

Town of Farmington  
Zoning Board of Adjustment Meeting Minutes  
Thursday, July 14, 2022- 7 p.m.  
356 Main Street- Farmington, NH 03835

**Board Members Present:**

John Aylard, Vice Chairman  
Bill Fisher, Secretary  
Bob Morgan  
John Scruton  
Joe Pitre

**Others Present:**

Brian & Candace Boisvert, applicants

**BUSINESS BEFORE THE BOARD:**

**Call to Order:**

Vice Chairman Aylard called the meeting to order at 7:05 p.m.

**Pledge of Allegiance:**

All present stood for the Pledge of Allegiance.

**Review of Minutes:**

**July 7, 2022-** Public Session- Page 4, line 16- Change "said" to "asked if"; Page 5, line 9-Change "said" to "asked if"; line 12- Change "said" to "asked if" Page 6, line 10 from the bottom-strike "a temporary alternate for the position of" and add "Vice" to read "Mr. Aylard is still the Vice Chairman..."

**Motion:** (Scruton, second Pitre) to approve the minutes as amended passed 5-0.

Mr. Aylard said this has been on-going and asked the board how they would like to proceed.

Mr. Fisher said in the memo from Planning Director Kyle Pimental he has it broken down step by step on what he needs to do and he has been doing this for the Planning Board and it works out real well. He noted the memo from Attorney Fillmore is a lawyer's opinion.

Mr. Pitre asked if Att. Fillmore is our Town Counsel.

Mr. Fisher said what is in their packets was the counsel for Lebanon but it's a public document that Mr. Pimental found and pulled out because it explains the 5 criteria for granting a variance and it gives specific examples of court rulings in the state on how those rulings were applied. He said Mr. Pimental also put in a memo which breaks down how they should go about conducting the review of this.

Mr. Scruton said he believes she is also our attorney but she prepared that for Lebanon. He said when they about continuing it to August they said Christine Fillmore by name is available to attend the August 4 meeting.

Mr. Fisher said she is our Town Attorney.

Mr. Pitre recalled we had Att. Keriann Roman.

Mr. Scruton said he doesn't believe she is with the firm anymore.

**Potential Workshop with Town Counsel in August:**

Mr. Fisher said it might not be a bad idea if they are willing to put it together for them to have a meeting in August to discuss and get a clear picture on today's use of granting variances.

Mr. Aylard said he didn't see any problem with it and more information will never hurt us.

Mr. Fisher said he has never heard a lawyer talk about it since he has been on the Zoning Board for several years.

Mr. Pitre asked if he has never been to a land use seminar. He said that's one thing that everybody that's on a Zoning Board should attend.

Mr. Scruton said they have 3 every fall and almost always one of them is zoning related.

Mr. Fisher said that is something the Town has never brought up to him nor has any Chairman.

Mr. Aylard said it's been a while since he has seen any literature on it.

Mr. Pitre said that's because of COVID.

**Motion:** (Scruton, second Fisher) to request a meeting with the Attorney for August 4<sup>th</sup> passed 4-1 (Pitre opposed).

Mr. Fisher asked if Mr. Aylard wanted him to bring that up with Mr. Pimental because he is the one that can arrange this or how he wanted to notify him of their decision.

Mr. Aylard said he didn't have his e-mail address and asked Mr. Fisher to send him an e-mail.

Mr. Fisher said he would send Mr. Pimental an e-mail and ask him to set up the meeting.

**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 Foxtrot Drive in the Rural Residential District.

Mr. Aylard convened the hearing and Mr. Scruton read aloud from the variance application that there is a variance requested from article 2.03 section B of the Zoning Ordinance to permit a proposed garage into the front setback.

Mr. Scruton asked the applicant again if he had any issue with him or Mr. Morgan sitting on the case. He said he missed 2 of the meetings and Mr. Morgan missed one of the meetings.

Brian and Candace Boisvert came forward and Mr. Boisvert said no sir. He said he appreciated them coming here and volunteering their time here. More minds bonding is better so I appreciate you coming and thank you he said.

Mr. Scruton said his understanding is that the notice requirements for the first public hearing (May 5, 2022) and the continuations (June 2, July 7 and July 14, 2022) were completed.

Mr. Aylard said he believes all their ducks are in a row.

Mr. Boisvert asked Mr. Scruton if he has been brought up to speed and if he has seen the previous pictures.

Mr. Scruton said he was here last time and that Mr. Morgan may not have seen them.

Mr. Boisvert said he has them but he meant prior to that with the swale and the water condition.

Mr. Scruton gave Mr. Morgan copies of the photos of the site Mr. Boisvert gave out last time.

Mr. Boisvert said there were printouts of the swale which Mr. Scruton wasn't here for so he didn't know if he was shown those.

Mr. Scruton said he read it in the minutes and he showed him in the pictures where they were.

Mr. Boisvert said there were actual pictures of the swale and the erosion and stuff and he would rather have him make his own opinion rather than reading somebody else's opinion where he is sitting new. He said he believes they have the other pictures that had printed.

Mr. Scruton said he did not see the pictures from the meeting before.

Mr. Aylard said everything Mr. Boisvert presented was in the folder and gave the case file to Mr. Scruton to review.

Mr. Boisvert said they were full 11"x (?) printouts.

Mr. Scruton said he thought they explained the pipe coming down the side of his property crossing in front...

Mr. Boisvert said there's no pipe there's actually a swale, a run-off.

Mr. Scruton said somehow there must be a pipe that brings it underground.

Mr. Boisvert said that's in front of the house so what they're trying to avoid is the left side of the property where there's a maintenance swale for run-off. He said basically it secures all the houses on his road and going down Walgren Road so all the water funnels through his yard and if they don't maintain it the other houses will have water issues.

Mr. Pitre asked how close he was to other properties and if he could see people across the street.

Mr. Boisvert said across the street yes and nobody has any trees in front of them but to the side it's wooded and he owns the woods but the setback is beyond the woods. He said when the water comes out of his yard it goes under the road and then into the yard across the street.

Mr. Pitre asked if the property is quite wet all around his house.

Mr. Boisvert said around everywhere but where they're living.

Mr. Pitre asked if the property was built up and if he has a cellar.

Mr. Boisvert said yes the property was built up and no he does not have a cellar. He said he thought there are only 1 or 2 cellars and he didn't think they use them. If you ask anybody it's not great land he said.

Mr. Pitre asked how far it would be from the existing fence along the left side of the property to the back of the garage.

Mr. Boisvert said that's just chicken wire.

Mr. Aylard clarified he meant the fence between the trucks and where he wants to put the garage.

Mr. Boisvert said he didn't have his sheet in front of him but he bought the picket fence just to separate the yard from his work equipment because he tries to keep his property as nice as possible.

Mr. Pitre pointed out the fence in one of the photos and asked how much room there was from the edge of the pavement to the fence.

Mr. Boisvert said those are 8 ft. sections and its going 2 ft. past that so its 22 ft. from the driveway to that fence. He said his garage would stick past that fence 2 ft. which would allow him to still park all his equipment that the Town allows him to park so he can tuck that garage in there and avoid that area where all the culverts dump in.

He said if he puts the garage there he can still access the garage from his driveway, the service door would go up the walkway to his house and he could park all the equipment the Town allows him to have because he applied for that and they approved it. So I wouldn't lose any of the parking for my equipment that makes the money for me to pay the taxes which I took a property that was bringing in \$1,300 a year in property taxes to now \$5,300 in property taxes in which I still keep (I'm buying the property behind me) improving the property to generate taxes which is great for our town. Building that garage is only going to increase the property value which will increase my property taxes which is what we realistically want because we want a great town. We want a great school, a great Fire Dept. and Police Dept. and bring businesses in he said.

Mr. Boisvert said if it's going to be this hard he has 14 vehicles that he registers and they would be shocked if he told them what he pays that dept. and if he moves out of here they are going to get some old lady and old man that would have one car and they would pay \$170 to register their car compared to his \$5,000-\$10,000 registration fees which is fine because he loves this town and does everything for this town. He said he brought in an AU program and hangs...

Mr. Aylard interjected that this isn't a barter program and the board does this and asked if he thinks they hand out chips for that.

Mr. Boisvert said it doesn't matter and he was 100% right.

Mr. Aylard said then don't say it if it doesn't matter.

Mr. Boisvert said he was saying it leads from one thing to another. He said we're a small town, we're a community and we have each other's backs.

Mr. Aylard asked if the board had any other questions or comments.

Mr. Pitre asked how much he could comfortably move that garage back away from the setback.

Mr. Boisvert said he moved it back as far as he possibly can and that comes up to the existing building and the existing deck. He said because of the way his road and the property lines are he is actually 20 ft. from the road which doesn't affect the sight line, road maintenance or anything to do with that and that well or catch basin thing is in the way. By me putting the

garage there it's not affecting anything to do with the Town or my neighbors or anything to do with that. It's the most efficient place that he can continue to run my business and have everything just flow he said.

He said he understood the hardship and all that and if there is something preventing him from moving the garage to another area. He said there's a deck, there's concrete and other things that are there which after talking with the state the board can put their foot down and say you need to move that. He asked if that is being fair from what they say and answered "absolutely not". We're here to work together and come to a conclusion and make this happen because who's benefiting-the Town of Farmington. The Town is benefiting from me building this structure because they're going to get revenue from the taxes. I love this town I don't want to move from here but there are things that keep preventing me from doing this and then you lose all that other stuff which we don't want to lose. We need to keep businesses in our town and work with town residents. You guys have the power granted by the state and you can do...

Mr. Aylard called a halt to Mr. Boisvert's comments and acknowledged that he had argued his point well. He asked what he was parking in front of his building and if he would be leaving it open where the garage would dump out or if he would have stuff in there too.

Mr. Boisvert said he has 5 children so he would be pulling in and half of that area is a half of a basketball court that his 5 children use daily. He said there are 7 people in his household and he has 14 registered vehicles with the Town of Farmington.

Mr. Aylard said he is a lucky person and to enjoy the luck. He said he read his parking permit and it states he only has 2 vehicles for the business.

Mr. Boisvert said that was when he filled that and asked for the date on that.

Mr. Aylard said it was in 2019.

Mrs. Boisvert said they have 2 vehicles-the bucket truck and the one ton and their personal vehicles.

Mr. Boisvert said there is also the chipper, the stump grinder, trailers and all of that which is in the picture. He said as time goes on businesses expand and do better and it has grown from a \$60,000 business to a \$307,000 business last year and it's only going to expand in a year and he is buying the property behind him.

Mr. Aylard said he is not proving a hardship if he has that kind of money.

Mr. Boisvert said the hardship is the layout of the land.

Mr. Aylard said the layout of the land would be if he outcroppings of rocks or from swamps. He said they have some swamps around there but his own stuff does not create a hardship.

Mr. Boisvert said the stuff is there at this moment and it says is there anything preventing putting the garage somewhere else which Mr. Pitre read and Mr. Barron shut him off when he was reading the criteria. He said there is a deck, concrete, a hot tub and other stuff that is preventing him from moving that garage to a different spot.

Mr. Aylard said anyone in town could say that and have anything they wanted. He then closed

the session and asked the board if they had any questions.

Mr. Boisvert said the lawyer is going to have fun.

Mr. Aylard said this is a court of law and he can't "banter" it.

Mr. Boisvert said he wasn't bantering anything and the state granted them the power...

Mr. Scruton asked if it is correct to say that his claim to hardship is related to the water drainage structure in front of his property and the ditch down the side of his property. He asked if that is why he is arguing a hardship to the land.

Mr. Boisvert said that's correct and his well which is in the pictures is behind his house so if he...

Mr. Fisher said that has nothing to do with hardship.

Mr. Scruton asked to let him finish answering his question.

Mr. Boisvert said if he puts the garage where he is supposed to he cannot get to his well. He said he had something he wanted to read on hardship and Mr. Pimental had sent it to the board and if they read it thoroughly which he was going to break it down which if they don't want to give him the time he is okay with that because he is not here to argue and fight. I'm here to get a decision and have it go on he said.

Mr. Fisher said they have all that paperwork in front of them and they've all read the paperwork. He said they have looked at many, many cases for this town for various people in this town on what hardship is. You're arguing hardship because it's too damn hard for you to move something on your property. The well has nothing to do with it and it is particular to the land such as maybe the drainage swale or a rock outcropping he said.

Mr. Boisvert said the state requires 25 ft. to maintain that swale.

Mr. Fisher said he has that through the backyard and that has nothing to do with moving the garage.

Mr. Boisvert said it goes down the left side of the property and if you put the garage there and you move the garage 25 ft. to the left of that swale it's in the...

Mr. Fisher said they said to move it back and if his deck is in the way get rid of the deck and put the garage where the deck is and he is fine. In my opinion you have no hardship he said.

Mr. Boisvert said he hopes he is wrong and we will see.

Mr. Aylard stopped the discussion and told Mr. Boisvert his session is closed and that if he didn't understand that to read the bylaws. He said Mr. Scruton could continue with his question but it needs to be stated as a question.

Mr. Scruton said it looks to him that his plan on this picture is that the edge of the garage is almost even with the edge of his house.

Mr. Boisvert said that's correct.

Mr. Scruton asked if he said he was going to be moving the container.

Mr. Boisvert said that is there for temporary storage until he can build a garage.

Mr. Scruton then read aloud the 5 criteria for a variance and the facts supporting this request as stated on Mr. Boisvert's variance application which are as follows:

1). The Variance will not be contrary to the public interest:

Applicant response- The construction of the garage inside the setback will be approximately 120-140 sq. ft. and is approximately 13' from the Town right-of-way.

Board response- Motion: (Scruton, second Pitre) that the variance is not contrary to the public interest passed 5-0.

2). The spirit of the ordinance is observed:

Applicant response- Boundary line with abutter will not impact setback. Design minimizes impact to road setback and does not impact maintenance, drainage or sight distance.

Board response- Mr. Scruton said his statement is for those reasons this application is in keeping with the spirit of the ordinance.

Motion: (Scruton, second Pitre) that the spirit of the ordinance is observed;

Discussion: Mr. Fisher asked what was the purpose of the ordinance keeping a 25 ft. setback from the road. He asked if the spirit of the ordinance was to prevent hindering any access by the Town to do any type of major work along the road which evidently they haven't done for this road in quite some time but the ability is still there. He asked why the ordinance was developed and why we have a 25 ft. setback.

Mr. Aylard said he did not know.

Mr. Fisher asked how far from the street would the edge of his garage be.

Mr. Boisvert said it would be 20 ft. from the edge of the road.

Mr. Fisher asked if the setback is 25 ft. from the edge of the road how he can be 15 ft. over the setback line.

Mr. Aylard said the numbers don't work.

Mr. Scruton said because the road he's talking about the paved surface rather than the edge of the right-of-way and the setback is from the edge of the right-of-way.

Mr. Fisher said he thought the setback was from the center line of the road back.

Mr. Scruton showed him the property line in the survey and said he needs to be 25 ft. back from there and proposed garage would 20 ft. from the paved surface. He pointed out the paved surface and the drainage structure in a photo and that 20 ft. from there is where the garage is going to be but the property line is pretty close to the drainage structure

Vote: The motion passed 3-2 (Morgan, Pitre, Fisher-yes; Scruton, Aylard-no).

3). Substantial justice is done:

Applicant response- Construction of proposed garage will not deter from Town's goals protecting its vision of small town. Allowing this exception meets the substance of this article.

Board response- Motion: (Scruton, second Pitre) that we find that substantial justice is done passed 5-0.

4). The value of surrounding properties are not diminished:

Applicant response- Site will be improved. Aesthetics will not decrease value-it will increase.

Board response- Motion: (Scruton, second Aylard) we find the value of surrounding properties



are not diminished passed 5-0.

5). Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship:

Applicant response- Due to property development from the past history has made it necessary to encroach into the setback.

Board response- Motion: (Scruton, second Morgan) we find that the literal enforcement of the provisions of the ordinance would result in an unnecessary hardship;

Discussion: Mr. Scruton said he would now speak against his motion for 3 points. He said there is reasonable use of this property and it is admirable all that the applicant has done with this property and it looks very nice. He said he has done a lot as far as development of the property but it's that very development that has occurred in particular the deck that is part of the issue here. He has a reasonable use of the property now there's no guarantee in zoning that you can have a garage he said.

He said secondly he has alternatives. He said the alternative as indicated if he moved the garage back into that space in front of the deck he could probably get it the 25 ft. off of the r-o-w and he would just have to have a different way to get on his deck and move the garage straight back because it would clear the edge of the property. He said he was not going to be designing things for him but he believes there is an alternative that would avoid requiring a variance in this case. I would like to see him get his garage he's made a thorough presentation and worked hard coming here and presenting all of this but I believe he has alternatives he said. Mr. Scruton said part of the issue is it is the development that occurred and he had a concern that he doesn't believe you should be able to create a hardship on the lot by what you do on the lot itself. He said in particular in the (Lebanon ZBA) memo they have been referring to on page 6 it says "This standard is a difficult one to meet. In order to satisfy this test the deprivation resulting from application of the ordinance must be so great as to effectively prevent the owner from making any reasonable use of the land. If the land is reasonably suitable for a permitted use then there is no hardship and no ground for a variance even if the other four parts of the five-part test have been met." He's met the other 4 parts of the test but I believe he has failed to make this one and that's why I'm going to be voting no he said.

Mr. Fisher said he agreed with Mr. Scruton and the hardships he discusses are hardships that were created in how he laid out his property and has nothing to do with how the property is in itself. He said the garage could be moved over a little bit and back that way it wouldn't hit the corner of his house. He said he agreed his deck is in the way but he may have to cut his deck in half and run it out towards his backyard more so he still has his deck and access in and out of his house. I don't want to block that but the garage could be moved. It's not for me to decide or figure out he said.

Mr. Aylard said he would be too close to the road when all is said and done and on a snowy day with plowing and it's a dead end road and the snow has to go somewhere in that area.



Mr. Boisvert said it doesn't even affect anything to do with that garage. He then said he will be back and asked Mrs. Boisvert if she was ready to go.

Mr. Aylard said if he would like to leave he may leave.

Mr. Boisvert then told him to finish his statement.

Mr. Aylard said that was pretty much it and that he didn't like that he was 10 ft. off the road and the setback needs to be adhered to a little better and he will vote no.

Mr. Boisvert said they need to be educated on the ZBA.

**Vote:** The motion failed 2-3 (Morgan, Pitre-yes; Aylard, Fisher, Scruton-no).

Mr. Scruton said the variance is denied. He said we really want to keep Mr. Boisvert as a citizen and we value him but he cannot vote differently because of the reasons that he stated and he was sorry he had to do that.

Mr. Boisvert said its people like you that drive people out of this town and why this town is suffering. He told the board to have a good day and that he would see them shortly he guaranteed that as he left the meeting.

Mr. Aylard called for a motion on the application.

**Motion:** (Scruton, second Aylard) that this application has been denied because it failed to prove an undue hardship passed 3-2 (Aylard, Fisher, Scruton-not to grant the variance; Morgan, Pitre-to grant the variance).

#### **Any Other Business to Come Before the Board:**

**Election of Officers- Motion:** (Scruton, second Fisher) that John Aylard be appointed Chairman of the committee;

There were no other nominations for Chairman.

Mr. Aylard accepted the nomination.

**Vote:** The motion passed 5-0.

**Motion:** (Scruton, second Morgan) to appoint Joe Pitre Vice Chairman;

Mr. Pitre accepted the nomination.

**Vote:** The motion passed 5-0.

**Motion:** (Scruton, second Morgan) to appoint Bill Fisher Clerk/Secretary;

Mr. Pitre said they have a Recording Secretary and the bylaws do not fit the scenario they follow.

**Motion:** (Pitre, second Scruton) to special order the bylaws until the next meeting;

**Discussion:** Mr. Fisher said they still need the Clerk/Secretary position in case the Chairman and the Vice Chairman are not here. He said he would keep the voting path in case something happens to them.

Mr. Aylard asked if he would accept the nomination.

Mr. Fisher said he would rather not with his duties as Chair of the Conservation Commission and as a member of the Planning Board and the Strafford Regional Planning Commission.

After some discussion Mr. Fisher accepted the nomination.

**Vote:** The motion to appoint Mr. Fisher Clerk/Secretary passed 4-0-1 (Fisher abstained).

**Bylaws-** Mr. Fisher asked if they would talk about the bylaws at their next meeting and that the Planning Director would set up the agenda for the meeting.

Mr. Pitre said that is at the board's direction. He said they need to get the bylaws set up so they do what it says in the bylaws otherwise they will get burned.

Mr. Scruton noted the bylaws say they will meet at 6:30 p.m. and they're not.

Mr. Aylard said that was changed for him because he works in Boston and could not get here until 7 p.m.

Mr. Scruton said if that's the case they need to set it for 7 or 7:30 p.m.

Mr. Aylard asked that the meeting time remain at 7 p.m. until they change the bylaws.

**Next Meeting:** Thursday, August 4, 2022 at 7 p.m.

**Adjournment:**

**Motion:** (Scruton, second Morgan) to adjourn the meeting passed 5-0 at 7:58 p.m.

Kathleen Magoon  
Recording Secretary

  
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John Aylard, Chairman