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Washington NH - ZBA
Public Hearing Transcript
January 31, 2024

Members Present

Deb DeFosse - Executive Administrator
Gary Carney - Board Member
Joe Tapp - Board Member
Linda Marshall - Board Member
Mark Florence - Chair

Members Absent

Andrew Hatch - Board Member

Visitors

Arin Mills - Conservation Commission
Jed Scharwtz - Conservation Commission
Nan Schwartz - Conservation Commission
Timothy Kendrick - Applicant



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Summary

Introduction and Attendees

Mark Florence, the Chair of the Zoning Board of Adjustment, welcomed attendees to the January session and expressed gratitude for their presence. He issued an apology in advance for any issues that might arise due to his new hearing aids, which he was still adjusting to, and mentioned the possibility of removing them during the meeting if necessary.

Florence then proceeded to acknowledge the individuals present at the meeting, including Deb Defosse, the executive administrator, Arin Mills, Nan Schwartz, and Jed Schwartz from the Conservation Commission, the applicant Mr. Kendrick, and board members Linda Marshall, Gary Carney, and Joe Tapp. He noted the absence of one board member, which led to an important advisory for Mr. Kendrick regarding the voting process.

Considering the reduced number of board members, Florence informed Mr. Kendrick of his right to postpone the hearing until the board was fully staffed, as a three-member affirmative vote was required to pass a motion. He highlighted that a tie would result in a motion not being approved. Despite this, Mr. Kendrick chose to proceed with the hearing.

Approval of Minutes

Before commencing the hearing, Mark Florence, the Chair, addressed a procedural matter requiring the board's attention. He moved to approve the minutes from the October 25, 2023 meeting, which were available on the town's website. Board Member Gary Carney seconded the motion.

Mark Florence called for a vote from the board members. The members collectively voiced their approval with a unanimous "Aye." Consequently, the Chair confirmed that the motion had passed, resulting in the official approval of the previous month's minutes.

Kendrick Public Hearing

Mark Florence, the Chair, initiated a public hearing for an application and explained the two-phase process: the public hearing for comments and the deliberative session where the board would discuss and decide on the variance request without further input from the applicant. Timothy Kendrick, the applicant, acknowledged the process. Florence then raised a point of clarification regarding the wetlands setback variances requested by Kendrick, suggesting they be consolidated for simplicity. Kendrick expressed some confusion, noting that he had been informed of two separate variances by the Select Board and had only included the smaller variance in his application.

Florence also brought up the issue of side setbacks, questioning whether they were regulated by Land Use Ordinance (LUO) 202 or LUO 403.1 due to an ambiguity in the LUC permit. Kendrick and Florence discussed whether Kendrick's proposed building was an expansion or a replacement, with Florence suggesting that Kendrick's plan seemed to require variances for the side setbacks. Board Member Gary Carney and Florence discussed the correct variance for the side setbacks, considering the existing building would be demolished, leaving a vacant lot.

During the site visit, Florence and Carney found discrepancies in the measurements provided by Kendrick, which led to a discussion about the accuracy of the property boundaries and the need for a survey. Florence proposed three variances for the board to consider: approximately 20 feet from the wetlands, 21 feet and six inches from the southern boundary, and 20 feet and six inches from the northern boundary. Kendrick was open to adjusting the size of his proposed building based on the accurate measurements.

Conservation Commission member Arin Mills emphasized the importance of wetlands buffers and the potential environmental impact of reduced buffers on Highland Lake and surrounding

ecosystems. She also noted that Kendrick would require a shoreland permit due to the proximity of his project to Highland Lake. Florence acknowledged the valuable insights but reminded everyone that providing advice was outside the ZBA's mandate.

Ultimately, Kendrick decided to voluntarily withdraw his application to consider his options, as he did not have a pressing need for a 25 by 25-foot building and was considering a survey of the property. Florence closed the public hearing at 7:49 pm, with the board unanimously agreeing.

Transcript

Introduction and Attendees

7:00 pm **Florence** Welcome to the January session of the Zoning Board of Adjustment. I appreciate everyone taking the time to join us tonight.

Before we proceed, I'd like to offer a preemptive apology. I've recently acquired new hearing aids to address my well-known hearing difficulties. However, having only had them for a day, I find my own voice echoing loudly in my head, and I'm still uncertain about their effectiveness in helping me hear others. Therefore, there's a possibility that I might remove them during the meeting. Please forgive me if that happens.

Now, let's acknowledge those present this evening. We have Deb Defosse, our executive administrator, and we're joined by Arin Mills, Nan Schwartz, and Jed Schwartz, by invitation from the Conservation Commission. We also have Mr. Kendrick, the applicant for tonight's hearing, alongside board members Linda Marshall, Gary Carney, and Joe Tapp. I, Mark Florence, am serving as the chair. Unfortunately, one of our members couldn't make it tonight.

This brings me to an important point for Mr. Kendrick. With only four board members present, I want to remind you of your rights before we initiate the public hearing. You are entitled to request a postponement until the board has its full five-member composition, as it requires the affirmative vote of three members to pass a motion. Should a motion result in a two-to-two tie, it would not be approved. With this in mind, Mr. Kendrick, would you prefer to proceed with the hearing or wait for a full board?

7:01 pm **Kendrick** We should proceed.

Approval of Minutes

7:01 pm **Florence** So before we open the hearing, just one procedural thing to get out of the way, and that's for us, the board, to approve last month's minutes. So I'll make the motion. I'll make the motion that we approve the October 25 2023 minutes as published on the town website. Do I have a second?

7:01 pm **Carney** Seconded.

7:01 pm **Florence** All those in favor?

7:02 pm **All** Aye.

7:02 pm **Florence** All in favor. So the motion passes, and the minutes are approved.

Kendrick Public Hearing

7:02 pm **Florence** I would like to formally commence the public hearing for your application. For those who may be unfamiliar with the process, allow me to provide a brief overview.

The hearing will proceed in two distinct phases. The initial phase is the public hearing itself, during which we will invite comments from all

interested parties, with a particular emphasis on your input as the applicant. We encourage participation from both the public and board members, who may have questions or statements to contribute. This session will continue until everyone who wishes to speak has had the opportunity to do so, ensuring that you, above all, have ample time to present your case comprehensively.

Following the conclusion of the public hearing, we will move into the deliberative session. At this juncture, the board will engage in a discussion to reach a decision on whether to approve, deny, or take other actions regarding the variance you have requested. It is important to note that while this session is open to the public, and we certainly encourage your attendance, you will not be permitted to address the board during this time. Therefore, it is essential that you present all your arguments and information during the public hearing.

By attending the deliberative session, you will be able to hear the board's dialogue and considerations pertaining to your application. Once the board has concluded its deliberation, you will be promptly informed of the decision regarding the variances you have sought.

7:03 pm **Kendrick**

Understood.

7:03 pm **Florence**

Before we begin our discussion, I would like to take a moment to clarify a few points, which I believe will enable you to present your case more effectively. It is important for me to understand the specific variances you are requesting, particularly those related to the wetlands setback.

According to your application, you have requested three variances in this area. However, upon closer examination, it appears that one of these requests includes two separate measurements, which could suggest that there are either two or three variances, depending on how they are counted. My intention is to suggest to the board that we consider consolidating these requests into a single variance for the sake of simplicity and clarity.

Before we proceed, I would like to invite opinions from all interested parties on this matter. I am especially interested in your views regarding the wetland setback that is nearest to the wetlands, as this is the most critical aspect to consider. Your input is valuable, and I want to ensure that everyone has the opportunity to express their thoughts before we move forward.

7:04 pm **Kendrick**

Right.

7:04 pm **Florence**

I believe you have already accounted for a 21-foot variance. Additionally, there is a separate variance of 47 feet under consideration. If we decide to approve the 20-foot variance, it logically follows that we would also approve the 47-foot variance. Conversely, if we choose to deny the 20-foot variance, then there would be no point in considering the 47-foot variance, as it would become moot.

Given these circumstances, it seems most prudent for all parties involved to simplify the process. I suggest we consolidate our efforts and focus on evaluating a single wetlands variance. This approach would likely serve everyone's best interests and make the decision-making process more efficient.

7:04 pm **Kendrick**

Certainly, I experienced some confusion regarding the matter. The Select Board informed me that there were two separate variances in place, with one being on each side of the property. Initially, I was under the impression that only the smaller of the two variances would be relevant.

Consequently, when I completed the application, I only included the measurement for the smallest variance.

7:05 pm **Florence** Moving forward, I would like to address the issue of the side setbacks. Although this topic was not initially requested, it is important to clarify a particular point of contention. We need to determine whether the side setbacks are regulated by Land Use Ordinance (LUO) 202 or LUO 403.1.

Upon reviewing the LUC permit, I noticed an indication of uncertainty, which seems to be shared by the select board. Specifically, there is a note questioning whether the required setback from the site is 25 feet. This measurement is consistent with the stipulations of LUO 403.1. However, if LUO 202 is the governing ordinance, then a 30-foot setback would be applicable.

It is crucial that we resolve this ambiguity to ensure compliance with the correct land use ordinance and to proceed with our planning accordingly.

7:06 pm **Kendrick** Well, it says for existing buildings.

7:06 pm **Florence** I believe we should discuss LUO 403, which concerns the 25-foot setback for nonconforming buildings and structures. Nan from the planning board can assist with interpretation.

7:07 pm **Kendrick** LUO 202 at the bottom it has a note: Also see section 404 for setbacks if your structure is existing. But I have an existing structure I was going to tear down.

7:07 pm **Florence** Does it say 404 or 403? Because there isn't a 404.

7:07 pm **Ms Schwartz** I think there's a typo, it should read 403.

7:07 pm **Florence** I would like to revisit section 403. This section is relevant to your situation as it is titled "Nonconforming Buildings and Structures." According to the text, any building or structure that does not conform to current regulations may continue to be used indefinitely. Furthermore, such buildings or structures may undergo alterations, expansions, significant improvements, restorations, reconstructions, or replacements, albeit with certain restrictions.

From what I understand, the particular aspect you are referring to pertains to the replacement of a nonconforming building or structure.

7:07 pm **Kendrick** Yeah. There's a small building there.

7:07 pm **Florence** You're not expanding the building that you've got. You're replacing the building.

7:07 pm **Kendrick** No, there's a small building and I was going to make a bigger building.

7:08 pm **Florence** It's not in the same spot. It's not in the same footprint. It's not an expansion. It's not an alteration. It's a replacement.

7:08 pm **Ms Schwartz** It's a new building.

7:08 pm **Florence** Certainly. According to section 403.1, it is permissible for a nonconforming building to undergo alterations or expansions as long as these changes do not extend within 25 feet of the side line of the lot. I would like to clarify that I am not attempting to impose any interpretation; rather, I am seeking to comprehend the regulation.

From my interpretation of the regulation, it appears that section 403.1 may not be relevant in this particular instance. The reason being that the situation at hand involves a replacement of the structure, which is distinct from an alteration or expansion as defined by the code.

- 7:08 pm **Ms Schwartz** Mr Kendrick is not expanding the existing building; instead, he is constructing it at an entirely new location.
- 7:08 pm **Florence** To clarify, the required side setbacks must be 30 feet, not 25 feet - is that correct? This is my understanding of the regulations. According to provision 403.1, a 35-foot setback is mandated between buildings, and this appears to be the sole instance where such a requirement is specified. Therefore, it seems that provision 202 is the relevant one for our situation, in which case only the side setbacks are relevant, not the distance between Mr. Kendrick's proposed building and the existing building owned by Bruce Carpenter.
- 7:09 pm **Kendrick** The section titled "Abandoned Discontinuance and Destruction" in LUO 403.2 stipulates that if a building structure requires replacement due to damage, the new structure must be erected in the exact location and possess the same dimensions as the previous one. However, there is an exception to this rule: if altering the location or dimensions of the replacement structure would result in better compliance with regulations, such changes are permissible.
- 7:10 pm **Florence** Yes, but I don't think your new proposal is more conforming than the existing building.
- 7:10 pm **Kendrick** The proposed adjustment would enhance conformity, as it would comply with the 25-foot requirement. Currently, the structure does not fulfill the 30-foot standard, as it is not situated 30 feet away as required. By relocating it to the center of the lot, the structure would adhere to the regulations more closely, maintaining a distance of 25 feet from each side.
- 7:10 pm **Florence** The proposed development is more conforming in one particular aspect. However, it requires a variance for the wetland setback, which diminishes its conformity. Additionally, there may be a need for variances regarding the side setbacks. I want to clarify that I am not issuing directives here; rather, I am discussing the matter for consideration. Ultimately, it is the responsibility of the board to determine the validity of my points.
- 7:10 pm **Kendrick** The LUO does say "change of location".
- 7:11 pm **Florence** "The replacement buildings must be in the same location and the same dimensions. Unless change of location or dimensions would make the replacement more conforming."
- 7:11 pm **Tapp** But Mr Kendrick's proposal is also making it bigger.
- 7:11 pm **Florence** The proposed changes will result in an increase in both impervious and building coverage, exceeding previous levels. Additionally, the revised plan calls for reduced setbacks, making them more restrictive than in the past. The sole aspect of the plan that is less conforming is the reduced distance between your building and Bruce Carpenter's property. However, I believe this concern may be unfounded, as LUO 202 does not stipulate a mandatory distance between buildings. I would like to open the floor to the board, the planning board, or any other attendees for their input on this matter.
- 7:12 pm **Carney** The variance in question is not for 25 feet; it is, in fact, for 30 feet. This is due to the fact that the existing building will be entirely removed. It is not a matter of simply relocating the structure; the building will be demolished. Regardless of the method of destruction - whether it is burned down or dismantled and disposed of in a dumpster - the end result is the same: the building will no longer exist.

Consequently, we will be left with a completely vacant lot, devoid of any foundation or remnants of the previous structure. Based on these considerations, I assert that the correct variance should be recognized as 30 feet.

7:12 pm **Florence** I'm certainly not saying this with prejudice in the sense that it's less likely for us to grant that because it's 30ft rather than 25ft. The only thing I'm focused on right now is what are the right variances that we need to look at?

7:13 pm **Kendrick** The condition of the building is currently poor, indicating that it is slated for demolition. According to the regulations, any building that has been abandoned, discontinued, or partially or completely destroyed can be renovated and returned to operation, provided that the restoration takes place within a two-year period. Furthermore, any replacement building or structure must be erected on the original site and match the previous dimensions, unless there is a stipulation for a change of location. The rules clearly state that these conditions apply regardless of the reason for the building's abandonment, discontinuance, or destruction.

7:13 pm **Florence** I believe that interpreting the text in the most generous manner would simply permit reconstruction efforts. However, it seems to me that what you actually require are variances for the side setbacks. This is due to your need for a specific number of feet, whereas a 30-foot distance is mandated by the Land Use Ordinance (LUO) 202, which is currently applicable.

Furthermore, the proximity of your property to Bruce Carpenter's building is no longer relevant in this context. LUO 202 does not regulate the spacing between buildings. Instead, this matter falls under the jurisdiction of LUO 403.1.

7:14 pm **Ms Schwartz** Did Mr Carpenter get a variance for his building?

7:14 pm **Florence** Yes, he did.

7:14 pm **Kendrick** He was not required to obtain a variance for the 35-foot height restriction, as there were no buildings in the vicinity that would have been affected or posed a concern.

7:15 pm **Florence** It appears we have reached a consensus, correct? It seems there are no objections from the board or anyone else present. I would like to distribute some documents, if that's acceptable. I believe I have prepared sufficient copies for everyone.

Mr Carney and I recently visited your property to conduct some measurements. During our visit, we observed some discrepancies between what we saw and the details that were previously recorded. I would like to discuss our findings with the group.

May I proceed with handing out these copies?

- 7:17 pm **Carney** Despite the survey's findings, the reference lines provided for our measurements were incorrect. The survey indicates that property boundaries should be clearly delineated; however, the only markers we could use to determine your property limits were the lines you established. These were the guidelines that both Mr. Florence and I relied upon for our assessment.
- 7:18 pm **Kendrick** I did not take measurements between the pins; instead, I relied on their positions as a guide. They could be in the wrong spot.
- 7:18 pm **Carney** I am working under the assumption that when you use a string to measure, you extend it between two fixed points. The measurement is taken from one end of the string to the other. Even if the string is not perfectly taut and sags slightly, the measurement should remain consistent. Being off by a small margin, such as a foot, isn't a significant issue in this context. However, an eight-foot discrepancy, such as the one from 67 to 75 feet, is substantial and cannot be overlooked.
- If there is a professionally surveyed plan available that provides precise locations and dimensions, we can certainly use that as our reference point. Unfortunately, without such a plan, we are left to rely on our own measurements, which, as noted, have resulted in a considerable error.
- 7:19 pm **Kendrick** That's weird, because the pin over here on this side has a cap on it. There's a pin in the ground with a cap identified by the surveyor.
- 7:19 pm **(Crosstalk)** Okay.
- 7:19 pm **Florence** We conducted multiple measurements and found that the results are consistent. Upon examination, you will notice that on this map, the north direction is indicated to the right. Starting from the north, we measured a distance of 23 feet. Moving to the south border, the same measurement applies to the rectangle's length. Additionally, we have two measurements of 22 feet each, extending towards the north border. When these distances are combined, they total 67 feet.
- 7:19 pm **Kendrick** I'm just thinking that the pin is in the wrong spot. My pin might be in the middle of Bruce Carpenter's driveway.
- 7:19 pm **Florence** We need to consider our next steps, assuming our measurements are accurate for now. Based on our measurements, it appears that you would need to maintain a setback of 21 feet and 6 inches from your southern boundary, despite the standard requirement being 30 feet. Similarly, a setback of 20 feet and 6 inches from the northern boundary is necessary, where again, the requirement is 30 feet.
- To achieve the desired dimensions of a 25-foot by 25-foot area, the space would need to be inflated by 18 inches. However, extending the area by 18 inches closer to the eastern boundary is not advisable, as it would bring the structure nearer to the road and likely necessitate a variance for the front setback.
- Therefore, it would be more prudent to extend the area by 3 feet towards the west, in the direction of the wetlands, to comply with the required setbacks and avoid encroaching on the front setback limit.
- 7:21 pm **Kendrick** I didn't catch it. Why would I have to go 3ft back?
- 7:21 pm **Florence** To achieve the desired dimensions of 25 by 25 feet, the rectangle must be expanded by 18 inches. However, if this expansion extends 18 inches eastward, towards the street, it will necessitate a front setback. It is important to note that we are unable to design this for you. I would like to emphasize that adjustments will be necessary to accommodate these requirements.

7:21 pm **Kendrick** I know we measured. My wife and I measured that because we tried to get it square.

7:21 pm **Florence** Upon observation, it became apparent to us that the extensive snow cover obscured our ability to discern the precise locations of the wetlands and bodies of water. This limitation significantly hindered our capacity to make accurate assessments.

Furthermore, our analysis suggests that the central rectangle, as currently delineated, does not reflect an accurate representation of the area in question. Given this discrepancy, we are faced with a challenge in accurately determining the necessary setback distance required from the wetlands. It is our concern that without a clear and precise identification of the wetland boundaries, any measurements of setback distances may not meet the required standards for accuracy.

7:22 pm **Kendrick** I could change the permit to 22 x 22 feet.

7:22 pm **Florence** Regarding the side setbacks, we are able to accommodate the required distances. Currently, we understand that there is a need for a setback of 21 feet and six inches from one boundary, and 20 feet and six inches from the opposite boundary. We are confident that we can work within these parameters.

However, we are unclear about your preferences concerning the proximity to the wetlands. To proceed effectively, we would need to know precisely how close you intend to build in relation to that area.

7:22 pm **Kendrick** My primary concern is the precise location of this pin. It's crucial that it doesn't end up in the incorrect spot, especially since we still need to address the side. To elaborate, if the measurement is 22 feet, we are looking at a total of 67 feet. Under these circumstances, I wouldn't require a variance on the side that borders Bruce Carpenter's property.

However, if I were to have the property surveyed and it turns out that my boundary pin is situated in the middle of his driveway, then I would not need to seek a variance for that particular side.

7:23 pm **Florence** If it was off by 8ft: that's just speculation.

7:23 pm **Kendrick** My information from the planning board. They say the lot is 75ft wide.

7:23 pm **Ms Schwarz** That's not from the planning board, it's from our surveyor.

7:23 pm **(Crosstalk)**

7:24 pm **Kendrick** My concern centers on the fact that the pin in question is not the same as before; it's a different one. Do you understand my point? Moreover, its location is directly adjacent to the road. Considering that loggers have been working in the area, there's a possibility that one of them might have dismissed any damage by simply stating, "Oh well, we ran over it."

7:25 pm **Ms Schwartz** So did you have your lot surveyed?

7:25 pm **Kendrick** No.

7:25 pm **Mr Schwartz** Did a wetland scientist indicate where the wetland boundary is?

7:25 pm **Kendrick** I just measured to the edge of the water.

7:25 pm **Tapp** Certainly, the feature in question is merely a stream. However, it is worth noting that one side of the stream is dry, while the other side is entirely devoid of water. This observation leads me to my next inquiry. Given that the stream tends to dry up during the summer months, I am curious to know whether it still qualifies as wetlands despite these conditions.

7:25 pm **(Crosstalk)**

7:26 pm **Mills** A stream and a lake both fall under the category of jurisdictional wetlands. This category also includes other types of wetlands such as clustered wetlands and forested wetlands. Each of these environments is recognized as a jurisdictional wetland.

When considering a stream as a jurisdictional wetland, it's important to note that it does not share the same features as a clustered wetland. Clustered wetlands typically contain shrubs or soft vegetation. In contrast, streams are characterized by the presence of rocks and flowing water.

Furthermore, streams can be classified based on their flow patterns. A perennial stream is one that flows continuously throughout the year. On the other hand, an intermittent stream displays different characteristics, as it flows only during certain seasons. The flow patterns of these streams are influenced by various factors, including how they receive water.

7:26 pm **(Crosstalk)**

7:26 pm **Mills** It could be intermittent, but still jurisdictional wetlands.

7:27 pm **Florence** I believe it would be beneficial to seek the board's perspective on this matter. In my opinion, the board might be amenable to your proposal, which includes an approximate 20-foot setback from the wetlands. Such a consideration seems like something we could potentially agree upon. I'm interested to hear the thoughts of others on this topic. What do you all think?

7:27 pm **Carney** If it's necessary for you to move back an additional 18 inches, and moving towards Valley Road is not an option, then you will need to adjust by pushing back the required 18 inches. As a result, the current measurement of 21 will likely decrease to approximately 20.

7:27 pm **(Crosstalk)**

7:28 pm **Florence** I would like to put forward a suggestion for the board's consideration. My proposal involves three distinct variances. Firstly, I propose an approximate setback of 20 feet from the wetlands. Although I am not presenting this in a formal manner, I trust that we all grasp the concept at hand.

In addition to the wetland setback, I recommend a setback of 21 feet and six inches from the southern boundary of the property. Lastly, I propose a setback of 20 feet and six inches from the northern boundary. These are the three variances I believe the board should deliberate on.

7:28 pm **Kendrick** Then how big would the building be?

7:28 pm **Florence** 25 by 25 feet.

7:28 pm **Florence** Before we proceed further, I would like to inquire if the board finds this proposal reasonable.

7:29 pm **All** Agreed.

7:29 pm **Florence** Mr. Kendrick, does the proposal seem reasonable to you? I want to reiterate that we have the option to pause the project for now. If you prefer, we can wait until the snow has cleared before proceeding. Once conditions improve, we can conduct a thorough survey, obtain precise measurements, restake the area, and then take into account the exact figures. This is an option available to you, should you choose to take it.

7:29 pm **Kendrick** Like I was saying, I just picked the size. It's not that important.

7:29 pm **Florence** In other words, you would build 22 x 22 feet if you could?

7:29 pm **Kendrick** The size of the structure is not a significant concern for us. The reason being, we have already successfully installed a quad in the existing small structure. Our aim is simply to expand on that by incorporating additional units. Therefore, we are in search of a structure that is larger than the current one. The choice of a structure with dimensions of 25 was arbitrary, based solely on the fact that we thought we had 25 feet clearance on each side and the lot was 75 feet wide.

7:29 pm **Florence** Ms DeFosse, what does that mean to the LUC permit application?

7:30 pm **DeFosse** Mr Kendrick would have to submit a brand new one to the Select Board.

7:30 pm **Florence** Can we proceed to deliberate on these variances, or do we need to wait until the new application is rejected?

7:30 pm **DeFosse** No, we could not proceed. The ZBA must wait until and new proposal is evaluated by the Select Board.

7:30 pm **Ms Schwartz** Could Mr Kendrick amend the existing proposal?

7:30 pm **DeFosse** No, the Select Board will want a completely new building permit application.

7:30 pm **Kendrick** And that would be for a 22 x 22 structure.

7:30 pm **Florence** You have the option to calculate a 22 by 22-foot area. However, should you choose not to question our measurements, it will be necessary for you to adhere to specific setback requirements. These include ensuring there is a 23-foot setback from the southern boundary and a 22-foot setback from the northern boundary. Additionally, you must maintain a 21-foot setback from the wetlands.

7:31 pm **DeFosse** I have a concern that Mr Kendrick might think that once he does that, the ZBA will approve those variances.

7:31 pm **Kendrick** No, they said they were going to consider them.

7:31 pm **DeFosse** Certainly. I would like to clarify something important. It is essential that he is fully aware that introducing a new measurement does not automatically grant him permission approval. It is crucial that this point is understood to avoid any confusion or miscommunication in the future.

7:31 pm **Florence** Certainly, Ms. DeFosse, you've raised a valid point. To proceed as you've suggested, it appears that requesting three variances would be necessary.

I believe it would be beneficial to have the Conservation Commission present during this discussion. Their input on the wetlands matter could provide valuable insights and potentially influence the direction we take moving forward.

7:32 pm **Mills** Certainly. I have conducted a desktop review, focusing specifically on the wetlands and the rationale behind the established setbacks. The primary reasons for these setbacks are to manage stormwater on the property and to protect our wetlands. These buffers are crucial because they prevent the natural infiltration process from being compromised by the proximity of structures, which increases the amount of impervious surface and the subsequent runoff that occurs before it can be naturally filtered or absorbed on its way to the wetlands.

In this particular case, we are dealing with a stream - either an intermittent or perennial one. I have prepared a written statement that articulates this more clearly: Wetlands buffers serve to shield soil

surfaces from the direct impact of rain, slow down the speed of runoff, maintain the soil's ability to absorb water, and keep soil particles in place. This is the fundamental intent of having a setback.

The concern here is that a reduced buffer does not provide adequate space for stormwater treatment through the natural vegetation buffer before it reaches the stream. Therefore, alternative methods should be considered to enhance infiltration, such as implementing rain gardens or similar features, especially when construction approaches close to wetland areas.

Upon review, it is evident that the proposed variance would significantly reduce the distance to the wetlands, which is not ideal. It is important to consider the broader implications, such as the stream's flow through the conservation land known as Wild Acres, and its eventual contribution to Highland Lake. This stream has a substantial watershed, and any changes to the buffer could affect the water quality downstream.

Moreover, the stream flows adjacent to the property in question, passes under a road, and discharges into Highland Lake. Given the importance of Highland Lake as a water resource and the presence of peatlands identified in the area, it is crucial to understand the potential impacts on these sensitive ecosystems.

I have maps available that illustrate these points, and I can provide them digitally for better clarity. My desktop review indicates that the stream's watershed encompasses a significant area, including the conservation land, and any alterations to the buffer zone should be carefully considered in light of the potential consequences for Highland Lake and the surrounding wetlands.

Peatlands represent a unique subset of wetlands, characterized by their sensitivity and the presence of distinctive species such as sphagnum mosses and pitcher plants. These ecosystems are considered priority resource areas due to their ecological value, and as such, they are highly regarded when it comes to environmental conservation.

When seeking a wetland permit, particularly for activities in peatlands, one must recognize that these areas are given special attention. The introduction of additional stormwater, along with its potential load of nutrients and sediment, poses a significant threat to these delicate habitats. The influx of contaminants can disrupt the natural community of the peatland, which is already very sensitive to such disturbances.

In the context of the application in question, it is important to consider the implications of directing water into this sensitive natural community, which ultimately affects the lake as well. It has been noted that the application claims an exemption from the Shoreland Water Quality Protection Act, suggesting that the project is not within the jurisdiction of this regulation. However, the potential environmental impact on the peatlands and the lake remains a concern that warrants careful consideration.

7:36 pm **Kendrick**

The state sent me a PBN to fill out. Do I have that name correctly?

7:36 pm **Mills**

You will require a permit for your construction project, as the select board will inform you that all necessary permits must be obtained before you begin building. Specifically, if your project falls within the category of a PBN, you will still need to go through a permitting process with the Department of Environmental Services (DES), given the proximity of your project to Highland Lake.

The reason for this is that your construction site is located within 250 feet of the reference line of the shoreland, which is a regulated area. In preparation for your project, I have taken the initiative to assess the site myself. By utilizing the two-foot contour maps, I was able to determine the elevation of the lake and identify the edge of the lake, which can be challenging due to the marshy terrain surrounding it. Based on these contours and the elevation data, I have measured the distance from the lake to your proposed construction site. From this assessment, it appears that you will indeed require a shoreland permit to proceed with your project.

7:37 pm **DeFosse** The Select Board did suggest for Mr Kendrick to reach out to DES about that, but we never heard back whether yes or no.

7:37 pm **(Crosstalk)**

7:37 pm **Mills** Let's discuss the surface elevation of Highland Lake without delving too deeply into technical details. If you research the elevation, you'll find that it stands at 1,294.52 feet. This measurement serves as a reference point, marking the boundary where the lake's surface ends and the land begins, as indicated by the topographic line.

Now, if you take a measurement from this topographic line and extend it 250 feet inland, you'll find yourself within the bounds of your property. Moreover, this distance places you within the jurisdiction of the Shoreland Water Quality Protection Act, which means any activities within this 250-foot range are subject to regulations aimed at preserving the water quality of the lake.

7:38 pm **(Crosstalk)**

7:38 pm **Mills** Referring to the reference line you mentioned, it appears that you can locate the light topographical contours by using GRANIT. However, the main point to take away from this discussion is the necessity of obtaining a shoreland permit. It seems that this permit is required, and as Ms DeFosse mentioned, it is imperative to secure all necessary permits before you can be issued a building permit.

Therefore, it is crucial to be cognizant of the need for a shoreland permit for your project. Additionally, you will need to collaborate with the Department of Environmental Services (DES) as they have jurisdiction and authority over this matter. Ensure that you complete the required processes with DES to comply with the regulations.

7:38 pm **(Crosstalk)** *Conservation Commission members and Ms DeFosse discuss the process and timing for obtaining DES permits, Select Board and ultimately ZBA approval.*

7:41 pm **Florence** The information presented here is indeed valuable and insightful. However, it's important to note that it falls somewhat outside the typical scope of responsibilities handled by the ZBA. Nevertheless, it's beneficial that we've laid all the details out for discussion, and I anticipate that there will be further points to consider as we continue.

Additionally, there's another matter I'd like to address before we delve into evaluating the potential courses of action available to you. During our recent site inspection, we encountered a neighboring property owner - an abutter - who had not submitted written correspondence nor attended the meeting to voice their concerns. While I won't directly quote what was communicated, I think it's pertinent to mention that the abutter did bring certain issues to our attention.

7:42 pm



7:42 pm **Florence**

This photo appears to show some makeshift toilet facilities. Going forward, the ZBA would make removal and cleanup a condition of any variance approval.

7:43 pm **Florence**

Viewing the situation from the board's perspective, I believe there are three viable actions you could consider taking immediately.

Firstly, you have the option to voluntarily withdraw your application during this meeting. If you decide to resubmit with a revised plan of 22 feet by 22 feet, as Ms DeFosse has highlighted, you will still require variances. Even with the Department of Environmental Services (DES) permits, the Select Board is likely to refer the application back to us due to the need for these variances. However, the resubmission would be assessed based on the new dimensions of 22 feet by 22 feet.

Secondly, you could choose to construct a 25-foot by 25-foot structure. If you opt for this, we will continue with the current meeting and evaluate the necessary variances accordingly.

Lastly, the third option is a variation of the first two. You could re-evaluate the measurements, stating that instead of the current 67 feet, it may actually be 75 feet. You would then remeasure and restake the area, and we would proceed based on the accurate location of the real property pins. Both the first and third options would require you to voluntarily withdraw your request from us, which would result in the termination of this meeting. On the other hand, if you decide to proceed with the 25-foot by 25-foot proposal, we will move forward and cast a vote on your variances.

- 7:44 pm **Kendrick** Well, there is one other option. I could expand the existing building, keeping 50 feet from the wetlands, and I would not need any variances at all.
- 7:45 pm **(Crosstalk)** *Conservation Commission and ZBA members point out that if the foot print is expanded, it must comply with the setback regulations or otherwise variances must be obtained.*
- 7:46 pm **Florence** I believe there is a specific situation in which obtaining variances would be unnecessary. If you were to construct a tower on that particular ten-by-ten area, as long as the structure did not exceed 35 feet in height, you would not be required to inform anyone about it. This appears to be the sole instance where building can proceed without the need for any variances.
- 7:46 pm **Mr Schwartz** I would like to offer a suggestion regarding the Conservation Commission's perspective on the proposed variance. It is generally viewed more favorably if measures are taken to increase the distance from the wetland. The further the development is from the wetland, the better it is perceived in terms of environmental impact. To my knowledge, the Commission has not previously endorsed a variance that encroaches on wetland areas. Therefore, any steps you can take to minimize the impact on the wetland will likely improve the Commission's reception of your variance request, even if that means moving the structure closer to the road and requiring a front setback variance.
- 7:47 pm **Florence** Thank you for your input, Mr. Schwartz; your advice is greatly appreciated. However, I'd like to remind everyone that the Zoning Board of Adjustment (ZBA) has a specific mandate and, unfortunately, providing advice falls outside of our purview.
- Mr. Kendrick, I encourage you to engage with the Conservation Commission at your convenience. Their guidance can be quite beneficial, as you've seen. Additionally, Ms. DeFosse is known for her exceptional assistance and could be a valuable resource for you.
- With that in mind, could you share with us your thoughts on the next steps? How would you like to proceed from here?
- 7:47 pm **Kendrick** You previously mentioned that I have the option to voluntarily withdraw it, so I that's what I'll do. I will take some time to deliberate on what I would prefer in this situation.
- The reason for my hesitation is that I don't have a pressing need for a building that measures 25 by 25 feet. Initially, it appeared to be a suitable addition because there are two other buildings of comparable size in the vicinity. From my perspective, a structure of this dimension would complement the existing character of the area and would be appropriate for the dimensions of the side lot.
- 7:48 pm **Florence** Understood, your intention is clear and will be duly noted in the minutes. There's no need for a vote in this instance, as the action is based solely on your statement. Consequently, the minutes will serve as the official record of your intent.
- Typically, following our meetings, we distribute a notice of decision to document the outcomes. However, as no formal decision has been reached today, such a notice will not be issued. Rest assured, the minutes from today's meeting will be made available within five days.
- Before we conclude, does anyone else have any comments or matters to raise? If not, I will proceed to close this public session.

- 7:48 pm **Mills** Conducting a survey of the property can be incredibly beneficial, particularly when considering the wetlands within the area. It is important to ascertain the exact location of specific features, such as streams and jurisdictional wetlands. Having a clearly defined boundary line is crucial for understanding the extent of these natural elements.
- Even for experts, determining the precise starting and ending points of such features can be challenging. It appears that, in addition to environmental concerns, there may be other motivations for wanting to carry out a thorough survey of the land. Ensuring clarity on the property's layout and its natural attributes is essential for any further considerations or plans.
- 7:49 pm **Kendrick** Agreed. I was thinking that I would start with a survey.
- 7:49 pm **Mills** Please take into account the inclusion of stream flagging as part of your survey activities. If your survey encompasses the area around the stream, it should not be a significant burden to mark its location. This additional consideration will ensure that you are aware of both the stream's precise location and its characteristics.
- 7:49 pm **Florence** Okay, so I move then at 7:49 pm that we close the public hearing. Do I have a second?
- 7:49 pm **Carney** I'll second.
- 7:49 pm **Florence** All those in favor?
- 7:49 pm **All** Aye.
- 7:49 pm **Florence** The motion is passed unanimously. The public hearing is closed. Thank you very much, everybody.