

1 **ZONING BOARD OF ADJUSTMENT**

2
3 Minutes of September 20, 2011

4
5 ATTENDEES: Doug Kirkwood (arrived 7:40 p.m.), Chairman, Wil Sullivan,
6 Alternate, Alex Buchanan, Alternate, Carl Miller, Jamie Ramsey, Joe Taggart,
7 Beth Davis, Alternate, Robert Rowe, and Charlie Tiedemann, Planning Director

8
9 **New Business:** 1. Election of Officers of the Zoning Board of Adjustment

10
11 Robert Rowe called the meeting to order at 7:06 p.m. He explained that officers
12 should be elected.

13
14 *Jamie Ramsay nominated Doug Kirkwood for Chairman, Carl Miller seconded.*
15 *All in favor.*

16
17 *Robert Rowe nominated Joe Taggart for Vice Chair. Jamie Ramsay seconded.*
18 *All in favor.*

19
20 *Carl Miller nominated Jamie Ramsay for Secretary. Joe Taggart seconded. All*
21 *in favor.*

22
23 Joe Taggart stepped up as Vice Chair in Doug Kirkwood's absence to take over
24 the Chairman responsibilities in running tonight's meeting.

25
26 Introductions of the ZBA members were done and the process was explained by
27 Joe Taggart.

28
29 **Case 1463: Lot 8-77-91 Madison Lane: Variance** – Thomas J. Donnelly and
30 Margaret W. Donnelly, 4 Madison Lane, Amherst, NH 03031 (owners), requests
31 a Variance from the provisions of Art. IV, Sec. 4.3 Yard Requirements, Para.
32 4.3.3.1 and Para. 4.3.3.3 to construct a garage that will be 34.5 feet from
33 Madison Lane (50 feet required), and 5.4 feet from the adjacent property line (20
34 feet required). Residential / Rural Zone

35
36 Tom Donnelly, representing the applicants, explained that he has never done this
37 before and they would like to add a detached garage for one vehicle and a
38 workshop. The neighbors have been spoken to and he does not believe it is a
39 hardship to any of the neighbors. The location selected is because that is where
40 the existing driveway is located. If located on the other side of yard, the hill
41 would need to be cut into and a driveway would need to be added. Joe Taggart
42 indicated there are five tests that need to be reviewed. Mr. Donnelly proceeded
43 with the tests as follows.

44
45 Public interest: this is for additional garage space for the applicants.

46 Spirit of Ordinance; he is hoping it is, he plans on making a good looking garage
47 that is consistent with the neighborhood.

48 Substantial Justice; he does not feel it will affect the general public, it does not
49 block any view or hinder anything.

50 Will the value of surrounding properties be diminished? Mr. Donnelly does not
51 believe so.

52 Hardship – the access to the house and the already existing driveway dictate it
53 should be placed where it is proposed.

54

55 Alex Buchanan asked where the septic is on the plan. Mr. Donnelly pointed it out
56 to Alex, also pointing out the leach field and the septic tank. Alex Buchanan
57 asked what access the septic system will have. Mr. Donnelly pointed out the
58 access. Alex suggested there would be no access for equipment if the garage is
59 added. Mr. Donnelly indicated there would be at least 15 feet to access. Carl
60 Miller asked if the garage is attached. Mr. Donnelly said it is not attached. Carl
61 asked if the neighbor has lawn on the other side of the driveway and how far is
62 the house from the line? Mr. Donnelly said it is lawn and the house is
63 approximately 60 feet from the property line. Jamie Ramsay indicated there are
64 no other garages located in front of the homes so he is unsure if this is
65 appropriate. Mr. Donnelly spoke with the builder and the location was kind of
66 locked in and ideas were looked at, settling on this design, noting that the garage
67 will be sided and will match the house.

68

69 Joe Taggart asked if it could be backed up and attached to the existing garage.
70 Mr. Donnelly said they looked at that and found it would be on the edge of the
71 leech field. Carl asked if abutters were notified. Charlie Tiedemann said they
72 were. Carl asked if any audience members are abutters. There were not. Joe
73 asked for additional comments or questions. There were none.

74

75 *Carl Miller moved to enter deliberations. Jamie Ramsay seconded. All were in*
76 *favor.*

77

78 **DELIBERATIONS:**

79

80 Case 1463:

81

82 *Jamie Ramsay moved no regional impact. Carl Miller seconded. All in favor.*

83

84 Robert Rowe noted he understands the need for additional space, however, the
85 applicant has other locations where a garage can be placed. The workshop and
86 garage could be on the other side of the house and add another driveway with no
87 Variances from Zoning. Robert Rowe suggested tabling this so that the applicant
88 can identify another location that is more in keeping with the Zoning Ordinance.
89 Alex does not think the application addresses hardship the way it should be
90 addressed. The house is close to the sideline, but perhaps he could try to
91 demonstrate why it does not fit on other parts of the lot. Also to come up with

92 why this property is unique to address the hardship. Beth Davis heard something
93 about the topography on the side of the house, but we have not heard a lot of
94 information on that. What creates the hardship for the need of this request? Carl
95 said there is an issue on the other side with ledge and trees so there is some
96 question about that other side. If there is ledge, that could force the location to
97 where it is being proposed. Joe said regarding the hardship issue, if the house
98 had no garage that would help the hardship, but there is a garage, is it more for
99 parking or for a workshop?

100

101 *Robert Rowe moved to come out of deliberations to gather additional information*
102 *from the applicants. Carl Miller seconded. All in favor.*

103

104 Joe Taggart asked Mr. Donnelly to address the ZBA regarding the concerns. Joe
105 indicated that the Board feels some of the issues were not addressed
106 appropriately and there were some topography issues that were not thoroughly
107 discussed when comparing to other properties in the neighborhood. Further
108 information such as that would be helpful. Wil Sullivan asked why the garage
109 cannot be on the west side. Mr. Donnelly apologized for the lack of information,
110 the west side of the house is a steep area and has a retaining wall, he does not
111 know if there is ledge, and the well is on that side of the house as well. The hill
112 with the trees would require cutting a lot of trees and a retaining wall would be
113 needed if that is done. Alex asked when the house was built. Mr. Donnelly
114 responded in 1973. Mr. Donnelly indicated the garage is on the east side of the
115 lot because of the hill.

116

117 Robert Rowe has suggested tabling this application, so that the applicant could
118 look further at this, since this Board is required to follow the Ordinance. With
119 further information, Mr. Donnelly could look at the information and come up with
120 a compromise that would be more in keeping with Zoning and the Ordinance.
121 Robert Rowe is willing to make that motion. Mr. Donnelly has talked with the
122 builder about moving it to the other side, a significant portion of the hill would
123 need to be taken down. Robert said if the Board votes on this and it does not
124 pass, you must wait a year before coming in for another Variance on the same
125 plan. Mr. Donnelly said that was considered up front and it was decided that the
126 garage on that side was not the best plan. Beth Davis said Mr. Donnelly talked
127 with his neighbor before moving forward with this plan.

128

129 *Carl Miller moved to enter deliberations. Jamie Ramsey seconded. All in favor.*

130

131 Doug Kirkwood will not be voting on this application since he missed a portion of
132 the presentation.

133

134 Joe Taggart asked that Wil Sullivan vote in place of Doug Kirkwood.

135

136 II. Conclusions [RSA 674:33, I (b)]:

137

138 1. The Variance will not be contrary to the Public Interest.
139 Carl Miller yes, it will not be contrary; Jamie Ramsay yes, Robert Rowe no, Wil
140 Sullivan yes, Joe Taggart yes
141 True: 4, Not True: 1
142

143 2. The Variance is consistent with the Spirit and Intent of the Ordinance.
144 Wil Sullivan yes; Robert Rowe no; Jamie Ramsay no; Carl Miller yes, it is in the
145 setback but is consistent overall with Ordinance and neighbors, Joe Taggart no,
146 setback is very close to side yard and front setback puts the structure in front of
147 the house
148 True: 2, Not True: 3
149

150 3. Substantial Justice is done.
151 Robert Rowe no, there are other locations that would be in keeping with Zoning
152 Ordinance; Wil Sullivan yes, it does not harm anything; Carl Miller yes; Jamie
153 Ramsay no, he feels there are other locations on the property that could enhance
154 the property more rather than locating in front of primary structure; Joe no
155 True: 2, Not True: 3
156

157 4. The values of surrounding properties will not be diminished.
158 Carl Miller no; Jamie Ramsay no; Robert Rowe no; Alex Buchanan no; Joe
159 Taggart no
160 True: 0, Not True: 5
161

162 5. Literal enforcement of the provisions of the Ordinance would result in an
163 unnecessary hardship.
164 (Apply tests under A or B below)
165

166 A. For purposes of this subparagraph, “unnecessary hardship” means
167 that, owing to Special Conditions of the property that distinguish it from other
168 properties in the area:
169

170 (1) No fair and substantial relationship exists between the general
171 public purposes of the Ordinance provision and the specific application of that
172 provision to the property; and
173

174 (2) The proposed use is a reasonable one.
175 Robert Rowe no; Wil Sullivan yes; Carl Miller yes, he feels there is a hardship;
176 Jamie Ramsay no, it has not been demonstrated – there has been nothing
177 presented to show it is impractical; Joe Taggart no, he does not feel that the
178 information presented justifies it.
179 True: 2. Not True: 3
180

181 B. If the criteria in subparagraph A are not established, an unnecessary
182 hardship will be deemed to exist if, and only if, owing to special conditions of the
183 property that distinguish it from other properties in the area, the property cannot

184 be reasonably used in strict conformance with the Ordinance, and a Variance is
185 therefore necessary to enable a reasonable use of it.

186 Carl Miller yes, there are some special conditions to this property; Jamie Ramsay
187 no, he does not think the evidence presented shows that; Wil Sullivan yes;

188 Robert Rowe no, Joe Taggart no

189 True: 2, Not True: 3

190

191 Based on the results of the tests, Joe Taggart indicated the Variance application
192 is denied.

193

194 *Robert Rowe moved to come out of deliberations. Carl Miller seconded. All in*
195 *favor.*

196

197 Robert Rowe explained that the Chair must explain to the applicant the options.
198 Doug Kirkwood, on request of Joe Taggart, explained that the applicant has 30
199 days to request a rehearing and state reasonable cause for the Board to grant a
200 rehearing. If that is granted, the application would be re-heard. The letter
201 requesting such, must state the reasons a re-hearing is being requested.

202

203 **Minutes:**

204

205 Alex Buchanan was excused from this portion of the meeting at 8:07 p.m.

206

207 **May 17, 2011**

208

209 *Carl Miller moved to consider the minutes of May. Jamie Ramsay seconded. All*
210 *in favor.*

211

212 *Carl Miller moved to approve the minutes of May 2011. Jamie Ramsay*
213 *seconded. All in favor with Joe Taggart abstaining.*

214

215 **June 14, 2011**

216

217 *Robert Rowe moved to consider the minutes of June. Carl Miller seconded. All*
218 *in favor.*

219

220 *Beth Davis moved to approve the minutes of June 2011. Wil Sullivan seconded.*
221 *All in favor with Jamie Ramsay abstaining. Motion passed.*

222

223 **July 19, 2011**

224

225 *Carl Miller moved to approve the minutes of July. Jamie Ramsay seconded. All*
226 *in favor.*

227

228 Beth Davis had a correction to Line 29 change "mute" to "moot".

229 Jamie Ramsay had a correction to Line 111 change “rainguards” to “rain
230 gardens”.

231

232 Robert Rowe moved to approve the minutes of July 2011 as amended. Carl
233 Miller seconded. All were in favor with Joe Taggart, Beth Davis and Doug
234 Kirkwood abstaining. Motion passed.

235

236 Doug Kirkwood indicated that this Board should remember that it should only
237 speak to what was presented, and not what “we think”. It is important to identify
238 any deficiencies in the application. Beth Davis asked if the applicant should not
239 have been given the opportunity to speak to what the Board brought up as
240 questions. Doug Kirkwood said that is not what he is saying, he is saying the
241 Board should speak only to what was presented. Robert Rowe said there was
242 an absence of specificity in the application. Beth Davis does not recall having
243 the applicant be required to provide scientific data. Carl Miller indicated we
244 needed topographic information for that lot. Beth Davis suggested part of the job
245 of this Board is to help them understand what we are looking for. It is the job of
246 this Board to help. Robert Rowe suggested this Board cannot lead or direct the
247 applicant. Wil Sullivan noted that there was not one member of the public that
248 showed up for this application.

249

250 Joe Taggart noted that on some of the tests it is incumbent on the applicant to
251 prove. Doug Kirkwood suggested the diminution of value is subjective.

252

253 *Robert Rowe moved to adjourn at 8:25 p.m. Jamie Ramsay seconded. All in*
254 *favor.*

255

256 Meeting was adjourned at 8:25 p.m.

257

258 Respectfully submitted,

259

260

261 Darlene J. Bouffard
262 Recording Secretary