

**ZONING BOARD OF ADJUSTMENT**

**MINUTES**

December 7, 2021

**APPROVED:** 1/4/22

**AGENDA:** 21VAR08 VARIANCE: MICHAEL & KAREN FEEHAN, 333 Wulamat Rd, #102-036  
21SPX13 SPECIAL EXCEPTION: DURWOOD MILLER JR, 86 Summer St, #114-084  
21VAR09 VARIANCE: RICHARD & ANDREA BARIL, 215 Batten Rd, #103-058

**ATTENDING:** Alan DeStefano (Chair), Richard LaFlamme (Vice Chair), Larry Denton, Melody Mansur

**ABSENT:** Lorraine Bohmiller, Ashley Dolloff (alternate), Jackie Elliott (alternate)

**OTHER:** Christina Goodwin (Land Use Manager), applicants

Mr. DeStefano opened the meeting with a quorum. He then explained that there is not a full Board present which means that 3 of the 4 will have to agree to approve a case. All applicants agreed to continue.

**MINUTES OF NOVEMBER 2, 2021:**

R. LaFlamme made a motion, second by M. Mansur, to approve the minutes as read. The motion carried 4-0-0.

**21VAR08, MICHAEL & KAREN FEEHAN, 333 Wulamat Rd, #102-036**

Ms. Goodwin read the application, abutters notified, and where the hearing was advertised. She stated that there were no written comments nor phone messages received from the public, and no comments from Department Heads.

M. Mansur made a MOTION, second by R. LaFlamme, TO ACCEPT THE APPLICATION AS COMPLETE. The motion CARRIED 4-0-0.

Mr. Feehan stated that the shed has been in place for three (3) years. Mr. DeStefano asked if the shed was installed without a permit and was told that it was. Mr. Denton asked how long they have had the cottage in Bristol and the applicant advised 16 years. Mr. Denton stated that the shed is violating the setback requirements. Mr. Feehan pointed out that there is a right-of-way abutting the shed that is no longer used and stated that there is permission included with the application from the owner of the right-of-way. Mr. Denton felt that the shed is right on the property line. Mr. DeStefano added that it should also be 20 feet from the street boundary. He asked if they have a current survey. They do not. Mr. Denton asked, after viewing the schematic, if there is no other place to put the shed. Mr. DeStefano felt that it could be placed by the leach field. Mr. Denton noted that they have letters of approval from all the abutters. The owners felt that this was best location, not blocking any views and tucked back into the trees.

At this time, the criteria were reviewed:

FEEHAN VARIANCE CRITERIA continued:

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#### **FEEHAN VARIANCE CRITERIA continued:**

1. Not contrary to public interest: The shed does not block any of the neighbors' views nor is it big and gaudy. It is tucked out of the way in some trees.

2. Spirit of the Ordinance: The tight narrow lot size, placement of the septic and leach field, and the house cause it to be located as is so as not to disrupt others' views or having it in the middle of their driveway.

3. Substantial Justice: The narrow lot, septic and leach field does not allow them to relocate the existing shed already purchased and in place. It does not impede anyone's view and is aesthetically appealing for the neighborhood.

4. Values of Surrounding Properties not Diminished: It is aesthetically pleasing, and the owners did not have to resort to an ugly carport canvas-type structure or smaller hunting-type shack.

5A1. No substantial relationship between the general public and application of the provision to the property: It is used solely for personal use to store the owner's Lake items. It was the only feasible spot to locate it on the narrow lot. The neighbors have no issue with its placement.

5A11. Reasonable Use: It does not block or impede any of the neighbors' views. It is used only for personal storage of lake items that no longer fit inside the home.

5B. Special Conditions of the Property: It is already purchased and in place and matches the color of the house. It houses all the Lake items. There is no other useable area on the narrow lot unless it is placed in the middle of the driveway.

Mr. DeStefano asked for any comments from the public for the project. There were none. He then asked for comments from the public against the project and again there were none. He asked for further questions or comments from the Board. Mr. DeStefano added that it is not a surveyed lot, so the Board does not know where the boundary lines are in relation to the shed. Mr. Denton stated that it is completely in the setback. They placed it first and then came in for a Variance. Mr. DeStefano added that the Board has a pattern of not approving already placed sheds. Mr. Denton said that setbacks are important.

As there were no other comments or questions, Mr. DeStefano closed the public portion of the hearing. The Board then voted on the criteria:

1. L. Denton made a MOTION, second by R. LaFlamme, TO DENY CRITERIA #1. The motion CARRIED 4-0-0.

2. L. Denton made a MOTION, second by M. Mansur, TO DENY CRITERIA #2. Mr. Denton again mentioned that it is entirely in the setback. The motion CARRIED 4-0-0.

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#### **FEEHAN VARIANCE continued:**

3. L. Denton made a MOTION, second by R. LaFlamme, TO APPROVE CRITERIA #3. He mentioned the lot is so small. The motion CARRIED 4-0-0.

4. M. Mansur made a MOTION, second by L. Denton, TO APPROVE CRITERIA #4. The motion CARRIED 4-0-0.

5AI. L. Denton made a MOTION, second by R. LaFlamme, TO APPROVE CRITERIA #5AI. Mr. Denton felt it is a small piece of land and this is probably the best place for it. The motioned CARRIED 4-0-0.

5All. R. LaFlamme made a MOTION, second by M. Mansur, TO APPROVE CRITERIA #5All. The motion CARRIED 4-0-0.

5B. L. Denton made a MOTION, second by R. LaFlamme, to APPROVE CRITERIA #5B. Mr. Denton sited the size of the property. Mr. DeStefano mentioned the guidelines were not met and the right-of-way is owned by the property owners. The motion CARRIED 3-1-0.

R. LaFlamme made a MOTION, second by L. Denton, to DENY THE APPLICATION FOR A VARIANCE FOR MICHAEL AND KAREN FEEHAN AS TWO OF THE CRITERIA WERE NOT MET. The motion CARRIED 4-0-0.

Mr. DeStefano explained the 30-day right to appeal. He suggested that they might try to purchase the right-of-way and added that the Board must follow what has been approved by the town. This body is for release but must follow the criteria. The neighbors cannot supersede the town ordinance. Mr. Feehan stated that he thought having all abutters approve of the location and permission of the right-of-way owner, would make a difference. Mr. DeStefano added that Mr. Feehan can appeal if he has any information that the Board is not aware of or feels that the Board did something wrong in the process. He also mentioned that the Board is not involved in the enforcement mechanism. Ms. Goodwin added that enforcement is part of the Land Use Office.

#### **21SPX13, DURWOOD MILLER JR, 86 SUMMER ST, #114-084**

Ms. Goodwin read the application, abutters notified, where the hearing was advertised. She stated that there were no telephone or written comments received from the public. There is a comment from the Water/Sewer Department stating that if a new signpost goes in, they should be notified so that they can identify the lines first.

Mr. Denton noted that there were no sign dimensions. Mr. Miller pointed out where this could be found.

L. Denton made a MOTION, second by M. Mansur, THAT THE APPLICATION IS COMPLETE. The motion CARRIED 3-1-0. Mr. DeStefano stated that he is also a Real Estate broker and asked if the Board members or the applicant wish him to step down. No-one felt that to be necessary.

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#### **MILLER SPECIAL EXCEPTION continued:**

Mr. Miller stated that the current sign is 12 feet and the proposed will be 14 feet. He added that the new sign will be located further back on the property.

Mr. DeStefano asked if the Board members had any questions. Ms. Goodwin pointed out that the Special Exception is for the off-premise portion of the sign only. The criteria were then reviewed:

2. Appropriate location and size: It conforms to existing and permitted uses within the zone.
3. Will not adversely affect the character of the area: it is consistent with the character and appearance of other properties in the neighborhood and the Village Commercial zone.
4. No nuisance or hazard to vehicles or pedestrians: It will increase visibility and improves the abutters' line of sight.
5. Will not place undue burden on town services or facilities: No impact on town services or facilities. It will be less intrusive and be maintained by the owner.
6. No effect on public health, safety, and general welfare of the neighborhood.

Mr. DeStefano asked for comments from the public for the project. There were none. He then asked for comments from the public against the project. Betty Seeler, an abutter, stated that she likes that they will move to behind the tree but asked if this isn't setting a precedence for allowing off-premise signs all over town. Mr. DeStefano asked if the Board had further questions. Ms. Mansur suggested that, if approved, they might want to add the telephone number to keep people from stopping at the location as the business isn't located on site. Mr. DeStefano asked if they will need a new permit for the sign and was told that they would; they would need a yearly permit where it is an off-premise seasonal sign. It was felt that this issue needs to be better addressed by the Planning Board. It was noted that the owner of the off-premise sign also uses the Summer Street property for storage.

With no other questions or comments, Mr. DeStefano closed the public portion of the hearing and the Board deliberated on the criteria:

2. L. Denton made a MOTION, second by M. Mansur, THAT CRITERIA #2 HAS BEEN MET. The motion CARRIED 4-0-0.
3. L. Denton made a MOTION, second by M. Mansur, THAT CRITERIA #3 HAS BEEN MET. The motion CARRIED 3-1-0.
4. M. Mansur made a MOTION, second by R. LaFlamme, THAT CRITERIA #4 HAS BEEN MET. It was noted that the question isn't relevant to this application but did answer the question. The motion CARRIED 3-1-0.
5. R. LaFlamme made a MOTION, second by L. Denton, THAT CRITERIA #5 HAS BEEN MET. The motion CARRIED 4-0-0.

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**DURWOOD SPECIAL EXCEPTION continued**

6. L. Denton made a MOTION, second by M. Mansur, THAT CRITERIA #6 HAS BEEN MET. Mr. Denton felt it is hard to say how it would impact. Mr. Denton felt it could be approved but the abutter brought up that it sets precedence. The motion was DENIED 2-2-0. Mr. DeStefano explained that a tie vote is a denial.

R. LaFlamme made a MOTION, second by A. DeStefano, to DENY THE SPECIAL EXCEPTION FOR DURWOOD MILLER JR. AS IT DID NOT MEET CRITERIA #6. The motion CARRIED BY DEFAULT 2-2-0.

Mr. DeStefano explained the 30-day appeal time and the Board felt that this issue should go to the Planning Board for clarification as the additional off-premise sign is for someone who also has storage at this facility.

**21VAR09, RICHARD & ANDREA BARIL, 215 BATTEN RD, #103-058**

Ms. Goodwin read the application, the abutters notified, and where the hearing was advertised. She stated that there were no comments received via phone or in writing from the public. She also stated that there no Department Head comments received.

R. LaFlamme made a MOTION, second by L. Denton, TO ACCEPT THE APPLICATION AS COMPLETE. The motion CARRIED 4-0-0.

Mr. Baril stated that they wish to take out the present retaining wall and replace it by building a garage attached to the house. It will be closer than the 15-foot setback from the side boundary. Mr. DeStefano asked if the present wall is concrete and how far into the setback the garage will be located. It was noted that it would be quite a bit into the setback. Mr. LaFlamme asked if the replaced retaining wall will hold the garage and was told that it would. Mr. DeStefano asked how they will address the driveway grade and Mr. Baril said that there will be foundation in place under the garage and some of the retaining wall area will need to remain. Mr. DeStefano asked why the garage is not placed on the other side where there is more land. Mr. Baril answered that the septic is located there.

The criteria were then reviewed:

1. Not contrary to public interest: the land where the garage is proposed is already in use with a large retaining wall and deck. All surrounding houses have garages.
2. Spirit of the Ordinance: The existing wall and deck are sloping and sinking. The proposed building will allow necessary repairs, build back stronger and prevent further sinking and shifting while providing indoor storage.
3. Substantial Justice: It will allow for necessary repairs and strengthening to the deterioration of land and wall. It will not change any neighbors' views or land usage.

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**BARIL VARIANCE continued:**

4. Values of surrounding properties not diminished: All lake and mountain views will remain the same. A garage will add value and all the surrounding neighbors have garages.

5AI. No substantial relationship between the general public and application of the provision to the property: The current wall and driveway are sinking. Moving and sloping the entire area needs to be redone with additional measures to prevent further movement of the land.

5AII. Reasonable use: If left as is, the area will continue to shift. The other side of the property is not buildable as the area is already being used. Surrounding homes have garages.

5B. Special conditions of the property: A garage for indoor storage can only be placed in this location. The other side of the house has the septic system and not accessible by vehicle.

Mr. DeStefano stated that the whole property slopes down. An abutter spoke of the deteriorating wall and the drainage. She felt that the garage would be an improvement as it would bring better drainage with the structure.

Mr. DeStefano asked for comments from the public for the project and there were none. He then asked for any comments from the public against the project and there were none. He then closed the public portion of the hearing and deliberations on the criteria began:

1. R. LaFlamme made a MOTION, second by M. Mansur, THAT CRITERIA #1 HAS BEEN MET. The motion CARRIED 4-0-0.

2. R. LaFlamme made a MOTION, second by L. Denton, THAT CRITERIA #2 HAS BEEN MET. The motion CARRIED 4-0-0.

3. M. Mansur made a MOTION, second by R. LaFlamme, THAT CRITERIA #3 HAS BEEN MET. Mr. DeStefano mentioned that the existing wall is to be rebuilt to modern standards. The motion CARRIED 3-1-0.

4. L. Denton made a MOTION, second by R. LaFlamme, THAT CRITERIA #4 HAS BEEN MET. The motion CARRIED 4-0-0.

5AI. L. Denton made a MOTION, second by R. LaFlamme, THAT CRITERIA #5AI HAS NOT BEEN MET. Mr. Denton stated that the garage would be way over the setback. Mr. DeStefano mentioned that the concrete wall with the structure replacement would be an improvement. The motion CARRIED AND CRITERIA #5AI WAS DENIED 4-0-0.

5AII. L. Denton made a MOTION, second by A. DeStefano, THAT CRITERIA #5AII HAS NOT BEEN MET. Mr. Denton reminded the Board that it is almost all in the setback. The motion CARRIED AND CRITERIA #5AII WAS DENIED 4-0-0.

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**BARIL VARIANCE continued:**

5B. L. Denton made a MOTION, second by R. LaFlamme, THAT CRITERIA #5B HAS NOT BEEN MET. The motion CARRIED AND CRITERIA #5B WAS DENIED 4-0-0.

L. Denton made a MOTION, second by R. LaFlamme, TO DENY THE VARIANCE FOR RICHARD AND ANDREA BARIL AS NOT ALL CRITERIA HAD BEEN MET. The motion CARRIED 4-0-0.

Mr. DeStefano explained that there is a 30-day right-of-appeal time.

**COMMUNICATIONS:** None.

**UNFINISHED BUSINESS:** None.

**NEW BUSINESS:**

Ms. Goodwin stated that Jackie Elliot has resigned from the Zoning Board effective immediately. She also mentioned that Jan Laferriere is retiring at the end of this December.

Ms. Goodwin pointed out the meeting schedule in the Board's packets for 2022.

Ms. Goodwin offered to compose the Town report for the Board and asked if there were any items the Board would like added. Mr. DeStefano stated that the application counts are normally included.

Mr. DeStefano stated that he is retiring from his business but will stay on the Zoning Board.

**OTHER:** Mr. DeStefano said that the Board did a good job tonight though it was hard. He said that the Board has to be aware of setting precedence and added that the Planning Board needs more language for guidance on off-premise signs.

**NEXT MEETING:** The next scheduled Zoning Board meeting is January 4, 2022, at 6:00 p.m.

L. Denton made a MOTION, second by R. LaFlamme, TO ADJOURN AT 8:03p.m. The motion CARRIED 4-0-0.

Respectfully submitted,  
Jan Laferriere  
Land Use Associate