valid to the zoning law, I'd like to see that. I'd like to read that case. So, I'm just thinking for myself. I don't know if we could put this over to our September meeting. There are things that I don't have sufficient information on that are important to this case.

B. Maloney: We have a lot of options. One is to proceed and make a decision tonight. The other is to come back in the September meeting for a continuance. Based on the comments from the abutter landowners, there are some concerns.

B. Zurhellen: There is the concern of the extra square footage which I think probably is because the deck is not the full width of the house, it is 2' narrower than the house. When you made it a rectangul, you included the added space from a 10x18, instead of a 10x16 and included the space for the shed on the outside, which can't be included.

R. Nadeau: May I ask a clarification question? Are you taking the position that nobody can come, forget about the barn, forget about the utility shed, forget just this dwelling, are you saying that this board views that anybody that comes in to request an expansion of a non-conforming structure within a setback would not be allowed?

B. Zurhellen: Expansion of living space?

R. Nadeau: Yes. You're saying that you'd never grant a variance for that.

B. Zurhellen: We can't.

B. Maloney: Never. We're not allowed to. It is that specific.

E. MacLeish: My view is that it might depend upon the conditions that are applicable to a unique lot. If not, it is generally something that we do not do. That is something else that I am not clear on either which is, are there other special conditions that are applicable as well. I don't know that answer to that question. It would seem that there aren't, but I want to give you an opportunity to persuade me that there are.

R. Nadeau: I want to be clear. What you're saying is the majority of you feel that any application that comes in here that requests an expansion into a setback would not qualify for a variance.

E. MacLeish: I'm not going to say never because we have to see the application before us. From my view, it would depend. And it would depend on any special conditions that are applicable to the lot and whether or not it would constitute an unnecessary hardship. So, no I don't concur with those 2 statements. It would depend.

R. Nadeau: That is my position. I do believe that is why this board is here. Whether it is encroaching into a setback, whether it is intended for a use that is not allowed under the ordinance. It is asking for a relief of something that is not allowed under the zoning ordinance, which is why I'm here. When you asked if we wanted to reconsider, I wanted to figure out what I'm up against.

B. Maloney: Understood.

R. Nadeau: There were a lot of things that were said here that I just feel needs a response, but I'm getting the vibe from the board that we're at a juncture here. If you could give us about 3 min. to talk with our clients?

B. Maloney: That's reasonable. We will take a 3-5 min. break while we are in public session.

Following the break

R. Nadeau: Under the circumstances, we're going to reconsider this. I don't know if we're going to revise our plans or not, but if we do, I can submit them before the hearing.

B. Maloney asked L. Levy for deadlines. The deadline for the September hearing was the following day. The October 8<sup>th</sup> deadline was determined to be the better date.

N. Leschly asked if the board could provide him with specific things that they should consider for the rehearing.

B. Zurhellen reminded him that there could be a problem if the board did not mention something that needed to be addressed.

C. Boldt: My client can't be here that night. Is there going to be a plan change?

R. Nadeau: There is probably going to be a plan change. We've been trying to accommodate the abutters.

B. Maloney: I understand that you have a representative, but we don't have the right to delay it any further than that.

T. Michel: This has already happened once before (gave specific info on original proposal, acknowledged that moving the septic and well were good things). The response that was raised by the abutters was not reflected of the evidence that was presented to this board. I want to point out that you are giving them another "shot on goal" with another continuance.

B. Maloney: Unless they can come back with something new, we may be coming to the same conclusions people think we're leading to. I'm not going to commit to anything. I was hoping we didn't have to make a decision tonight because I felt it was going in the wrong direction. For any number of reasons, it wasn't just the setbacks. A question came about putting the septic under the center of the driveway and remove it from the proximity of the neighbor's home where she felt she would have to look at it. I am speaking for myself and only for myself. I think the abutters' concerns were laid out nicely and I think we have to take that into consideration but only as it relates to the legality of the variances. That's all we can vote on. We can take the opinion of the abutters, take that into consideration. But it all comes down to the criteria, we have to go by the zoning regulations. That's where we are limited.

R. Nadeau: We are the applicant and we've asked for a continuance.

B. Maloney: You have that right. What I don't know is if you have the right to ask for 17 continuances, I don't know where there's a limit.

R. Nadeau: This is only the 1<sup>st</sup> continuance.

B. Maloney: I understand and I understand his concern. We will arrive at a conclusion, period. And, I'd like to think it will be in October and there is no reason for continuations. I'd like to see it happen and bring it to conclusion.

The public session ended at 8:16pm.

**Case #440-07-10:** Application submitted by Christopher Salomon as agent for Gabrielle Crandall for property located at 65 Kesumpe Point Rd. identified as Tax Map #236-063-000 in the General Residential District, Town of Holderness, for a Variance to the degree necessary from Article 700.2 (Reconstruction of a Non-Conforming Dwelling Outside Existing Footprint).

B. Maloney opened the public hearing at 8:18, introduced the case, and stated that he knew one of the abutters and would be willing to recuse himself. The agent and owner were fine with him staying on the board.

C. Salomon explained the plan. The goal is to relocate the house beyond the 50' lake setback and to improve the setbacks.

B. Maloney: Is this a removal of the existing structure and a starting from scratch with a new one?

C. Salomon: Yes, it is a rebuild. The new floorplan stays within the setbacks, but improving the side setbacks. The home is a 4-season home. There is a problem with access into the home in the winter months because of a slopping walkway. The new plan will align with the current grade. It will have a covered carport.

B. Zurhellen: What happens to the existing shed?

C. Salomon: It will be removed, the existing cottage on the side will remain.

B. Maloney: You're asking for one variance?

C. Salomon: Just to move this building back.

E. MacLeish: You'll still be non-conforming in the side yard?

C. Salomon: Yes. We've taken the existing 566 sq.ft. and moved it back, and the existing 269 sq.ft. and moved it back (pointing to the plot).

E. MacLeish: The side setbacks are still non-conforming. Are they the same as the original structure?

C. Salomon: Yes.

B. Zurhellen: Can you show me the outline of the current house?

C. Salomon showed him the drawings.

B. Zurhellen: Why does it say existing foundation in front of the carport?

C. Salomon: That is the existing footprint from an addition. This is the only conforming part of the property (pointing to the plot).

B. Zurhellen: So, you're adding a carport onto the end of that?

C. Salomon: Yes, and that will be built onto the existing conforming space.

K. Fuller: What is the square footage of the existing structure?

C. Salomon: The lower level is 1440 sq.ft. and the second floor is 451 sq.ft.

E. MacLeish: The second floor is more than that. Will there be any changes to the foundation?

C. Salomon: We are removing the foundation so that we can build a new foundation.

K. Fuller: What is the square footage of the proposed one?

C. Salomon: 1245 on first and 810 on the second.

B. Zurhellen: And that doesn't include the carport, right?

C. Salomon: Just the living space.

B. Maloney: You are going to pick up some additional square footage?

B. Zurhellen: Will the design on the second floor be the same?

C. Salomon: No, the proposed second floor (showed the plan)...

B. Zurehllen: How much of the second floor is non-conforming? If you are simply pushing that back, you are pushing it into conforming space.

B. Maloney: It looks like the upper side where the carport is, is being removed. If you run the new line at the top of the house across, everything above that is being taken out of non-conforming. In fact, it looks like you've put both sides of the house on the 35' setback, correct?

C. Salomon: Pointing to the plan, he corrected them showing 35' to the carport and the existing is 18' from the line. The new one is going to be 23'.

E. MacLeish: Basically, you're coming into conformity on the shore setback and you're looking for a variance for the side setbacks non-conformity.

C. Salomon: Yes.

E. MacLeish: And you're replacing the square footage of the structure by about 300 square feet.

C. Salomon: Roughly.

B. Maloney: Are you claiming any form of hardship.

C. Salomon: Yes, currently there is no access to the property from the parking lot because of difficulties in the winter. We want a covered entry.

B. Maloney: Is that an inconvenience to the property owner or truly a hardship?

C. Salomon: It is for the safety of the property owner.

E. MacLeish: What about special circumstances?

C. Salomon: The special circumstance is the amount of space for the current house – 12' wide. The only area to build would be to take down the existing structure.

E. MacLeish: Is that a legitimate criterion, that you could only put up a 12' structure?

B. Maloney: You mean just using the current footprint?

E. MacLeish: If you just bought this lot then you'd only be able to build a 12' structure. Is that a legitimate criterion?

C. Salomon: That's the only area where we can build.

E. MacLeish: You're choosing to rebuild. You have an existing con-conforming house right now. What is special about this lot?

C. Salomon: We've chosen to improve the lake frontage.

E. MacLeish: I don't think that addresses the issue of special conditions.

K. Fuller: What is the problem building in the existing footprint?

C. Salomon: The existing footprint is – we are right on the lake; we want to improve that condition. We also want to improve the condition of the adjacent property owners.

B. Zurhellen: What part of the new construction falls within the conforming zone?

C. Salomon: Just this section here (pointing to the plan).

B. Zurhellen: And, that has always been conforming or have you gained conformity by moving it back from the lake.

C. Salomon: We have gained more conformity by moving it back.

B. Zurhellen: I need to know how much non-conforming space did you have before and how much non-conforming space do you have now?

C. Salomon: We have 566' on non-conforming on the first floor. We've moved it back to ...

B. Zurhellen: Just give me a total.

B. Maloney: What is the non-conforming space after the completion of the project?

The board and C. Salomon did the math and found that they are going from 1135 to 1183 sq.ft.; increasing non-conforming space by 50 sq.ft.

B. Zurhellen: The goal should be the same, you can't increase the living space.

The board agreed that if they could eliminate the increase in 50 sq.ft, the rest would be ok.

B. Maloney: Asked if there were questions from the rest of the board and from the public.

M. Mason: Expressed concern about the distance from her property to the carport, although she supports the idea of her having a carport. She acknowledged the improvement of the 50' setback, the grading problem, the driveway is on top of the septic, the problem with getting into the house in the winter, the decrease in side setbacks (but is still concerned). She expressed concern over the length of the build, the issue of an unnecessary hardship, the fact that the previous owner had to stay within the setback, and questioned whether the owner needed a new building.

B. Maloney: We are hung up on the increase in non-conformity. Getting it down makes it more feasible. Is there an undue hardship is the question?

M. Mason: Reading from criteria #3, can potentially open views to the lake. She prefers to have trees.

B. Maloney asked if there were other questions from the public.

R. Ritz: Reading from criteria #5 about the new house said that the house would not be in keeping with the neighborhood, did I read that correctly.

C. Salomon: That meant if she kept the existing house.

R. Ritz: I owned the house and I was not allowed to add a second story, so we did the extension. Is she going to put in a new patio, will that be conforming? No door is shown going into the house from the carport.

B. Zurhellen: The architecture drawings are not included. There will be a door from the carport into the house.

C. Salomon confirmed B. Zurhellen's statement.

R. Ritz: The drawing shows windows, it should show doors. She has 3 cars. The walkway isn't changing, she says it is treacherous. What will be the elevation of the roof line?

B. Zurhellen: She can have 3 cars.

C. Salomon: It will be conforming.

R. Ritz: I think it is going to be disruptive for 1.5 to 2 years.

B. Maloney: Is the expectation that this can be done in a relatively short period of time? Could it be done in 12 months; demolition and construction?

G. Crandall: Yes, if it would please the Town.

B. Maloney: There is a 2-year time limit to build, so it has to be done in 24 months or you have to come back to get another permit.

G. Crandall: The walk is slippery and icy. It is a hardship.

B. Zurhellen: Why not put a door from the carport into the room?

C. Salomon: We can do that.

G. Crandall: The purpose of tonight was to see if this is a possibility. We have not spent the time or expense to see if it's possible. If it is, we'll develop the plans.

C. Salomon: A house of this scale typically takes 8-10 months of construction.

B. Maloney: Let's bring this back to the open question. Can a non-conforming dwelling be moved off an existing footprint? I see a decrease in the non-conformity, potentially.

E. MacLeish: It's a new type of non-conformity. There are new side yard setbacks. It is not automatically allowed because they are not increasing the non-conforming setbacks.

K. Fuller: I agree.

B. Zurhellen: Because they are not building in the existing footprint.

G. Crandall: We want to put something there that is on a non-conforming spot.

B. Maloney: Might you consider using the existing footprint and putting the carport extension on the existing footprint?

G. Crandall: Absolutely. Yes, I would.

C. Salomon: The goal is to improve the shoreline.

B. Maloney: Understood. We appreciate that.

C. Salomon: The existing patio and deck will remain.

E. MacLeish: It would be helpful if we had plans that demonstrated that the non-conforming square footage would not increase.

B. Zurhellen: I suggest that we continue it for 1 month for 2 purposes. One, we can get a legal decision from the State; exactly what the rules are about building in a footprint, can we move the footprint without changing it, and that would give the architect the time to make sure the square footage is not an issue.



B. Maloney asked if K. Fuller or J. Ruhm had anything to add.

J. Ruhm: I like this plan.

B. Maloney: Would you consider coming back in a month with the exact 50' non-conformity measurements (eliminating them, if possible) and the pre- and post- measurements. Are there any other comments from the public?

L. Levy suggested a continuance until October due to the next day's deadline.

B. Zurhellen asked for a clear decision from the State.

B. Maloney said that L. Levy can get that.

The public hearing was closed at 9:14.

**ADJOURNMENT:**

At 9:15 P.M. the following motion was made:

MOTION: "To adjourn."

Motion: B. Zurhellen

Second: K. Fuller

Discussion: None

Motion Passed: 5 – Yes, 0 – No, 0 – Absent

Respectfully submitted,

Linda Levy  
Land Use Boards Assistant