

TOWN OF CENTER HARBOR
ZONING BOARD OF ADJUSTMENT
Municipal Building

Monday, March 21, 2022
7 p.m.

In attendance: Chair Bernie Volz, Vice Chair Jean Meloney, Members Karen Ponton and Stephany Marchut Lavallee. Alternate Members Gregory Hime and Timothy Nefores. Member George Lamprey and Alternate Member Alison Toates absent with notice. Public Attendance, Applicants Jeff and Pamela Walsh, Northpoint Engineer, Jeff Lewis, Charles and Diana Martin, Sandy Mucci and other unnamed attendees. No input from other attendees.

Voting Members Bernie Volz, Jean Meloney, Karen Ponton, Stephany Marchut Lavallee and Gregory Hime.

Chair decides to move past item I. on the agenda and move to the scheduled hearings. Chair will go back to the approval of minutes after the hearings.

I. MINUTES:

Approval of the February 14, 2022. Chair states the one thing he thought was important to add was that the Board of Selectmen asked to be notified if the ZBA would require the assistance of Attorney Spector Morgan. Minutes will be amended to reflect that request. **Motion: Chair Bernie Volz motions to accept the February 14th, 2022 minutes as amended. Seconded Stephany Marchut Lavallee. All were in favor of approving the minutes.**

II. PUBLIC HEARING – VARIANCE 469 WAUKEWAN ROAD 105-004 JEFF WALSH

Chair goes through the protocol for those in attendance. Chair does ask those in attendance to please limit the discussion to new items or questions. Any discussion from the previous two hearings are part of the public record by way of the approved minutes. Chair requests the public refrain from discussing the same items at length again.

Chair opens the hearing, Gregory Hime asks the Chair to allow him to discuss a subject related to applicability on how the application for variance was filed. Gregory Hime states he researched the deeds for both parcels regarding the ROW, upon his review to this best of his knowledge he believes the parcel at the lakefront, 471 Waukewan, owns the driveway. Chair states that seems to agree with what is on the plans. Jeff and Pamela Walsh disagreed with that statement and said the lawyers (Town Attorney Chris Boldt and the attorney for Jeff Walsh) determined the driveway belongs to 469 Waukewan and it's a ROW.

Greg reads from the deed and states that conveyance to him is clear the owner of the driveway is the lakefront lot and asks if the applicant has documentation on the opinions ruled by the Attorneys. Applicant responds no but that he believes the town does based on the approval to split the lots and that had all been worked out with the Town's own attorney. Greg adds that further confusion is that both parcels are part of one deed. Jeff Walsh states this is how the attorneys and surveyor straightened it out and they determined which lot owned the ROW. Jeff mentions the town illegally merged them and they unmerged them. Greg says the one deed lists two separate parcels and the rights therein for each property. Jeff and Pamela Walsh agree. Greg just wants clarification on who actually owns the ROW because that may contradict which parcel

is requesting the variance. Chair said the deed seems to agree with the drawings, he didn't treat it as a ROW. Greg agrees, but if his interpretation is correct which lot should ask for the variance of the wall. Chair states it could be an important question for which file the decision is placed in by the Clerk. Greg mentions if this at some point is to be owned by different people it may cause problems and wants the Board to be ruling on the correct variance for each lot. Chair states if this is owned by 471 then there is no variance for 469 needed in terms of the wall. Greg yes that's what I'm saying. Jeff Walsh says it's very clear in the deed and how it was worked out with the town that it's a ROW that 469 is giving 471. Jeff says he may not be clear in how he's saying it but the attorneys said it was very clear this is a ROW that 469 is giving to 471. Jeff states the attorneys had a long conversation with the land surveyor and it was determined that is a ROW. Chair says the drawings from the engineer contradict the Town GIS maps. Tim Nefores asks the applicant if he got a new survey. Applicant says no it's the same survey but I understand the confusion but the town attorney and Bob Varney our attorney and the land surveyor determined that it's a ROW and not owned by 471 and that's how it's written and the town accepted it that way. Chair the best thing is to proceed with what has been said and what's on the plan. Stephany Marchut Lavallee just wants to confirm there are two properties and one ROW. Chair shows the Board and public where the lines should go by using the GIS on the monitor. Chair states for tonight's discussion we will go with what they have and if at a later date it's determined it's not correct, they may need to come back.

Chair turns the hearing over to the applicant.

Jeff Walsh 467 Waukewan Road, this is our third meeting and through the advice of the Board I've hired Jeff to present the plan. I'm looking for a variance for a very small wall on 469 and then a large retaining wall on 471. I'm also looking for a variance for setbacks on septic systems on both properties along with enlarging the house and making it more conforming by pulling it back from the water and changing the shape.

Jeff Lewis from North Point Engineering, Randall Shuey of my office prepared septic design plans for the two septic systems. The septic plans have been approved by the state and Mr. Walsh needs a variance from the town to place them in these locations that again were approved by the state. Mr. Walsh asked me to look at the plan which was prepared by Carl Johnson who is a surveyor, we based all of our information off of that plan in terms of boundaries and topography. I don't have much to offer on the property line the Board was just discussing other than what I just heard but it does seem to me the property line would extend across (indicates on the plan) which would mean a small section of the wall would end up being on the 469 parcel. Mr. Walsh needs the retaining wall here because the structure will be very close to the property line; there is an existing fence on that property line and it slopes down to the lake. Mr. Walsh is trying to take away the existing cottage and build a new house further away from the lake. There will be a lot of work involved with bringing in fill and in order to do what he wants. He needs the retaining wall. We recommend with the new configuration shifts the house up to the north to pin it as close as we could get it to the northerly property line without needing a variance which measures at 15' away from that boundary which gives us a bit more room on the south side to build the retaining wall and driveway. The max height of the wall is 8' 6" in the south easterly corner, on the second sheet you can see the profile of the wall. (Jeff goes through the plan with the Board). The face of the wall would be 1' from the property line I believe this variance says 6" from the property line. Contractors will have to be careful setting the blocks they need to set the foundation block and they will have to be able to get as close to the fence without disturbing the fence or the abutting property. 3' for the wall width and then some rail or fencing on top of that wall because it will be an 8' drop off where that back up area is. Our recommendation is to have structural engineer do the final design on the wall. We've drawn it as a separate guard rail but it doesn't need to be -

we just did that to make sure we have enough room in that location. Typical height of the guard rail would be 2'6". The building code might dictate that if it needs to be higher.

Chair Bernie Volz, I believe the existing fence is about 6' high so perhaps a 20' section of the new wall will be a little bit higher than the fence will be.

Jeff Lewis, so if they have a 6' fence off the property line then yes there would be some exposure of the wall but most of it would be behind the fence.

Greg Hime, to confirm, your company designed both septic designs and they are based on the existing elevation?

Jeff Lewis, that is correct.

Greg Hime asks Jeff Lewis if anyone in his company looked at the hydrological aspect of the impact of the wall. Jeff Lewis responds from a drainage perspective no and states if Mr. Walsh receives his variance, then he needs shoreland permit from the state and that will address an abundance of issues including the drainage and that to have a hydrological report done at this stage is premature due to the cost involved and the uncertainty of the variance decision. Tim Nefores mentions there is a lot of details on the plan on this side (closest to Martins) and there used to be a retaining wall on the other side but those are gone now so trying to figure out how you are addressing the slope. (Tim refers to previous plan that showed two walls at the walkout level on the north side of the property). Jeff Lewis said based on discussions with Mr. Walsh, the full walkout would be hard to do on that side of the property so the plan will likely have a change to not have a full walkout on the side near the garage but there will still be one on the lake side. If there is a wall on the side with the garage now that they moved the house closer to that property line Mr. Walsh would need a variance for that other wall and he doesn't want to do that. Tim Nefores asks if the state has approved the septic systems. Jeff Lewis responds yes and he has those approvals.

Chair asks for anyone would like to speak in favor of the proposal. Hearing none, Chair asks if anyone would like to speak in opposition reminding the public to keep the discussion to new items not previously discussed from the past two hearings.

Charles Martin 473 Waukewan, one question I have is, is this a 469 variance or a 471 variance? **Chair Bernie Volz**, we discussed that earlier and at this moment it's both. 469 and 471 need a variance for the wall.

Charles Martin, the reason I'm asking is in looking at the variance application 469 is asking for the 6" retaining wall and my concern is that there is no basis to have that wall on that driveway. I'm not concerned of any run off as stated at the last hearing so there is no need for that wall. My view is I don't want to see a retaining wall going in and for 469 I don't think there is a need for it only in the sense it's being used for 471. If these were separately owned properties and they probably will be again and 469 came in and asked for a variance for this retaining wall along the property line for a non-confirming driveway would the Board even consider it? Probably not. I'm a little shocked about what I'm hearing about possibly seeing some guard rail from the lake side possibly as high as 12' from the grade at the end. I did send in an email suggesting that the way this has been handled in the past was a car for 471 would just park on that side of the fence so just grant an easement for a parking spot at 469. This is created an elevated roadway that changes the character of the view from our property as well as the view from the lake.

Chair Bernie Volz, you do bring up a good point in that the future maintenance of this wall, assuming it does get approved and built, it is going to be more complicated if there are two property owners involved. I was really happy when I saw this plan without the line drawn there because it made sense, one person owns that driveway which means one person owns that wall.

Charles Martin, this type of variance seems extreme to me to build an 8'6" retaining wall. This is not like trying to accommodate a septic system which I think is a bit more reasonable. This was a seasonal cottage on a very small lot and what is being proposed is outside of the realm of reasonability.

Chair Bernie Volz, we are just focused on the 469.

Vice Chair Jean Meloney, thank you for bringing up the fact if the lots were owned by two different people.

Diana Martin mentions the damage and health of her trees, this issue was brought up in the previous meetings. (refer to previous set of minutes). Diana Martin asks if the town has an arborist, Chair states it would be up to the property owner to hire an arborist.

Jeff Lewis adds that he thinks the best way for the wall to be installed would be to have a nice gradual slope to 471. Only a few feet of wall would be on 469 but states he could make that work without that section if the concern is that it's on two separate properties and he understands that concern. They would have a fill slope or something different to taper that section down. Jeff believes they are far enough back to make up an 18" grade without having to put the wall. If that section of wall is a concern it's not critical and we can make an adjustment to remove it.

Stephany Marchut Lavalley asks if the retaining wall would impact the size of the 12' ROW. Jeff Lewis states the ROW would have to get wider or relocated. Stephany asks if that would create a problem in making the ROW smaller in width? Jeff Lewis responds no.

Chair states there is really no way to know where the ROW of way is, the deed conveys the ROW and sometimes it's hard to know exactly where that is. Chair asks Jeff Lewis if he has any comment about the trees. Jeff Lewis said he's not sure how close they are to the property line but it wouldn't be the weight of anything that would be concerning but if the wall was installed there, there would be disturbance to the roots. Jeff Lewis said they deal with this a lot, if you're the abutting property you can dig and cut into the root system of trees on the abutters property. Jeff Lewis adds that he's been told by landscaping companies they work with if 50-60% of the roots are kept intact the tree will survive. Jeff adds whether it's a wall or drainage pipe it will have the same impact.

Gregory Hime, to reiterate the design could accommodate not having a wall on 469?

Jeff Lewis, that is assuming the property line is where you are talking about, separating the two parcels (Jeff shows location on the plan). I think having the wall there would be nice but it's not critical.

Chair Bernie Volz, at that property line you will have a 2-3' drop.

Gregory Hime, back to what you said Bernie about the ROW as defined is 12' wide from the highway along the line of the Whittlesey's (now Martins) so it is running along that property line. In the preliminary plan the driveway is encroaching on the other property.

Jeff Lewis, yes, he will need to expand that easement which he can do because he owns that property.

Charles Martin, quick question, the driveway right now does not continue beyond 469. In order to establish a driveway wouldn't you have to have permission from the abutting property?

Chair Bernie Volz, yes it will probably be a difficult thing to determine but yes if it's closer than 10', it requires permission from the abutter.

Jeff Walsh, I disagree with that. The driveway goes all the way down to 471. It is being extended but it already goes down there.

Gregory Hime, from the site walk and the plan dated 2020 that shows the stone walls and steps so the driveway could indeed go into the property but it certainly doesn't go to the house because the steps are there.

Chair Bernie Volz, it's hard to know where the current driveway stops because you're going all the way down here now (shows the location on map provided on monitor). This will be an open issue because it does not go far because you would be driving down the steps. So maybe a third of the way down.

Tim Nefores, the total is about 35' from the property line to the lower stone wall not the upper wall so yeah maybe a third.

Chair Bernie Volz, It could be argued the driveway went to where the 552 marker is on the contour lines. They will probably need permission from the abutters to extend for the driveway. Section 5:3:2. (Chair reads section).

Jeff Walsh, or a variance?

Chair Bernie Volz, no I don't think we can grant a variance to that.

Jeff Walsh, so if I cut out that turn around that driveway becomes, ok?

Chair Bernie Volz, no the driveway would have to end here. (showing on map)

Jeff Walsh, right but that still will get me to my garage. That's just a turnaround for me to back out safely but it's not needed.

Jeff Lewis, I'm sorry what is the section that refers to permission from the owners?

Chair Bernie Volz, Section 5:3:2 of the Zoning Ordinance. This is more of an issue for 471 not 469 but these properties, although we are trying to keep them separate, they are entangled.

Sandra Mucci, Meredith, I'm listening to all of this and the discussion about this wall is all to locate a garage on the property replacing a property that didn't have a garage to begin with. You don't need a garage; I've lived many years without one. If it's all being done to accommodate a garage, my inclination says get rid of the garage and do less drama.

Chair Bernie Volz, we can't tell people do this or do that we can just approve something or not. During our discussion there are usually things brought up about can you do something different that would reduce the impact. At the last hearing we asked them to reconsider what they really need so when we get to that case we will see if there are any changes that may help reduce the impact. With them moving the structure back from the water is a good thing because it makes it less non-conforming but that does not automatically mean you get to increase the square footage.

Gregory Hime, on lot 469, the whole lot was looked at when determining the location of the septic?

Jeff Walsh, Jeff Lewis was not there I was there with the designer from his company that designed the plan and yes, he did many test pits and it was his opinion this location was the best.

Chair Bernie Volz, and for 471 it's the best place it can be because it's the furthest it can be from the water.

Tim Nefores, and I think with 469 the tank wasn't going to be located in the setback.

Chair Bernie Volz, I think that was for 471.

Tim Nefores, I don't see the tank for either property.

Jeff Walsh, for 471 I met with the septic designer and Jeff and those tanks are moveable without permission from the State. The sediment chamber.

Chair Bernie Volz, that's basically what Bill Doucette said is that they can move those around without any problem. They are contained.

Greg Hime asks about the well for 469. Jeff Walsh states he has approval from the State for that and it's located on the street side.

Board reviews the application and focusing on 469 goes into discussion.

Chair states the property owner has given himself permission to put the septic within the setback of 471. (Jeff Walsh owns both parcels.) Vice Chair Jean Meloney asks what if he didn't own both parcels would that be an issue. Chair Bernie Volz states if Jeff sells the property this goes with it and the new owner would have to understand this is where it was installed. A future owner they either buy it or they don't. Chair references 5:3:3 about the septic and leach field and states this wouldn't apply because the septic and leach field are beyond 75' from the water. After discussion, the Board agrees the reference of Section 5:3:3 for 469 Waukegan does not need a variance and will indicate such in their motion. Board reviews the next section reference of 5:3:2 for the retaining wall. Chair doesn't believe the wall falls under this section but rather 5:3:1. Board agrees. Chair doesn't think a wall should be under Section 5:3:1 Structure Setbacks stating walls are designed to go on property lines so he believes the setback rule may not apply to the retaining wall. Chair believes the only variance item for 469 would be the septic system.

Board goes through the five criteria for the variance request on the septic.

Criteria 1 and 2: Fixing the septic is in the public interest. The location on the lot based on the applicant's testimony is the best location for installation according to his septic designer. Chair states it's not contrary and is in the spirit of the ordinance. Board agrees.

Criteria 3 A septic system is needed and this appears to be the best location. Board agrees.

Criteria 4 Board did not think this would diminish surrounding property values.

Criteria 5 Chair believes this would result in unnecessary hardship to the applicant if they did not have a septic system. Board agrees.

Motion: Karen Ponton motions to grant the variance to install the septic as presented. Seconded by Stephany Marchut Lavallee.

Vice Chair Jean Meloney mentions she would feel more comfortable to have the motion worded to grant the variance for the septic but keep it separate from 471 should designs be changed. If 471 doesn't go through then they don't need all the fill for 469 so it wouldn't be as designed. They need the septic system but it's unknown at this point if they need that entire mound of design that they have, as designed means it will be one at some point. Chair Bernie Volz states it's two separate septic systems. Gregory Hime, I think we could be more specific by stating the Septic Design that's been approved by the State of NH and designed by North Point on the existing elevation. Chair Bernie Volz states he thinks what Vice Chair Jean Meloney is trying to get at is that 469 is disconnected from 471 so anything they do has to be contained on the 469 lot. Vice Chair Jean Meloney agrees. Chair Bernie Volz mentions because the state wanted two separate systems, they looked at them each individually. Vice Chair Jean Meloney adds that looking at this proposal as if they were two different property owners how would we look at this and that is this approval is for 469 and 469 only and she wants to be sure it's not tied in at all with 471. Tim Nefores adds there is currently only 2' of grade difference in the plan but on 471 if the septic does not get approved for some reason, then it's just a bigger slope. Board was in agreement it's two separate approvals that are required and this approval is for the septic installation on 469 only. Board was comfortable with the discussion and moves to vote on the motion.

Pam Walsh adds that the design was to maintain two separate entities. At first, they wanted to put them together but then as they went through the process in discussions with the state, they

decided they didn't want one system and moved forward with designing two separate systems one for each property on their own lot.

After discussion Gregory Hime requests the motion be amended to as designed by North Point Engineering and approved by NHDES. Tim Nefores asks about the variance for the wall and whether or not there is anything that needs to be put in the motion for that. Chair Bernie Volz states it's confusing but we have multiple requests so the Board should rule on each request in the application. Vice Chair Jean Meloney states they can deny the request for the wall because they have an alternative for that. After much discussion about how many sections the applicant cites in the application the Board agreed to take each section referenced be addressed individually.

Motion 1: Karen Ponton motions the application for a Variance for Section 5:3:1 Structure Setback, which requires a 15' setback of a septic, to allow construction of the septic system per the approved design by the NH DES. Seconded by Stephany Marchut Lavallee. All were in favor.

Motion 2 – Karen Ponton motions the application for Variance for Section 5:3:3 Subsurface Sewage Disposal, has been DENIED for the request is not applicable due to the relocation of the tanks which no longer fall within the setback of the abutting property. Seconded by Vice Chair Jean Meloney.

During the motions, Jeff Lewis asked for clarification of the denial of 5:3:2 for the wall, Vice Chair Jean Meloney states during the hearing it was presented that there could be an alternative and the small portion of wall could be removed. Jeff Lewis explains they would still like to add the wall but yes if they were denied they could figure out another option. Chair Bernie Volz reads the sections the applicant cited in the specified field on the application which were 5:3:1 and 5:3:3. Then in the text body of the application the applicant mentions 5:3:2 retaining walls 6" off lot lines so 5:3:2 got introduced into the application but not sure this is the intent. Jeff Lewis asks how the application was noticed asking if all three sections were noticed. Clerk responds no specific sections were referenced in the public notice rather a general notice of the application and instructions on where the application can be viewed were noticed to the public. Jeff Lewis states the Board is acknowledging there is an application in for 5:3:2 by that motion but then he states the Board has determined it's not applicable and therefore denied but Jeff adds there is a plan showing the retaining wall. Chair Bernie Volz asks if the applicant plans on moving stone wall? Jeff Lewis states if the applicant is asking for a variance for that section which requires a permission from the abutters, if the Board is saying that is not applicable then (Jeff just ends his statement). Chair Bernie Volz states he can see what Jeff Lewis is referring to and that the Board is ruling on the pertaining wall being part of 5:3:2 and not ruling on the driveway. Chair and Vice Chair state this is a sticky wicket. Karen Ponton states that when the Board is deliberating on the wall and they are looking at the 5 criteria, when they discussed the hardship, the Board would not see the hardship because there is an alternative. Jeff Lewis just wants to make sure he's understanding. Chair asks the Clerk her interpretation, Clerk believes the wall is a structure and would fall under structure setback 5:3:1. Vice Chair Jean Meloney asks what the spirit of the ordinance was created under what was the intent and a variance is needed. Chair Bernie Volz asks if Vice Chair Jean Meloney thinks that a variance is needed for any wall someone puts up? Vice Chair Jean Meloney states yes if it's within a certain distance of a property line yes, if you are moving soil and putting in a retaining wall and it's in a setback that to me would be a structure and a structure that would require a variance. Clerk states if she was prepared for this discussion this late into the application, she would have provided other cases that would support the variance for a wall. Chair Bernie Volz states that the Board could table the variance for the wall and revisit. Vice Chair Jean Meloney states the Board can deny the request and the applicant

can appeal it. Tim Nefores states at some point that term needs to be addressed. Board agrees. Tim Nefores states the Board has been going in one direction until just now.

Board states they need to discuss the criteria for variances requests, 5:3:2, 5:3:3 and 5:3:1 for these sections are cited in reference to the retaining wall. The Board decided to motion each section individually.

Board goes through the five criteria for the variance request on the retaining wall Section 5:3:2. Chair Bernie Volz states 5:3:2 is not applicable to the Board because they cannot grant a variance on that section where it's calling for abutter approval. Clerk states the confusion may be that 5:3:1 pertains to the wall and septic and 5:3:2 may have just been an misprint by the applicant because after that section the applicant writes "retaining wall" but 5:3:2 pertains to a driveway. 5:3:1 is noted at the top for the wall and septic. Chair Bernie Volz adds that perhaps the Board simply says that we believe the text regarding 5:3:2 was an error and not applicable to this application and the ZBA does not deny nor grant the variance. Clerk states you still need to address the wall under 5:3:1. Vice Chair Jean Meloney states that the Board does need to apply 5:3:1 to the wall and that a separate motion is needed. Chair Bernie Volz states there will be 4 motions for this application.

Criteria 1 and 2: Board states the abutters have provided input the wall is not needed; they don't have any drainage issues.

Criteria 3 Board thinks substantial justice is done. Criteria Passes.

Criteria 4 Board does not feel this would impact the surrounding property values. Criteria passes.

Criteria 5 Vice Chair Jean Meloney reads criteria 5 aloud and states this request does not meet the criteria for hardship. There are other proposed uses that could be used for that retaining wall.

Motion 3: Vice Chair Jean Meloney motions the application for Variance for Section 5:3:1 Structure Setback, as it pertains to the retaining wall is DENIED. Seconded by Stephany Marchut Lavallee. 4 members in favor of denying the motion (Meloney, Ponton, Marchut Lavallee and Hime) Chair Bernie Volz abstained from the vote because he didn't feel this request needed a vote based on the conversations about wall not being structure that needs to adhere to the 15' setback of a boundary line.

Board discusses the request for a variance from Section 5:3:2. Chair states he doesn't believe this is applicable.

Gregory Hime asks why the motion cannot be written as Motion 2. Chair Bernie Volz states the Board needs to be careful because in 5:3:3 there is not 75' setback and 5:3:2 is not for the ZBA to deny or grant a variance for in this case because roadways are for the abutter. We don't want to grant or deny because we can't do either. Karen Ponton asks about a situation in the past where a situation come up and the Board told the applicant they didn't need to submit an application for variance and the Board didn't hear the case. Board doesn't remember that but states they don't need to go through the criteria if it's not applicable.

Jeff Lewis, 5:3:2 does apply to this project because of the driveway being within 10' of the abutters but you as the ZBA cannot act on the variance request from that section? I would ask why that is.

Chair Bernie Volz reads the section aloud.

Jeff Lewis, that is what my applicant is asking for which is a variance from that section so we don't have to get permission from the abutter.

Chair Bernie Volz, for property 469 depending on what you do, you may or may not need to request a variance. So that is an interesting question as to what happens if we are asked to give a variance for the abutter approval.

Gregory Hime, that is not written in this request for the variance.

Chair Bernie Volz I agree, that is not mentioned in the application for this property. If this is the case, we could table this and the applicant could submit a more detailed application.

Clerk mentions her interpretation of the section and somewhat agrees with what Jeff is saying but for 471 not for 469. That even though the section states you need written permission if it's within 10' of the abutter, if they don't receive written permission the ZBA, because it is an ordinance, can theoretically waive it.

Chair Bernie Volz so going back to motion 4, it's whether we want to waive the condition of getting permission from the abutter.

Discussion: Vice Chair Jean Meloney apologizes for this process taking so long but does state the application is confusing the way it's written which makes it very difficult to decipher which direction the Board needs to go. Chair Bernie Volz states that 5:3:3 nobody has any issues with. 5:3:1 for the septic is also straight forward and has been granted and the 5:3:1 for the retaining wall was denied. The last item is this 5:3:2 which sounds like is the variance the applicant wants to get a variance against the abutter's permission. Gregory Hime asks if this is really the intent of that request. Stephany Marchut Lavalley states she doesn't think so because there is no mention of that in the application at all. The only items contained in the application for 469 is a variance for the retaining wall and septic. Jeff Walsh explains he doesn't do this on a regular basis and it was very confusing. Clerk states at the beginning of the project or process there had been no change to the driveway. Board agreed. Clerk mentions that the driveway issue came up later in the process after the application had already been submitted. Board agreed with that statement. The plans that are now before the Board have these changes and the Board felt there is now a requirement to discuss 5:3:2 as it pertains to the driveway.

Karen Ponton suggests the applicant resubmit the application if that is in fact what he wishes the Board to do. Board likes that approach based on how the application is written there is no mention of the waiver from this section as it pertains to the driveway. Jeff Lewis states he completely agrees with what the Board is saying and they came up with a revised plan and we are proposing changes to the driveway on 469 and where there is a requirement for approval from the abutter, if they couldn't get that they could come to the ZBA. In this case where it's already been applied for and requested Jeff's argument would be that they are pulling the driveway further away from the property line as it pertains to this lot so he would request the variance which at least allows them to keep the driveway there (as shown on plan) regardless of what happens on 471. Vice Chair Jean Meloney reiterates the applicant did not ask for anything in his application for the driveway. Jeff Lewis understood but the mention of that section is in there and it's in discussion now and instead of coming back again they are asking the Board to make that determination. The Board thought a new application was required because it's very unclear what is being requested.

Pam Walsh asks if they can submit the application now (during the current hearing). Stating it's an extreme hardship for them to come back and forth stating this is not a big deal for the Board receiving a response from Vice Chair Jean Meloney this is a very big deal. Chair Bernie Volz states if the applicant came in with the site plan, they have now from the very beginning we

probably would have had this resolved months ago. The ownness can't really be on the Board. Pam Walsh states she is definitely not putting it on the Board and mentions they have many other issues going on and she understands the Board does too but it's a 4 hour round trip ride every time. If she could sit down with Aimee and walk through everything, she would be willing to do that. Pam states the applications are confusing and they just are frustrated.

Chair Bernie Volz states that perhaps what we should do is say they need to come back for a variance on the driveway because they didn't ask for that in this application so for our motion, we just say 5:3:2 is not applicable for the retaining wall and therefore no variance vote is needed. Board agrees and makes a final motion for the 469 variance application.

Motion 4: Stephany Marchut Lavallee motions the application for Variance for Section 5:3:2 Driveway/Roadway/Parking Lot Setbacks, is not applicable to the retaining wall as referenced in the application, therefore does not need a variance vote. Seconded by Vice Chair Jean Meloney. All were in favor.

III. PUBLIC HEARING – VARIANCE 471 WAUKEWAN ROAD 105-004-001 JEFF WALSH

Chair states the time as 9:10 p.m. and asks if the Board would like to discuss 471 or make a motion to continue the hearing to April. Gregory Hime motions to discuss 471 taking into consideration the applicants drive time to get to these hearings. Chair states Board will go to 9:45 p.m. and then determine what to do.

Chair mentions this application also has many variances being requested and one thing we have to go by is the previous meetings' building plans and square footage because to his knowledge, the only new information the Board received was the layout per the site plan. Chair asks for confirmation from the applicant there have been no changes to the floor plan or square footage from the previous hearing. Jeff Walsh confirms those documents have not changed.

Chair asks if there is anything the applicant or Engineer Jeff Lewis would like to state. Jeff Walsh mentions they are still looking for an increase in living space that request has not changed and they also are requesting to move the structure as well as build a retaining wall and install a new septic system all of which require a variance. Chair states the applicant is moving the entire structure and it will be more conforming as they are pulling the structure back from the lake and further away from the Martin's property. Jeff Walsh says it's 15' further back from the water and an additional 13' further away from the Martin's which now puts the structure 15' away from the property line (structure is currently 2' from the property line the applicant is moving it over 13' which allows him to meet the setback requirement of 15'). Chair states that technically speaking if you move the structure away from the Martin's and it's now at 15' you don't need a variance for the lot line 15' set back. Gregory Hime mentions he needs it on the other side because he's now in the 15' on that site. Chair mentions yes but again this now makes this property less non-conforming because they are moving the building from the lot line and moving it back from the water. Stephany Marchut Lavallee asks if they have to state that the building is being moved under a specific section. Chair mentions the original application does not cite that section because they were going to replace the structure on the existing footprint. (Karen and Stephany mention they have two separate applications one was withdrawn and the Board needs to be looking at the application filed under case number 2022-0110.B which was filed on 11/30/2021).

Chair asks if there is anyone that would like to speak in favor of the project?

Pamela Walsh, I know that the square footage has come up and I honestly appreciate all the time and effort you are putting into this I know it's a lot of work. In the spirit of making the property as valuable as possible to whomever might be there, the square footage needs to increase in order to afford a family of 3 or 4. In today's living, children need their own spaces. This is not a huge footprint. It's going up instead of going out and it's not even that height but to create a space where any family can live year-round effectively, I don't know how you guys live but we have a 13-year-old she needs her own space. When she comes over with friends, they need their own space and I don't want them in my living room and the bedroom is not always the best place. There is no other space in this house, so in order to make it functional for any family that is what we are requesting for space.

Chair asks for the numbers again for the total square footage for the existing and the proposed. Jeff Walsh states the existing is 1475 sf and the proposed is 2944 sf. Gregory Hime disagrees with that based on his calculations of the layout on the property card of the existing. Jeff Walsh states he hired an engineer and the numbers he gave the Board are accurate. (the existing and proposed floor plans were submitted to the Board with the application). Karen Ponton mentions the Board has always asked the applicant with the numbers. Chair, Greg and Tim state they did supply the numbers Tim shows the Board the sheet where the numbers are broken down. Clerk also provides her copy for review. Vice Chair Jean Meloney mentions the proposed is double the square footage. Chair states yes and the Board determined it's the external footprint not the internal to calculate the living space. (inaudible multiple Board members speaking and papers shuffling). Chair states many years ago the Board used to allow a 20% increase in the total square footage and that has been removed so now any increase on a non-conforming pre-existing structure requires a variance. Tim Nefores mentions when we first started this the square footage is the first concern we had and that was when the house was in the original location. Chair and we have another floor. Tim Nefores responds that if a full basement is allowed then yes. Chair we can't prevent the new basement of 6' and a full basement would be another 4' give or take over that. Tim Nefores mentions that is what he is referring to that the new application now has a livable full basement. Chair and the second floor is much bigger than the second floor was. The roof design was changed so they didn't go over the height. Chair states the Board may want to take them as separate motions as they did for 469.

Board reviews the application and plans again. Septic is approved for 2 bedrooms; state approval has been issued. Board discusses the floor plans and makes suggestions on how to decrease the living space. Chair asks what the height change was. Tim Nefores states it's now 32' and before it was 39'. Applicant states the new height is 32'6" and the previous plans showed a height of around 36'. Chair asks what is the height of the building existing today. Jeff Walsh says it's about 28'.

Chair states this application does need Section 5:3:3 because the leach field is within 75' of the water. Also needed is 5:11:2 and 5:11:3. Chair reads Section 5:11:2 aloud:

5:11:2 A non-conforming structure on a lot which does not comply with the regulations contained in this ordinance may be replaced by a new structure in a different location on the lot provided the ZBA determines that the new structure is not more, non-conforming than the original structure. The ZBA may set conditions and re- strictions for the replacement structure such as:

1. Sideline and frontage setbacks

2. Screening of site/structure
3. Limitations on future expansion
4. Limitations on footprint size and total square footage of structure.

Chair Bernie Volz adds that they can move it which is a good thing however, they still need 5:11:3 because they want to make the structure bigger.

Vice Chair Jean Meloney, is there is any way, and I am going to be brutally honest with you, it is a very small lot it's not even a tenth of an acre and this is being way over developed on that piece of property. This is asking too much for that little postage stamp piece of a lot, if you could reduce the size so that every time we are not turning around and saying you need a variance for this and a variance for that, when there are that many variances being asked for that just tells me this lot is too substandard to support this. That is my feeling and I just want to put that out there because it's a lot of house for a very small lot that is being extremely overdeveloped in my point of view.

Chair Bernie Volz, I would agree with that as well.

Vice Chair Jean Meloney, that might tell you where I'm headed and what you might want to do to bring it back a little bit so it's not as overdeveloped on that little postage stamp lot.

Pamela Walsh, I do appreciate what you're saying, I think that if we were to maintain the length of the house which is 50 or so feet now and go up then that would be ridiculous. What we are doing is condensing the space, we are making it more conforming and we are going up. It's not expanding it outward we are reducing the actual footprint of it.

Vice Chair Jean Meloney, why do you need that much square footage though. (someone from the public interjects no name provided for the record that this house is only two bedrooms. Vice Chair continues) we are the ZBA and we are talking with her you need to address the Chair rather than just insert your comments. I apologize I'm being a little assertive but I'm Vice Chair.

Jeff Walsh, I know you don't care about personal stuff but our intention is to move there and this is what we would need to live there. I think to make it a year-round home it's something we need.

Vice Chair Jean Meloney, I live in a 2700 sf house, I had 2 children, it's a 3-bedroom house and I have way more house than what I need.

Pamela Walsh, so does your 2700 sf house include the garage?

Vice Chair Jean Meloney, no.

Pamela Walsh, ours does. So, when you are asking for the total square footage, you need to take the garage out of it because that number is in there.

Vice Chair Jean Meloney, take the garage out.

Pamela Walsh, what we are trying to do is make it as conforming as possible. Multiple Board members state that is not conforming.

Chair states the Board should go through the criteria and if they end up denying certain things then they can rethink what they want to do. Jeff Lewis asks that if the Board thinks they are not going to act on all of these, it would be beneficial to act on the septic first. Chair states he personally does not have a problem with the septic being installed

where it is but the wall and making the house bigger is a concern to him. The septic system is in the best possible location. Board agrees. Gregory Hime moves to address the septic variance only at this time. Vice Chair Jean Meloney asks for the applicant to confirm there is no septic there currently? Applicant states this is a replacement there was one there but it was composting toilet. The septic will need 2 variances, one is for the 15' setback from the property line the other is for the leach field being within 75' of the shoreline.

Motion: Gregory Hime motions the Variance for Section 5:3:1 Structure Setback, which requires a 15' setback of a septic, and the Variance for Section 5:3:3, which requires a 75' setback from normal high-water level of Lake Waukewan, to allow construction of the septic system per the approved design by the NH DES be granted. Seconded by Karen Ponton.

Criteria 1 and 2 – Board agrees that the same applies as discussed for 469. Adding a septic is in the public interest. The location on the lot based on the applicant's testimony is the best location for installation according to his septic designer. Chair states it's not contrary and is in the spirit of the ordinance. Board agrees.

Criteria 3 A septic system is needed and this appears to be the best location. Board agrees.

Criteria 4 Board did not think this would diminish surrounding property values.

Criteria 5 Chair believes this would result in unnecessary hardship to the applicant if they did not have a septic system. Board agrees.

Chair requests a vote on the motion. 4 members in favor of granting the motion (Volz, Ponton, Marchut Lavallee and Hime) Vice Chair Jean Meloney abstained from the vote. Motion passes.

Jeff Lewis asks to address the Board. Chair allows.

Jeff Lewis, in order to save everybody here some time we can see where this is headed. In speaking with the applicant, rather than continue to deliberate this and possibly push it to another meeting the applicant would like to withdraw the rest of the variance requests and go back to see if they can come up with something that is more palatable to everyone. Withdraw without prejudice if you'll accept Jeff's verbal acceptance of that.

Jeff Walsh, yes.

The Board accepts the applicant's verbal withdrawal of remainder of the application.

No motion is needed for the applicant to withdraw the remainder of the application. The written record by way of approved minutes and the Notice of Decision will reflect that on application 2022-0110.B, the Board granted the Variance(s) requested for the **Septic installation ONLY, pertaining to Sections 5:3:1 and 5:3:3**. The remainder of the application pertaining to the retaining wall, the relocation of the non-conforming structure and the increase in square footage to the non-conforming structure has been withdrawn by the applicant. If the applicant wishes to submit a new application for variance, all requirements pertaining to new application submission

will apply. (Fees for application processing, notification to abutters, public notice and notice to newspaper).

IV. OTHER

Ambrose Bros, Inc. V. Town of Center Harbor Zoning Board of Adjustment – Chair states the Board should have received the court ruling provided by Attorney Spector Morgan and adds the applicant can appeal the court's decision.

ZBA Fees – The Board will discuss potentially increasing the application fees at their next meeting.

V. ADJOURNMENT

Motion to adjourn by Chair Bernie Volz Seconded by Stephany Marchut Lavallee. All were in favor. Meeting adjourned at 9:54 p.m. Next meeting tentatively scheduled for April 11th.

Submitted by Aimee Manfredi-Sanschagrin