

Town of Farmington  
Zoning Board of Adjustment Meeting Minutes  
Thursday, July 7, 2022  
356 Main Street-Farmington

**Board Members Present:**

John David Aylard, Vice Chairman  
Joe Pitre  
Bill Fisher  
John Scruton, alternate

**Others Present:**

Brian Boisvert, applicant

**Board Members Absent:**

Bob Morgan

**BUSINESS BEFORE THE BOARD:**

**Call to Order:**

Mr. Aylard called the meeting to order at 7 p.m.

**Pledge of Allegiance:**

All present stood for the Pledge of Allegiance.

Mr. Aylard announced that he was sitting in for Chairman Barron. He asked if the members had an opportunity to review the meeting minutes.

Mr. Scruton advised him to ask the applicant if he was willing for the board to proceed with the hearing even though the time was not listed on the agenda. He said he also has to seat him as a regular member before continuing with the agenda.

Mr. Aylard said three of members present have heard all of Mr. Boisvert's information and that Mr. Scruton is an alternate member and asked Mr. Boisvert if he wanted Mr. Scruton to be seated on the board because he needs a 3 out of 2 vote when the time comes.

Mr. Scruton said he needs a minimum of 3 votes regardless of whether there are 3, 4 or 5 members present. He said he has read through the minutes for the last 2 meetings and he is willing to sit but it is Mr. Boisvert's call whether he sits or not.

Mr. Boisvert asked if they were going to continue the meeting and then said it was fine for Mr. Scruton to sit on the board.

Mr. Aylard appointed Mr. Scruton to fill one of the vacant seats on the board. He asked Mr. Boisvert if he accepted Mr. Scruton as an alternate member who can vote and have an opinion on this and the fact that he has not been here...

Mr. Boisvert said yes and that he didn't have any other choice.

Mr. Aylard said that he did have a choice.

Mr. Boisvert then said yes.

Mr. Scruton asked if Mr. Boisvert was willing for the board to proceed with the meeting given

the potential irregularity of not having the 7 o'clock time on the board out front.  
Mr. Boisvert said yes.

### **Review of Minutes:**

June 2, 2022- Public Session Minutes -No errors or omissions

**Motion:** (Pitre, second Fisher) to accept the minutes as written passed 3-0-1 (Scruton abstained).

Mr. Scruton asked if the applicant was asking them to continue the meeting to July 14 where they do not have 5 members present.

Mr. Boisvert said yes and then asked if he should present the new information to the board.

Mr. Aylard said yes so they could look it over before the next meeting.

Mr. Boisvert asked if they would continue it when they have a full board.

Mr. Pitre said there could be 5 members present on the 14<sup>th</sup> if Mr. Morgan is present.

Mr. Scruton said he could wait and present his information when he is here.

Mr. Aylard opened the continued public hearing for Brian Boisvert, Tax Map R61, Lot 26.

### **CONTINUED CASES**

**Public Hearing for a Variance by Brian Boisvert, Tax Map R61, Lot 26.** A request has been made for a Variance under Section 2.03 Rural Residential District; Letter (B) Space and Bulk Standards. The applicant is requesting a Variance to encroach into the front setback. The encroachment is for a proposed garage. The property is located on Fox Trot Drive in the Rural Residential District.

Mr. Boisvert said the board asked for the measurements and he wrote them all down. He said if they are going to continue it until Thursday it gives the members extra time to look it over rather than next Thursday. He said he took the pictures that were asked for on both sides and where his well is, etc. so he could hand them out if the board wanted him to.

He said he spoke with the state Planner and she brought up a good point that the swale is to the left of the yard and she highly suggested that he stay 25 ft. away from that for maintenance and flooding issues. He said that is the swale on the left they all know about and he has her contact information and she said they are more than welcome to contact her if they had any questions so they would know he is not just making it up.

Mr. Boisvert then held up a stack of photos and briefly explained what each one was- the measurements he took, the septic system, the proposed location for the garage, where he parks his equipment, what he would have to tear down and panoramic views of his front and back yards so they would know that his well is next to the plow because the well can't be seen in the picture and all 4 corners of the property.

Mr. Aylard advised him that anything he submits to the board will not be returned to him.

Mr. Boisvert said he made a copy for everybody and passed out the copies to the board.

Mr. Pitre said there should also be set of photos for the Town files.

Mr. Boisvert said he was told he only needed 5 sets of the photos.

Mr. Aylard said he didn't have a problem with his photos going in the file and he just wanted to let him know that he wasn't getting them back.

Mr. Scruton said he had trouble seeing where the swale is.

Mr. Boisvert said they have pictures and he would show him in a second.

Mr. Scruton said he would have to help bring him up to speed and that he read the minutes but he didn't have any pictures.

Mr. Boisvert pointed out the location of the swale on one of the photos and explained that it is on the back side of the storage container right up against it. He said the water picture is right next to it and when they had that heavy rain it leached into the back yard. He said the water recedes and goes away so that's another reason why he can't put it (the garage) back there. He said the board has a bunch of other pictures from the previous meetings.

Mr. Scruton asked if the existing house was the gray building with the windows in front of the pickup truck.

Mr. Boisvert said yes and pointed out his leach field and where he is trying to put the garage.

Mr. Scruton asked if this was the area where they were talking about a catch basin and the 2 pipes connecting.

Mr. Boisvert said yes and its 13' x 8' and he wrote those measurements down.

Mr. Scruton asked which way the water flows.

Mr. Boisvert said it comes from both directions-under his driveway and under that work truck and then comes right under the road as he pointed them out in the picture.

Mr. Scruton asked where it goes after it goes under the road.

Mr. Boisvert said it goes into his neighbor's yard and out into the back 40 of whoever's property that is.

Mr. Scruton pointed to an area in a photo and asked if this was the location of his request.

Mr. Boisvert said yes and that it's 20 ft. off the road and 8 ft. behind that circle.

Mr. Scruton asked if it was going to come over to the fence.

Mr. Boisvert said it would come right up to the edge of the truck.

Mr. Scruton said the fence would come down and the far edge of the garage would be the fence.

Mr. Boisvert pointed out the fence on a drawing he provided to the board and said the garage is the area that's cross hatched. He said the new information that the lady from the state (NH Office of Planning and Development Principal Planner Stephanie N. Verdile) gave him was that she recommends that he stay 25 ft. from that and that he is actually 29 ft. away from it.

Mr. Scruton asked if she was going to have him move his container and the chicken coop.

Mr. Boisvert said no because if he moves that and puts the garage there he is right on top of the swale. He then said the Connex box is getting moved anyway because his plan is he is

buying the property behind him and that is one reason he is putting the garage where he needs to because he wants to put a road to get to that 4 acres he is buying.

Mr. Scruton said one photo showed the current driveway for his trucks and that would go straight through and that Mr. Fisher had said he had site plan review for this.

Mr. Boisvert said the Town allows him to park his equipment and it's already approved by the Town so if he puts the garage there he loses access to his backyard, his well and would be blocking all access to the back of the house because of the deck, the hot tub and the stamped concrete which are in those pictures.

Mr. Scruton asked if the railing on the house was the same railing in another photo.

Mr. Boisvert said yes and that the deck was 20'x 16'.

Mr. Scruton asked about a "high thing" in one of the photos.

Mr. Boisvert said it was a gazebo and was a temporary thing they put up in the summer because they have 5 kids and they grill and sit on the deck and he didn't want to lose the deck because it is hard to eat in that little kitchen with 5 kids. So we spend as much time outside as we possibly can he said.

Mr. Scruton said the chicken coop in the next picture was only 4'x 4' or 5 ft.

Mr. Boisvert said the yard is 8 ft. x 28 ft. and that little structure isn't that big. He said they only get 10 eggs a day but when there are 7 of them it adds up.

Mr. Fisher asked for clarification on the written dimensions at the corner of his garage going back to his deck.

Mr. Boisvert said that is 14 feet.

Mr. Scruton said there was something in one of the sets of minutes about wetlands in the backyard.

Mr. Boisvert said the whole back of his property is wet.

Mr. Scruton asked if he meant the lawn or in the area behind the lawn.

Mr. Boisvert showed him the area on the drawing and the swale and said that it is all wet.

Mr. Scruton asked if the lot behind that was the lot he was buying.

Mr. Boisvert said yes and he is waiting for a wetlands access permit and Prospect Mountain Survey is doing that and that's what is holding him up from buying it while he is figuring out what they need to do to get access to it.

Mr. Fisher said if he looked at the pictures correctly he said that this is where he wants to put the garage and asked where the driveway for the garage would be.

Mr. Boisvert said he would be coming off the driveway and it would face the driveway so you wouldn't see the garage doors. He said you pull onto the tar and then pull into the garage.

Mr. Scruton asked if there was any issue with 2 driveways on a small lot as far as driveway permits and he assumed that was taken care of at the site plan review.

Mr. Fisher said that it already existed and he didn't know because he wasn't at the site plan review because the site reviews aren't conducted with any of the boards. He then asked Mr.

Boisvert if was a site review or the Technical Review Committee that gave him permission to park there.

Mr. Boisvert said he filled out the paperwork with the Planning Dept. and got permission from the Town.

Mr. Fisher said that would have been through the TRC.

Mr. Scruton asked if he has site review authority with the Planning Board.

Mr. Fisher said the Planning Board has site review authority but this probably went to the TRC and not to site review.

Mr. Scruton said that's probably because their site review is more concerned with large commercial projects.

Mr. Fisher said site reviews can be any project and they just did one for the old hardware store.

Mr. Scruton said for this one the TRC felt it didn't need to go to the Planning Board.

Mr. Fisher said he imagines so but he was not at the TRC meeting. He said he did not recall this coming to the Planning Board and he may have misspoken in the past and said it was at a site review while thinking it was the TRC.

Mr. Boisvert said he was only asking for a variance for part of the garage not the whole garage.

Mr. Fisher said the variance would apply to the whole garage and he can't divide it in half and say it's only for one part as it is all one structure. He said the whole structure would be 15 ft. past the front setback requirements and that's what the sticking point is. He said he could move it back a few feet to keep him out of that 15 ft. or make it 15 ft. smaller.

Mr. Scruton said there is another underlying question when he read the minutes having to do with reasonable use and whether or not there was a true hardship. He said it means there was no reasonable use for the property and there appears to be extensive use of the property.

Mr. Fisher said it's not necessarily reasonable by...

Mr. Scruton interjected that they were not ready to debate that yet. He asked Mr. Boisvert if at this point he was asking for a continuation to the 14<sup>th</sup>.

Mr. Boisvert said yes and he wanted to give the board more information and give Mr. Scruton time to get up to speed and if they had any questions they'd have more time to look into it.

Mr. Scruton said they can't talk to each other about it but they could think about it on their own.

Mr. Boisvert said the 14<sup>th</sup> is fine.

Mr. Scruton said they can proceed here but he realizes there is a risk.

Mr. Boisvert said he would rather have the board have time to look at the new information and if there are any questions he would answer them. He said he didn't want to lose access to the lot he is buying or if his well was ever to go down. He said with the state telling him he should stay 25' off from that that adds a whole new thing that he didn't know.

He said there are wetlands behind him and he has cattails growing there. He said it was included on his new survey and he had 2 surveys done-one for the lot and one for the garage.

Mr. Scruton again asked Mr. Boisvert if he was asking the Zoning Board for a continuation to July 14<sup>th</sup>.

Mr. Boisvert nodded and said that is Thursday.

**Motion:** (Scruton, second Pitre) to continue this hearing to the 14<sup>th</sup> at 7 o'clock at the request of the applicant passed 4-0.

Mr. Scruton said by then the Selectmen could act and they may fill this seat with someone else so he may not be sitting here. He said he was willing to be on the ZBA as a member but he wasn't running a campaign with signs for it.

Mr. Fisher asked Mr. Aylard if he wanted him to come into the Town office to get the ZBA meeting for the 14<sup>th</sup> scheduled, to ask to have the Selectmen discuss making Mr. Scruton a full member of the board at the Selectmen's meeting on Monday and have Mr. Aylard appointed as Chairman.

Mr. Aylard said he would like him to do so because he will be out of town tomorrow.

Mr. Pitre said this board needs to vote on that.

Mr. Scruton said the Selectmen do not appoint the Chairman and they need to follow their bylaws.

Mr. Fisher said to keep this legal and keep it going because technically they were supposed to vote in April on officers and they didn't so for next week the Board of Selectmen could appoint a temporary Chairman which would be Mr. Aylard.

Mr. Pitre said no.

Mr. Fisher asked to finish what he was saying or he was going to resign. He loudly said he was on two other boards and he knows what he is talking about. He said to keep it legal, he knows they do not appoint the permanent Chairmen and that is voted on by the ZBA but since they are already not in accordance with the ZBA's bylaws they should have the Selectmen appoint a temporary Chairman because they control who is on the board and who is not.

Mr. Pitre said he disagreed.

Mr. Fisher said the Vice Chairman stands in when the Chair is not here. He said since Mr. Barron's resignation has not been accepted by the Selectmen Mr. Aylard is still a temporary alternate for the position of Chairman and that goes until Monday until the board accepts or denies Mr. Barron's resignation. Then we have to vote on the three offices for the ZBA. We can't do that we don't have the time so in order to keep it legal we need to get the Board of Selectmen to accept John (Mr. Aylard) as the Chairman he said.

Mr. Pitre said their bylaws are specific.

Mr. Aylard asked who would know the answer to this.

Mr. Fisher said a lawyer.

Mr. Scruton suggested that they proceed Mr. Fisher's way and he thought that it was overkill but for the sake of this proceeding...

Mr. Pitre said he has no problem with Mr. Aylard being the Chairman because he is the Vice

Chair.

Mr. Fisher said he didn't have a problem with it either and Mr. Aylard should take the position but they need to make sure the Selectmen agree with it until they can get into compliance with the bylaws which they are not right now.

Mr. Scruton said the board received copies of the 2004 ZBA bylaws and requested that a copy of the 2007 bylaws be sent to the members before the next meeting.

Mr. Fisher said he would come into the office tomorrow to talk to them and get copies of the 2007 bylaws sent to everybody if they can find a copy.

Mr. Boisvert asked if the board needed any other information or anything else from him for the next meeting.

Mr. Scruton suggested at the next meeting that he present his case for why this meets the 5 tests of a variance.

Mr. Boisvert asked if they would go over it all again.

Mr. Scruton suggested that he summarize it and reiterated the point that he read in the minutes repeatedly was the biggest hurdle he has is hardship. He said it doesn't relate to his kids it...

Mr. Boisvert said it was the water issue.

Mr. Scruton said that was his argument and if he thinks that is persuasive then that is the argument he makes. He said he was not telling him what argument to make or whether it's persuasive or not because they haven't deliberated. Make your best case for that meeting he said.

**Any Other Business to Come Before the Board:** None

**Adjournment:**

**Motion:** (Pitre, second Scruton) to adjourn the meeting passed 4-0 at 7:30 p.m.

Kathleen Magoon  
Recording Secretary

  
John David Aylard, Vice Chairman

