

Town of Winchester  
Zoning Board of Adjustment  
Minutes  
1-21-21

Meeting opened: 7:00pm.

Members present: Mike Doherty, Becky Roy, Jason Cardinale (V. Chair), Bill McGrath and Lou Fox (Chair). Colby Ebbinghausen is an alternate present. Margaret Sharra is the Land Use Administrator.  
Public: William & Suzanne O'Donnell, David & Suzanne Boisvert, David Poole & \_\_\_\_, and Bruce and Kendra Severance.

First order of business: Lou Fox is attending the meeting by telephone due to a broken leg. This is permitted per RSA 91A:2 III. All present can hear him, and he can hear all by moving the phone to those who are speaking. He has asked J. Cardinale be Chairman for the evening.

The board reviews the minutes of 1/7/21 for approval. **M. Doherty moves to approve, J. Cardinale seconds with just adding an "e" to his name in the beginning of the minutes. The vote is 4 yes. (LF abstains).**

Second order of business: The board is to hold a hearing on the rehearing request of Bill McGrath relating to a variance approval of Suzanne & William O'Donnell the board granted on 11/5/20. Bill McGrath recuses himself and Colby Ebbinghausen sits as a full member.

**J. Cardinale moves to open the hearing and B. Roy seconds. The vote is 5 yes 7:07pm.**

Bill McGrath had submitted a letter to the board which all members received by email and a copy also went to the O'Donnells. (see file). Bill holds the phone with L. Fox on it so he can hear and all persons can hear him. He reads the letter of his opposition to the O'Donnell's application to extend their present 7x7 deck to 7.6x12, and to erect a second story balcony that was previously 3x10 and now was amended to 5x6'9" and 4x10'10". The original variance application was 10x10.

Bill states he believes the variance request violates the spirit of the ordinance because it would violate the 30' front setback and 10' side and rear requirements that are in place to have aesthetically pleasing neighborhoods. This would make the neighborhood less desirable. He refers to a court case Robert Foley, Trustee v. Town of Enfield.

He does agree this request might meet substantial justice, because he doesn't see a harm to the public. He reminds the board all 5 criteria must be met.

He also agrees there would not be diminished value of surrounding properties.

He states the hardship is the toughest to meet. What special conditions of the property that distinguish it from other properties in the area. This property is not substantially different. If there are no special conditions of the property then the applicant fails this criteria. He says the applicant must establish that because of the special condition the proposed use is reasonable. He feels the applicant is now making reasonable use of the property.

Bill then clarifies when the decision was rendered, it stated the balcony was 10x10. The LUA explains some confusion on the last application. First, she erred with a typo stating a 7x12 deck was approved when it should have been 7'6"x12 deck, and the O'Donnells erred is writing down 10x10 balcony on the application. One reason why the board agreed to a rehearing is because of the confusion of dimensions presented last time. L. Fox confirms he has all the past and current information and sees the confusion. B. Roy asks if Bill's house is on this abutting lot. No.

Is the 928sqft of footage you stated in your letter relating to area on the lot covered with buildings and structure with the 7'6"x12' deck? Yes.

Mr. McGrath submits a plan showing the distance from points on the O'Donnell's home to Mr. McGrath's fence.

The O'Donnells speak to the variance request. They refer to their original submission. She states they have made many improvements to the neglected property in the last 4 years. The original porch/deck out back is 7x7. 7'6" is what we would like for depth for better construction. Due to a large boulder which was previously used as support, the additional 6" would permit a deck built to code. They want to extend the length of deck along side of house so they would have more room. This additional length would start about 8.5 ft away from fence and then gain more distance from the fence.

The previous balcony in the front was rotted and poorly constructed so it was removed. Many properties around them do not comply with setbacks due to previous errors. Building permits prior to 2000 are limited.

She states the variance is not contrary. The deck is in the back of the home, and it won't impede anyone's views because it's behind a 6' fence. There is no negative impact, no issues with the septic system problems (refers to inspection of system), and there is plenty of parking.

She says the spirit of the ordinance is met. This is aesthetically pleasing, and the big improvements we have done to the house. There is no additional traffic. This will actually bring more value to the area. We will then pay more taxes. Most properties in this area are legal non-conforming. The Lobdells, an abutter not present, told her they will never sell or develop the property. These proposed improvements will improve the area. When they bought the place it was in poor condition. We've been working on it. It can be seen in the pictures. This will improve the area and the town's tax base. They submit a diagram of the proposed balcony. These changes will be aesthetically pleasing and improve values. A few years ago the neighbors erected a structure within the setback without a variance. We wouldn't be able to use our property most effectively without these improvements.

The previous deck/porch was in need of repair. It is not possible to build a smaller deck to enjoy the outdoors. There is a huge boulder in the way. The board heard from their contractor at the last meeting for the need of 7'6" deck. The upper floor balcony was rotted and was not supported correctly. They removed it a couple of years ago. They explained the delay in getting their contractor. They also had trees crash onto their roof from a storm the year before. Their contractor had to repair all that damage first. J. Cardinale asked if COVID impacted the delay in repair, if you had torn the balcony off 2 years ago and couldn't get a contractor until just recently, that is a reasonable consideration. L. Fox concurs. The LUA clarifies that while the board considers the effect of COVID, that would only be for the previous balcony which was only 3x10, this request is for a larger balcony than what had existed, and such a variance would be needed. Mr. McGrath says if you want them to build the balcony, let them build it, I won't see it from my yard. L. Fox confirms the balcony will be seen from the street but the deck will not. Hardship- allowing a deck to be built with a footing, allowing more usable outdoor space as one would want by the lake. We are tall people and need a little more space. By not granting the variance will make the property less valuable.

Mrs. O'Donnell informs the board of the many communications she has had with Mr. McGrath. It was explained how he had contacted them on the last day he had to file for a rehearing and said he would agree to an 8x12 deck but not the balcony. She said she could not make a decision in a half hr. She doesn't know why he couldn't communicate sooner and it's unfortunate he incurred the expense of an attorney. She felt they could have worked it out. The LUA explains that if there had been an agreement then there would not have been a reason for a rehearing. She said they were prepared to sign the agreement on 12/5 but that Bill then added they needed to pay half his attorney's bill. They said no. They were informed by the LUA that if they went to a deck of 8x12 a new application would need to be submitted.

B. Roy confirms the size of the doors in the house were designed to the size of the deck. Yes, because they are sliding doors.

Mr. McGrath says we can talk all day about what ifs but it won't change the need to meet the criteria. They have the use of the house and 7x7 deck now. Presently the entire deck is within the setback.

Mrs. O'Donnell feels she improved the area for Mr. McGrath and others. It is confirmed the balcony is not within 10ft of Mr. McGrath's property, the balcony is in the front of the house, within the 30ft setback.

Mrs. O'Donnell states how the fence erected by Mr. McGrath is right on the boundary line. There are some areas that is difficult for them to walk around their house. She says they are both big people and need more room.

Mr. McGrath says while it is unfortunate for the O'Donnell's, and the board feels for their situation, they do not meet the spirit of the ordinance and there is no hardship. The lot size is only about 2500sqft and the front of the house presently is only 8ft from the road.

Mr. McGrath and L. Fox discuss construction methods and the need for 7'6". Mr. McGrath thinks there may be another way to take care of the boulder issue. The LUA said the Building Inspector agreed with the contractor with the building of the 7'6" deck.

**J. Cardinale moves to close the hearing, M. Doherty seconds. The vote is 5 yes. L. Fox was heard. 8:04pm.**

**L. Fox felt the board came to the right decision on the original application.**

**Public interest- it clearly meets this. This application is not contrary to the public interest. These changes will improve the property values in the area.**

**Spirit of the ordinance- The changes made on this property go back so far in time, those and these changes doesn't violate the spirit of the ordinance. J. Cardinale adds, while this is adding more illegal space, it is adding usable and valuable space and the issues are not detrimental. C. Ebbinghausen says it is just adding an extra 6" one way, and then heading toward the other neighbors property, there is nothing more closer to Mr. McGrath's property. L. Fox says this is not detrimental, and the benefits outweigh the setbacks.**

**Substantial Justice- is done by allowing the owners to complete the project and make improvements.**

**Diminished Values- There are not diminished values, actually the opposite, values will improve.**

**Unnecessary Hardship- These owners are the victims of past issues, there is no reason to punish them.**

**The lot is extra small and their heights are noted. This additional space is a reasonable use. This is similar to many properties around the lake that do not meet setbacks.**

**L. Fox so moves to approve the variance for the 7'6" deck and the 4x10'10" and the 5x6'9" balcony. M. Doherty seconds. The vote is 5 yes.**

Third order of business: L. Fox leaves the meeting. 8:15pm. Bill McGrath is back on the board and B. Roy recuses herself because she is an abutter on the next application. The board is here to hear an application submitted by Boisvert Construction for an SE to construct single family homes in the commercial district at 119 Warwick Road.

C. Ebbinghausen will continue as an acting alternate. B. McGrath asks about M. Doherty participating since he is also a PB member. M. Doherty decides to participate in this ZBA application. The LUA reads the notice of hearing and confirms all the notices were sent and posted. **J. Cardinale moves to accept the application as complete and move into a hearing, B. McGrath seconds. The vote is 4 yes.**

Suzanne Boisvert speaks to the criteria. There is currently a driveway and septic system.

- 1) Yes, permitted by an SE.
- 2) Yes, it is appropriate. There are residential uses all around the property and there was a single family home there for years. This lot abuts the AG district.
- 3) The use would not adversely affect the area, the area is of similar uses.

- 4) There are no hazards uses. This is residential use.
- 5) There will be water & sewer provided and all state and local regulations for single family use will be followed.
- 6) Yes, all state & local requirements will be met.

M. Doherty confirms it will be town water.

Becky Roy, abutter, asks if the house was still there would they need this SE. No.

David Poole, abutter, says the property is mixed use. He is concerned about the water pressure on Warwick Road. He also said there is already a lot of traffic on the road and to build houses there will burden our schools.

B. McGrath said these are issues for the Planning Board.

The LUA explains the process. The Boisverts need an SE first and then they go to the PB for subdivision which will look at traffic, water, drainage, etc.

Mr. Poole is also concerned about the water table. He said he has been limited on the use of his land.

J. Cardinale reminds him the board is just looking at the residential/single family use.

Mr. Poole has no issue with one house but does with six.

Bruce Severence, abutter of 84 Warwick Road, He said when Applewood was built in 84' it now floods his land every spring. He is concerned about drainage. Rodger and Fannie Fields had lived there for years. He prefers to see it left as is. He doesn't want six houses.

J. Cardinale reminds him to speak to the PB about his concerns.

Mr. Poole remembers the flood of 78 or 79.

Becky Roy tells the board that the Boisverts do a good job and builds quality houses. She encourages them to see him work.

The LUA states that all builders know they can't have water from their property affect others. That is Federal law.


There are no other questions.

**M. Doherty moves to close the hearing, B. McGrath seconds. The vote is 4 yes. 8:35pm.**

**J. Cardinale moves to approve the SE for the Boisvert because they met the criteria but asks the PB to look at the quantity of homes with relation of impact to wetlands and drainage. M. Doherty seconds. The vote is 4 yes.**

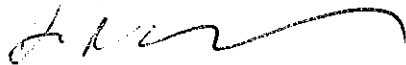
**J. Cardinale moves to adjourn, M. Doherty seconds. The vote is 4 yes. 8:40pm**

Minutes respectfully submitted by:

Margaret Sharra, LUA 

Minutes approved by the board on: 2/11/21

Minutes signed by:



Jason Cardinale, V. Chair