

# Zoning Board of Adjustment

## Meeting Minutes

August 30, 2023



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## Public Hearing

### Present

Andrew Hatch - Member  
 Deb DeFosse - Executive Administrator  
 Gary Carney - Vice-Chair  
 Joe Tapp - Member  
 Linda Marshall - Member  
 Mark Florence - Chair

### Absent

None

### Visitors

Cheryl Damato - Abutter  
 Daniel Lavoie - Abutter  
 Doug Max - Applicant  
 Joan Max - Applicant  
 Joseph Szymanski - Applicant  
 Nick Cashorali  
 Pat Fone - Abutter (by phone)  
 Peter Martin - Abutter  
 Ronald Max - Applicant  
 Rosemarie Downey - Abutter  
 Shellie Bueno - Abutter (by phone)  
 Tim Crouss - Applicant  
 Tom Burt

## Summary

### Motion to allow abutters to join by phone

- Florence begins the August meeting of the ZBA at 7:00pm
- Florence announces that Pat Fone and Shellie Bueno, who are abutters of Mr. Crouss, have requested to speak but cannot be present
- Florence proposes a motion to allow phone participation by Fone and Bueno in the meeting
- Carney seconds the motion and it passes unanimously
- Carney initiates a call with Bueno
- Carney explains to Bueno that he will have his phone plugged in and placed in front of him to ensure she can hear everything being discussed
- Florence mentions that the room's acoustics are not good and the conversation might not work as expected
- Florence informs Bueno that if she finds it difficult to hear or express her points adequately, she can request a continuance to be physically present and present her case in person
- Bueno agrees and understands that she can ask for a continuance if needed
- Florence mentions that there are other matters of business to address before addressing Bueno's case, but assures her that she will involve her at the appropriate moment.

### Schedule next meeting

- Carney proposes discussing the next scheduled meeting and addressing any issues beforehand
- Mr Florence states he will be unable to attend the meeting on September 27th
- Florence suggests two alternatives for the meeting date: the Tuesday before or the Wednesday before the original date

- Carney expresses preference for the Tuesday before (September 26th) but considers others' schedules
- Carney makes a motion to change the meeting date to September 26th
- Florence seconds the motion and all are in favor
- Florence confirms the new meeting date and clarifies that if a continuance were to occur, it would take place on September 26th

### **Roll call and prefatory remarks**

- Florence explains how the hearings work
- Public hearing allows applicants, abutters, and anyone with something to say to speak
- Questions can be asked by both parties
- One case addressed at a time until all have presented
- Deliberative session follows the public hearing
- Board members discuss evidence and arguments
- Vote to grant or deny applications
- Deliberative session is open to the public, but only board members can discuss
- Observers cannot comment during the session
- Important to speak during the public hearing before it closes
- Board members Joe Tapp, Andrew Hatch, and Linda Marshall present
- Chair Mark Florence, vice chair Gary Carney, and executive administrator Deb DeFosse also present.

### **Tim Crouss hearing**

- Crouss proposes to build a new shed to replace old shed and carport on the property
- The old shed is located on the property line, while the carport had to be taken down due to heavy snowfall
- Crouss believes combining all structures into one shed would be more practical and move it away from the property line
- Florence acknowledges that the proposal would make the lot more conforming after the project is completed
- Bueno, the owner and abutter of neighboring properties, expresses concerns about the approval of the project and encroachment on their property line
- Bueno believes the project compromises their ability to have a home, privacy, and obstructs views
- Bueno questions the variances and the distance between buildings, suggesting the project should adhere to guidelines without encroaching on their property
- Bueno emphasizes the sentimental value and long history of their family's ownership of the land
- Crouss responds that the new shed will be closer to his house and further away from the property line than the old structures
- Florence questions the temporary nature of the existing structures, and Bueno believes the shed was always intended to be temporary
- Crouss bought the property 11 years ago, and the shed was already in place at that time
- Florence asks about the erection of the carport, and Crouss confirms it was added a year after they bought the property
- Florence and Hatch discuss the setback limits and when they were enacted
- Lavoie, another abutter, supports Crouss's project, believing it would make the lot more conforming and enhance the neighborhood
- Bueno expresses frustration that the project comes at the expense of their privacy and property rights
- The Public Hearing remains open, and Bueno is encouraged to speak up if anything further occurs to them.

### **Doug Max hearing**

- Florence and Carney visited Mr. Max's lot and measured setback distances, building coverage, and impervious coverage
- Measurements showed a front setback from garage to road of 45' where 50' was required
- Total lot size is 29,900
- Building coverage is 15% (4495 sq ft)
- Impervious coverage is at least 25.6% (7661 sq ft)
- Florence raises concerns about the discrepancies between the measurements and the numbers provided in the building permit application
- Max claims he copied the information from a 2013 survey, which included the covered walkways

- Carney supports Florence's statement that they have thoroughly analyzed the situation
- Florence points out that variances are needed for front setback, building coverage, and impervious coverage, not just the side setback
- Max explains the reasons for obtaining the building permit and the need for covered walkways for his wheelchair-bound mother's safety
- Florence suggests that Max may need to modify his application to include the additional variances
- Martin questions if Max can submit a similar application if the variances are denied
- Florence explains that a significantly different application would be required for a reapplication
- Max offers to give back impervious area and convert it to absorbing soil
- Hatch mentions the denial of Max's building permit due to the distance between the building and the side property line
- Max explains the hardship imposed by the property's topography and the parallel property line with the garage
- Florence discusses the DES permit and the need for a shoreland permit
- Max acknowledges his awareness of the DES permits and his intention to obtain them if his variances are granted
- Florence questions Max's preparations for construction, noting the presence of building materials
- Max expresses his surprise and lack of awareness of the situation
- Florence suggests a continuance for Max to do more research, but the decision is up to the board
- Hatch clarifies that the board cannot reopen the public hearing if it is closed
- Max mentions his plans for constructing a bedroom above the garage for safety reasons
- Florence states that the Butcher email will be discussed during the deliberative session
- Martin asks about the implications of the retaining walls on impervious coverage, but Florence defers discussion to the deliberative session
- Martin references the Butcher email and its relevance to the case
- Florence asserts the board's privilege to discuss the evidence during the deliberative session
- Florence asks if anyone else wants to speak on the case before closing the public hearing

## Joseph Szymanski hearing

- Szymanski requests a 25' front setback variance for his shed
- He explains that the shed is not in compliance and is closer to the road than it should be
- Szymanski believes there are no other dry locations for the shed
- Florence suggests considering alternate conforming locations for the shed
- Szymanski mentions that the other side of the driveway would also be underwater
- Florence and Vice-Chair Carney visited Szymanski's site and noticed the shed was elevated on riprap
- Szymanski explains that the other side of the driveway is often inundated
- Florence asks if sufficient riprap in the alternate location could protect the shed, but Szymanski doesn't believe so
- Florence mentions that a significant portion of Szymanski's property is wetland and he has filled some of it over the years
- They discuss whether the shed encroaches on the officially designated wetland area
- Szymanski admits that the shed is within 50 feet of the wetland
- Carney asks if the water encircles another structure on Szymanski's property, and he confirms it does
- Szymanski explains that the water comes from the overflow of Millen Pond and the culvert under Ashuelot Drive
- Florence and Szymanski reference a map showing the extent of the wetland and the shed's location
- Szymanski mentions that he recently had to get rid of snowmobiles that were underwater
- Abutters Ms. Domato and Ms. Downey state they are neither for nor against the project
- Burt concludes that there is no other suitable location for the shed due to the septic system and water restrictions

## Conclusion of hearing

- Florence asks if Ms Bueno is on the line and suggests calling her to see if she has any more comments before closing the Public Hearing
- Carney volunteers to call Ms Bueno
- Florence calls Ms Bueno and asks if she has anything else to say before they close the Public Hearing
- Ms Bueno mentions that she missed the last half hour and couldn't hear anything after 7:35
- Carney clarifies that the part Ms Bueno missed was unrelated to her case

- Ms Bueno expresses gratitude for the opportunity to provide her testimony and emphasizes the impact the proposed variances will have on her property
- Florence informs Ms Bueno that she can listen to the deliberative session and has the right to appeal if she disagrees with the final decision
- Ms Bueno acknowledges her understanding
- Carney brings up the need to vote on last month's meeting minutes before closing the Public Hearing
- Marshall seconds the motion to accept the minutes from last month's meeting
- Carney, Florence, and Marshall vote in favor, Hatch abstains, and Tapp votes in favor
- Florence announces that the motion passes 4-0 with one abstention
- Carney suggests closing the Public Hearing
- Florence moves to close the Public Hearing and move on to the deliberative session, Carney seconds the motion
- All members vote in favor of closing the Public Hearing

### **Tim Cross deliberation**

- Hatch and Carney discuss the absence of stakes to mark the location of a proposed shed
- Hatch expresses concern about unclear situations in the past and the difficulty of accurately measuring without stakes
- Florence agrees with the comment and mentions noticing the same issue during a site visit
- Marshall believes all applicants should be required to stake their desired location for easy identification
- Florence asks if the absence of stakes is disqualifying and Marshall says it is not, but suggests requiring stakes in the future
- Florence agrees that stakes would be preferred for accuracy but acknowledges the small margin of error in this situation
- Tapp believes the project should be staked and visible throughout the process
- Hatch suggests stating the stake requirement in the application for variance
- Florence suggests updating the Rules of Procedure as well
- Hatch suggests noting the concern for future discussion
- Florence suggests voting on whether the absence of stakes is disqualifying or not
- Hatch suggests moving on and brings up the issue of a missing carport mentioned in the application
- Carney points out that the ground below the carport is still impervious and would need to be restored
- Hatch raises a concern about whether the carport should still count towards the lot's building coverage
- Florence believes the carport should be considered existing due to the grandfathering period
- Hatch agrees
- Florence brings up the issue of 5 variances being requested and emphasizes judging each variance on its own merits
- Hatch mentions not paying attention to the abutter's lot but believes setbacks are improved overall
- Carney suggests an alternative building plan to avoid variances
- Florence agrees and highlights the reduction in impervious coverage and setbacks
- Tapp mentions the abutter's intention to build on her lot and the required distances
- Hatch believes the abutter is better off with the shed and carport removed for future building
- Florence empathizes with the abutter but believes concerns cancel each other out due to privacy
- Hatch emphasizes setting conditions on approval to prevent issues in the future
- Florence agrees and suggests conditions for demolishing the old shed and restoring the ground to a pervious state
- Carney makes a motion to grant all five variances with the mentioned conditions
- Florence seconds the motion and it is approved unanimously
- Florence reminds Ms. Bueno of her right to appeal the decision.

### **Doug Max deliberation**

- Florence expresses dissatisfaction with the discrepancy in measurements in the application
- Tapp observes retaining walls and crushed stone at the site
- Florence acknowledges the well-constructed walls and their contribution to impervious coverage
- Carney suggests planting grass over the walls to reduce impervious coverage
- Florence clarifies that impervious coverage is not currently under consideration and reducing it would have no impact
- Tapp suggests reducing the extent of the driveway to address impervious coverage
- Carney points out that the focus is solely on whether the lean-to gets built or not, and impervious coverage is not affected

- Florence highlights the need for setbacks and building coverage variances for the lean-to, emphasizing the non-conforming building coverage
- Carney asks if the proposed lean-to is included in the 15% building coverage
- Florence confirms that it is included, along with other measurements, increasing the building coverage from 13.6% to 15%
- Tapp questions the discrepancy between the stated impervious surface and the actual measurements found by Florence
- Florence confirms the higher impervious surface measurements but notes that not all surfaces were measured
- Florence suggests evaluating the situation based on the five variance criteria and not rejecting it solely based on unexpected numbers
- Carney considers the distance of the garage from the street and the hardship of not encroaching further
- Florence raises concerns about substantial justice and the failure of literal enforcement to advance the intended purpose of the LUOs
- Carney believes there is a genuine hardship
- Tapp agrees with Carney
- Florence discusses the consequences of not building the lean-to, including the lack of additional egress from the second floor
- Carney and Tapp agree that the stairway and lean-to should be considered together
- Hatch tries to understand and move forward, acknowledging the significant impervious coverage issue
- Florence explains the importance of building coverage and the increase caused by the lean-to and stairway
- Hatch suggests considering the benefits of the stairwell separately from the lean-to
- Florence clarifies her rhetorical question and the need to discuss them individually
- Hatch agrees with considering them separately
- Florence questions the authority to approve one and reject another, but Carney believes only the front and side setbacks are before them
- Florence emphasizes that building coverage is also before them
- Tapp and Carney agree that the special conditions of the property make the variances reasonable
- Carney makes a motion to grant all three variances
- Tapp asks about impervious coverage, but Florence reiterates that it's off the table for voting
- Carney's motion is seconded by Marshall
- The motion passes 3-2, with Carney, Marshall, and Tapp in favor and Florence and Hatch opposed
- Carney reminds Max of the importance of obtaining a shoreland permit from DES for the project's success

### **Joseph Szymanski deliberation**

- Carney initially thought the property was about two acres, but it turned out to be smaller due to the presence of a wetland
- The presence of a stream influenced Carney's experience on the property
- The shed was placed in its current location because moving it would encroach on the wetlands
- The shed was raised higher to prevent water damage
- Florence questions if permission would have been granted for the shed if it was presented as a sketch in its current location
- Carney believes the shed would have been rejected by the Select Board if it was presented as a sketch
- Florence suggests enlarging the boat house as an alternative solution
- Carney estimates that enlarging the boat house would be more expensive than tearing down the shed and building a new one
- The financial burden on the applicant is considered in relation to granting a variance
- The wetland size and setbacks are discussed, but it is determined that they are not relevant to the current situation
- Hatch moves to grant the requested variance of a 25 foot front setback
- The motion is seconded by Carney and passes unanimously.

### **Conclusion of deliberative session**

- Florence moves to adjourn the meeting at 9:03 pm
- Carney seconds the motion
- Florence asks for all those in favor to say "aye"
- All members say "aye"

- Florence declares that the motion passes unanimously
- The meeting is adjourned

## Transcript

### Motion to allow abutters to join by phone

- 7:00 pm **Florence** Good evening, everyone. It's 7:00pm and time to begin the August meeting of the ZBA.
- I'll do introductions in a second but there's something we have to get out of the way first and that's that we've been asked by Pat Fone and Shellie Bueno, who are abutters of Mr. Crouss, to be allowed to speak. They can't be here unfortunately and the only way to do that is to get them on the phone.
- However, the ZBA rules of procedure don't contemplate virtual meetings. So what we're going to do first, I'm going to make a motion. I'll make it right now that we approve phone participation by these two abutters in this meeting. Do I have a second ?
- 7:01 pm **Carney** Seconded
- 7:01 pm **Florence** All those in favor?
- 7:01 pm **All** Aye
- 7:01 pm **Florence** So that motion passes unanimously, My Carney, could you initiate the call?
- 7:01 pm **Bueno** Hi, this is Shelley.
- 7:02 pm **Carney** My name is Gary Carney, and I represent the ZBA. I am reaching out to you because you had expressed interest in listening to the meeting. I sincerely hope that you will be able to join. To ensure clear communication, I will have my phone plugged in and placed in front of me. My intention is for you to hear everything that is being discussed during the meeting.
- 7:02 pm **Florence** Okay, before we proceed, I would like to mention one thing. The acoustics in this room are not good, so our conversation might not work as expected. Unfortunately, all we have is a cell phone to communicate with you. If, at any point, you find it difficult to hear or understand us, and if you are unable to express your points adequately, please know that you have the right to request a continuance. This would allow you to be physically present and present your case in person. I hope this explanation makes sense to you.
- 7:03 pm **Bueno** Yes. If I can't get my point across, then I can ask you to consider a continuance.
- 7:03 pm **Florence** Before we can address your case, there are a few matters of business that need attention. Rest assured, I will involve you when the appropriate moment arises.

### Schedule next meeting

- 7:03 pm **Carney** Before we continue, I would like to propose that we discuss the scheduled next meeting. We currently have some issues that may require a continuance, so it would be beneficial to address them now rather than waiting until everyone has left and confusion arises. If I may hear a second on this motion, we can proceed with the discussion (*motion made, seconded, all in favor*).
- Now, our next scheduled meeting is on September 27th, but unfortunately, Mr Florence will be unable to attend.
- 7:04 pm **Florence** I'm sorry, but I won't be able to attend the meeting and neither will I be available the following Wednesday. It would be preferable for me to attend as Chair, but it's not necessary as we have a vice chair and we would still have enough members for a quorum if I'm absent. We have two options to consider: either we proceed with the original date and take whatever consequences may arise, or we vote for an alternative. I suggest two alternatives: either the Tuesday before or the Wednesday before the original date. So, one day or one week earlier.
- 7:05 pm **Carney** Personally, I like the idea of doing that Tuesday before the 27th, that would be to 26th. I like that. I like that but I don't know how it fits other people's meetings and schedules and

stuff. What do we think about that? I can do it. Okay, then I we should vote on this. Yes. I make a motion that we change the next scheduled meeting from September 27 to September 26. That would be the Tuesday .

7:05 pm **Florence** Seconded. All those if favor?

7:05 pm **All** Aye

7:05 pm **Florence** Confirmed: Tuesday, September 26. If a continuance were to occur, that specific date would serve as the designated time for it. I want to clarify that I am not implying that we will definitely have a continuation, but if there were to be one, that is when it would take place.

### Roll call and prefatory remarks

7:06 pm **Florence** If you have never attended any of these hearings before, I would like to explain how it works briefly. First, we have a public hearing. During the first half of the meeting, every applicant, abutter, and anyone with something to say is given the opportunity to speak for as long as they need. We will remain here until everyone has presented their case to us. We will ask you questions, and you can ask us questions as well. We will address one case at a time and continue the dialogue until we are finished.

Once the public hearing is concluded, we will move on to the deliberative session. This session is also open to the public, and you are not only welcome but encouraged to stay and listen. During this session, the board members will discuss the evidence and arguments presented to us. We will then vote to either grant or deny the application in front of us. While you are welcome to observe, please note that the only discussion allowed is between the board members. You can see and hear everything, but you cannot comment. Therefore, it is important to make sure you say everything you need to say during the public hearing before it is closed.

7:06 pm **Florence** Present today are board members Joe Tapp, Andrew Hatch, and Linda Marshall. Additionally, we have our chair Mark Florence, vice chair Gary Carney, and executive administrator Deb DeFosse.

### Tim Crouss hearing

7:09 pm **Crouss** I am proposing to build a 12 x 24 foot shed in order to replace the old shed that currently occupies the property. The old shed is located pretty much on the property line, right on the corner. Additionally, there used to be a carport, but it was a temporary structure that couldn't withstand the heavy snowfall of 42 inches, so I had to take it down. Therefore, I believe it would be more practical to combine all these structures into one shed, preventing the presence of multiple dilapidated sheds and the carport. Moreover, this would also help in moving the shed away from the property line. However, the property's layout is somewhat limited due to a stonewall and steps leading down to the driveway.

7:11 pm **Florence** Your proposal appears to make your lot more conforming after you finish your project than it is now.

7:12 pm **Crouss** Yes, the building and impervious coverage will be less than it is now, as well as all the setback distances.

7:12 pm **Florence** Ms Bueno (*on phone*) do you have any comments you'd like to make?

7:12 pm **Bueno** As the owner and abutter of 75 and 76 Hemlock Circle, my mother, Pat Fone, and I have concerns regarding the approval of the proposed project. The existence of five variances raises a red flag. Moreover, the fact that the project encroaches on our property line, which is already not in compliance with the law, is troubling. If they continue to encroach and get closer, it will negatively impact our ability to have a home, which is something we have been working towards. This encroachment will also compromise our privacy and obstruct our views from any future house.

I was informed that there should be a 30-foot distance between buildings. However, if they are not required to stay within this limit and are allowed to be 18 feet away from the property line, which currently seems to be the case, it should be rectified. Regardless of whether this project is approved or not, we will have to adjust our building plans and move further back, which is unfair as it jeopardizes our ability to construct our dream home and

maintain our privacy. The addition they propose does not seem necessary, and it appears they could build a smaller shed within the guidelines or find an alternative location or solution that does not encroach on someone else's property.

This land has been in our family for a long time, and although we have not been able to visit frequently due to COVID and my mother's illness last year, it holds sentimental value to us. We want to make use of the property and allow my mother to enjoy it while she is still with us. Our priority is to maintain our privacy and proceed with our plans without having to make changes due to someone else's failure to adhere to guidelines. This excessive construction of a large shed encroaching on someone else's property seems unnecessary and unfair.

- 7:15 pm **Florence** Mr Crouss, would you like to respond?
- 7:15 pm **Crouss** The new shed will actually be closer to my house and further away from the property line than the old structures.
- 7:15 pm **Bueno** So, I understand that he claims to be providing more space, but he has already exceeded what he should have. I wonder if that was officially approved. Is it currently approved? As it stands, he has already encroached upon our property boundary. Shouldn't he be more considerate? This raises another question - you are offering more property, but not actually granting us additional space, which goes against the law. In reality, you are not giving us anything back; instead, you are essentially reversing what should have been done. That's the structure of it. According to what she said, it was meant to be temporary, not meant to remain there. My mother is here with me and she is expressing the same sentiment in this message. Did you hear that? He mentioned that what was up there was supposed to be temporary, and now he wants to construct something permanent, which still exceeds the boundaries.
- 7:17 pm **Florence** Do you have any record to show that the existing structures were supposed to be temporary?
- 7:17 pm **Bueno** No, but it has always been our understanding that the shed was temporary.
- 7:17 pm **Florence** Mr Crouss, when did you buy your property?
- 7:17 pm **Bueno** *via phone, misunderstands and believes question was directed at her*
- 7:17 pm **Bueno** I own one lot, while my aunt and uncle owned the other lot. Then my mom purchased the property from both of them, so now we have two lots. I decided to buy a portion of my mom's lot so that I could contribute to the construction of a family retreat up there. It will serve as a home for our growing family, as I now have two children and just welcomed a grandbaby last Friday. This property has been in our family for over 60 years, and it would be wonderful to see something happening there. I'm really looking forward to spending time up there.
- 7:18 pm **Florence** Both lots are currently vacant, is that right, with no structures on them?
- 7:18 pm **Bueno** Currently, there are no structures on the property. However, there is a camper that we are actively trying to remove from it. This camper used to be functional and usable, but unfortunately, it has become unusable over time. Although there is a camper available for use, it is immovable. Therefore, we are currently in the process of finding someone who can assist us in removing it from the property. My son-in-law has been working on this task, but he recently had a baby on Friday, so we are exploring other options to get it taken care of. Initially, we attempted to contact a local junkyard for assistance, but they were unable to provide the help we needed.
- 7:19 pm **Florence** Mt Crouss, when did you buy your property?
- 7:19 pm **Crouss** 11 years ago. The shed was in place at that time. In 2022, I had the lot surveyed. This survey accurately depicted the shed and the carport that used to be present on the property. However, it is important to note that the carport is no longer there currently.
- 7:20 pm **Florence** I have some comments but only comments that I'd want to make in the deliberative session. I don't I don't have any more questions. Does anybody have any questions on the board?

- 7:20 pm **Carney** I do If you're standing and you're going towards the other piece of property, how far back does your line go into the woods? I tried to look for a stake there.
- 7:20 pm **Crouss** It's right where the rocks pile up at the edge of the trees. There's a well right on the property line that predates my ownership.
- 7:20 pm **Bueno** I could not hear perfectly, but did Mr Crouss say he bought the property 11 years ago and the shed was already there, but not the carport?
- 7:21 pm **Florence** Correct. Mr Crouss, did you erect the carport in the last 10 years?
- 7:21 pm **Crouss** I agree with that. It was a year after we had been there.
- 7:21 pm **Florence** Is it safe to say you did not get a variance at that time?
- 7:22 pm **Crouss** No, was that even a thing 10 years ago?
- 7:22 pm **Florence** That's a good question. Mr Hatch, from your experience as chair of the Planning Board, do you know when the setback limits enacted?
- 7:22 pm **Hatch** I have noticed that many individuals install carports, if you will, for a more accurate description. Surprisingly, they never bother obtaining the necessary permits, which are technically required for six months of the year. After that period, they are supposed to take it down, but nobody ever does. Therefore, the requirement is not really applicable. Additionally, the sidelines setback has been established since 2002.
- 7:23 pm **Florence** I believe the carport might have been non-conforming, but that is not our concern at the moment since it no longer exists. Therefore, it is what it is. I mean, it is simply a fact that we have to accept.
- 7:23 pm **Bueno** Okay. So you're saying that the LUOs were established in 2002?
- 7:23 pm **Florence** Yes. However over the years new LUOs have been introduced through several amendments. I am uncertain about the exact timing of when the setback LUO was implemented.
- 7:23 pm **Bueno** I appreciate your response and thank you for your input.
- 7:23 pm **Lavoie** I am an abutter at 2154 Valley Road. I believe that by removing the old shed and carport and replacing them with a new shed, Mr Crouss will make his lot more conforming than it is today. Additionally, this change would greatly enhance the character of the neighborhood. Instead of having a temporary shelter and an old rickety shack, we would have one structure, which would be a vast improvement. Therefore, I am fully in favor of Mr Crouss's project.
- 7:24 pm **Bueno** I'd like to make another comment. I just want to express my thoughts on this matter. I can understand and appreciate people's desire to enhance their yard and be considerate neighbors. However, I fail to comprehend why this should come at the expense of someone living nearby. Just because you can improve your own property, it doesn't necessarily mean that you should obtain a variance to make it bigger, causing someone else to compromise their privacy and relinquish what they have rightfully obtained through hard work and payment.
- 7:25 pm **Florence** Before we move on, do you feel that you've heard and understood everything you needed to?
- 7:25 pm **Bueno** I believe so. I have concerns about the shed being already very close. However, I want to acknowledge that you all have been very clear, and I genuinely appreciate that. Moreover, I am grateful to everyone for giving me the opportunity to speak.
- 7:26 pm **Florence** Thank you. We're going to move on from Mr. Crouss's Case now but we have not yet closed the Public Hearing. I encourage you to stay on the line. Please speak up if anything further occurs to you.

### **Doug Max hearing**

- 7:26 pm **Florence** Mr Max, before we proceed, vice-chair Carney and I visited your lot today and measured the setback distances, and the building and impervious coverage. We were concerned

that no work was shown on page 4 of your building permit application. I will now hand out a document that shows the measurements we found and I'd like to hear your comments.

7:26 pm

Front setback from garage to road: 45' where 50' required.

Total lot: 29900

Garage and surrounding covered walkways:  $38.6 \times 41.7 = 1610$   
 Connector covered walkway, garage to house:  $10 \times 13.5 = 135$   
 House (including deck):  $(47.2 \times 57.4) - (18 \times 23.5) = 2286$

New lean-to:  $12 \times 36 = 432$   
 New stairway:  $4 \times 8 = 32$

Total building coverage:  $4495 = 15\%$

Driveway:  $(28.2 \times 80) + (20 \times 45.5) = 3166$  (impervious at LEAST this amount)

Total impervious coverage:  $7661 = 25.6\%$  AT LEAST

- 7:26 pm **Florence** And I'd like the board to look at that because I thought the numbers were surprising. On the building permit application, you're saying that your structure coverage is 8.12% and your impervious surface coverage is 19.6%, whereas both are actually significantly higher.
- 7:31 pm **Max** I'm at a loss at how you came to those numbers as, when I filled out the building permit application, I simply copied from a survey we had done in 2013.
- 7:31 pm **Florence** Did that survey include the covered walkways, for example?
- 7:31 pm **Max** Yes, I believe so.
- 7:32 pm **Florence** I believe Mr. Carney can support my statement that we have thoroughly analyzed this situation and, if anything, we have been quite generous in our approach.
- 7:32 pm **Carney** I think the actual coverage would be higher. We tried our best, but as, Mr Florence mentioned, we didn't measure the top of the walls because they were curved and it would have taken too long. So, we wouldn't have been able to accurately determine the right area.
- 7:32 pm **Florence** Well, the fact is, we're confronted not with the one variance that you were looking for, which was the side setback variance. There's a building coverage variance and an impervious coverage variance that you need. We measured the distance from the garage to the road and that's 45 feet whereas it has to be 50 feet. so you need a front setback variance too.
- 7:33 pm **Max** The garage was built in 2013 and the setback measured from an engineering drawing. We got a building permit from the Town.
- 7:33 pm **Florence** The covered walkway is going to align with the garage, as indicated in the drawing you provided. It seems like the covered walkway will require the same front setback as the garage. Looking at the diagram, it appears that the front of the covered walkway is aligned with the front of the garage. Therefore, if the garage is only 45 feet from the road, it should actually be 50 feet, just like the front of the covered walkway.
- 7:33 pm **Max** So not for the garage?
- 7:33 pm **Florence** It's too late for that.
- 7:34 pm **Max** So it is not only the side setback for which a variance is needed, but the front too.
- 7:34 pm **Florence** It seems that your building coverage was initially around 13.7%. However, with the addition of this new project, it has increased to 15%. Therefore, you will require a variance for this change as well. Additionally, the impervious coverage currently stands at a minimum of 25.6%.
- 7:34 pm **Max** Understood, but covering an area that is already impervious doesn't change the impervious coverage percent.
- 7:34 pm **Florence** Nonetheless, we must consider the issue that the lot has at least 25.6% impervious coverage.
- 7:35 pm **Martin** If this project doesn't change the impervious coverage, why are we even talking about it?

- 7:35 pm **Florence** Okay, let me explain the reason for our discussion. We have recently received a letter from Mr. John Butcher, and I will now proceed to read it out to you.
- 7:35 pm **Florence** Will the BOA (*he means the ZBA*) be taking into account an impervious surface % variance for this project. Multiple construction projects, including driveway expansion, covered walkways as well as retaining wall structures have been recently (within 1 yr) built on this lot.
- 7:35 pm **Florence** That's why we're talking about it because it's been raised by an abutter.
- 7:36 pm **Martin** To clarify, the impervious service has already been modified by previous actions, which is not directly relevant to the current discussion.
- 7:36 pm **Florence** It's not directly related to this, but it's before us right now and I definitely want to talk about it. So, at the very minimum, instead of needing one side setback variance, I believe that you need a building coverage variance to get you to 15% and you need a front setback to get you from 45 feet to 50 feet.
- 7:37 pm **Hatch** It's all there on the worksheet that we distributed.
- 7:37 pm **Florence** To summarize, it is necessary to have a side setback of 18 feet, although the requirement is for 30 feet. Additionally, a front setback of 45 feet is needed, even though the requirement is for 50 feet. Lastly, the building coverage should be 15%, although the maximum allowance is only 10%.
- 7:38 pm **Martin** Are you suggesting that the application must be modified to request these additional variances?
- 7:38 pm **Florence** Absolutely. And we're going to consider at least those three variances and not just the one that we've been presented with.
- 7:39 pm **Martin** So when you say you're going to consider all three variances, does that mean that you could approve all of them, even though he's only asking for one?
- 7:39 pm **Florence** We must consider all necessary variances. We should not only focus on the variances that have been specifically requested. It is quite common for applicants to be unaware of the variances that are required.
- 7:39 pm **Martin** Does Mr Max have to submit a new application?
- 7:39 pm **Florence** No reapplication is needed. We're here to discuss everything tonight. The ZBA doesn't play Simon Sez with paperwork
- 7:40 pm **Martin** So are you saying you would address all three at this meeting now, or at a future meeting?
- 7:40 pm **Florence** No, right now.
- 7:40 pm **Max** I was taken by surprise and unprepared for this situation, so I am unsure how to respond.
- 7:40 pm **Florence** All the reasons you have prepared to justify your project remain relevant, regardless of the number of variances that may be required.
- 7:40 pm **Max** I believed that I had a legitimate hardship and that the location of the garage was not parallel or aligned with the presence inside line. Specifically, I understood that an engineer, possibly Peter Mellon, had determined the position of the garage. However, I cannot recall if he was the one who located it. By examining the drawing of the property, it can be observed that the distance between the rear corner of the lakeside of the garage and the front corner is greater. Therefore, I intended to discuss the location of the property or the garage itself, considering its proximity to the septic system.
- At the time, the garage was constructed in accordance with the necessary regulations, as it was conforming. Unfortunately, I was unaware that it did not comply with the 50-foot frontal setback requirement. I had assumed that the engineer knew what he was doing and that my father had obtained a permit to build the garage. Consequently, I believed that the garage's location was intentional and justified. My intention was simply to add a carport to the existing structure.
- Currently, I am in the process of selling my assets in Connecticut and relocating here in order to care for my parents.

- 7:42 pm **Hatch** You based your calculations on a permit that you stated was granted in 2013. Mr. Butcher states that building has been going on for the last year. Do you want to comment on that?
- 7:42 pm **Max** I would like to explain the reasons behind obtaining a building permit from the town to cover the walkways. The situation arose because my mother is wheelchair-bound and my father used to shovel the sidewalk. However, there was an incident in the past when my mother, who was using a walker at the time, slipped and fell on the sidewalk, resulting in a severe head injury. We nearly lost her due to this unfortunate accident.
- To prevent such incidents from happening again, we decided to connect the garage to the house by constructing a covered walkway. We obtained the necessary permits and went through the State's approval process, ensuring that the construction followed all the required regulations. Now, I am seeking permission to utilize the parking area on the left side of the garage, which I believed was part of the variances being discussed today. This additional parking space would be beneficial, especially during winter weather conditions.
- I am in the process of relocating to this area to take care of my parents, and my house purchase is scheduled to close on Tuesday. The new property is significantly smaller, around five or six hundred square feet above a garage, compared to my previous 5000 square foot home on a lake in Connecticut. However, the decision to downsize was driven by the need to provide better care and accessibility for my parents, as evident from the circumstances I have described.
- Regrettably, I was unaware that our current setup does not comply with the coverage areas and setbacks regulations. Therefore, I am here today to request variances for all these aspects. I hope you can understand the importance of these modifications in ensuring the safety and well-being of my parents.
- 7:44 pm **Hatch** If no work had been done since 2013, our discussion tonight would be very different. It seems like you have not taken that into consideration based on what I'm hearing.
- 7:44 pm **Max** I used the 2013 engineering calculations and incorporated measurements for covered walkways. I clarified that I included these calculations based on the 2013 maps submitted with the Town permits. I acknowledged that I am unsure whose calculations are incorrect, as the individuals who measured the walkways today seemed competent. I simply used the information I had and added it to the permit, assuming it complied with the regulations. This situation has caught me off guard, and I am unsure how to resolve it. I am only seeking leniency for the sake of my parents and trying to do the right thing.
- 7:45 pm **Florence** Do you have any comments about the hardship imposed? Is it your perspective that the hardship is inherent to the property?
- 7:46 pm **Max** Yes, the hardship arises due to the positioning of the septic system and the position of the well. Additionally, I noted that the side of the garage is not parallel to the property line. Based on my understanding, I believed that I would be able to obtain a building permit for the garage and the proposed lean-to without requiring a variance, as long as the roof line did not deviate from the original perspective. Thus, I requested an additional setback to accommodate the desired roof line.
- 7:46 pm **Max** I would like to highlight the significant amount of landscaping work I have undertaken. One particular challenge that my father had been struggling with for years was the presence of gravel and a hill, making it difficult to grow any kind of grass. Recognizing this as an issue, I took it upon myself to address the problem. I purchased two truck loads of topsoil and spread it over the area. Although I cannot recall the exact square footage, I estimate it to be around 1500 square feet. Additionally, I purchased sod and rolled it out, covering the entire area effectively. Fortunately, I managed to complete this task before experiencing heavy rainfall, which proved beneficial. However, I must admit that now I find myself facing a new predicament as I have to mow the lawn frequently.
- 7:47 pm **Max** During my observation of the garage where I intend to install the carport, I noticed a gravel path leading towards the water. This path can be converted back to topsoil and sod, effectively addressing any impervious areas. I am willing to give up this path as its purpose was solely to provide access to the basement for wood burning. I convinced my father to switch from firewood to propane. Although he expressed frustration and accused me of depriving him of exercise, I successfully facilitated the switch. The gravel area

alongside the garage can also be transformed into topsoil and grass seed, eliminating another 250 square feet of impervious space. I am willing to make any necessary concessions in order to fulfill my responsibilities of moving in and caring for my parents. I am open to suggestions and not present here to engage in arguments or disputes.

- 7:48 pm **Florence** The ZBA cannot provide suggestions, but the Select Board can offer assistance and guidance. They are known for being supportive and providing advice. However, the ZBA can only adjudicate the variances before us.
- 7:49 pm **Max** Do you propose to keep this hearing open until I can do more research?
- 7:49 pm **Florence** We can talk about that, but I'd like to hear more input first.
- 7:50 pm **Martin** If you decide tonight to deny the variances, does that prejudice Mr Max's ability to come back with a different application?
- 7:50 pm **Florence** Not at all, but it does have to be a significantly different application. You aren't allowed to take two bites from the apple.
- 7:50 pm **Martin** If you deny the variances, can Mr Max return with a *similar* application?
- 7:50 pm **Florence** It has to be a different application.
- 7:50 pm **Martin** What does that mean?
- 7:50 pm **Florence** We will judge that when and if we see it. It just can't be the same proposal.
- 7:51 pm **Martin** But I don't see what changes he can make. The only thing that has been suggested is go back to the Select Board and say, well I'm gonna take out this gravel walkway and remove 250 feet of impervious coverage.
- 7:51 pm **Florence** I don't want to get ahead of ourselves and talk about granting or denying this application at this stage of the Public Hearing. I will point out, though, that if the ZBA denies a variance, the applicant can appeal within 30 days. This allows them to present the same proposal with different arguments for reconsideration. If the board rejects the appeal, the applicant can then take the case to the Housing Appeals Board or even the Supreme Court.
- 7:51 pm **Cashorali** When did John Butcher send his email?
- 7:51 pm **Florence** On August 15th.
- 7:51 pm **Cashorali** So a couple of weeks ago, right. I know it's unintentional. Not giving someone a heads up. That happened. And then having them come in here and have to defend something. But it isn't right and, speaking as a resident of the town that doesn't have a good look, you know what I mean?
- 7:52 pm **Florence** No, I don't know what you mean because the Board has no ability to discuss this case with anybody period outside of this hearing. So I don't know what you mean at all. We did no investigation. We've done no investigation. We do measuring. That's all we do measuring.
- 7:53 pm **Cashorali** I'm just saying from how I look at this, right? So you can't interact with any of the people here prior to this meeting. You're not allowed to interact with them?
- 7:53 pm **Carney** If we show up at somebody's property, we obviously introduce ourselves and request permission to enter for a site inspection.
- 7:53 pm **Martin** So you have no duty to make that letter known to the application?
- 7:53 pm **Florence** None whatsoever. The only forum that exists for making the Butcher email known is this Public Hearing. That's why we're here tonight.
- 7:54 pm **Florence** Does anyone have any more questions for Mr Max?
- 7:54 pm **All** No.
- 7:54 pm **Florence** The question. Mr. Max put on the table is: do we continue this hearing to give him more time to do research? Or do we proceed with the hearing, go into the deliberative session and vote on what we have heard?

- 7:54 pm **Hatch** If we close the Public Hearing, we can't reopen it. So we must decide now if we want a continuance.
- 7:55 pm **Max** Can I offer to give back any of the impervious area?
- 7:55 pm **Florence** The Board can't negotiate. All we can do is accept or deny your variances. That's all we can do. And of course, if we deny, you have the right of appeal as I mentioned earlier.
- 7:55 pm **Hatch** I want to go back to the moment when your building permit was denied. It was denied because you needed a special permission for the distance between your building and the side property line. We, as the board, were not aware of this application initially. It was sent to us because you did not meet that requirement in the Land Use Ordinance. I cannot say what other measurements or discussions took place with the Select Board, but they rejected your application, which is why we are here tonight, is that correct?
- 7:56 pm **Max** During the discussion with the Select Board, we identified the hardship as the property's topography and the parallel property line with the garage. The existing impervious surface cannot be altered, but I am willing to give back approximately 250 square feet of impervious surface and convert it to absorbing or pervious soil. This could be seen as a positive solution. Additionally, I considered turning the carport into a guard rail to prevent any safety hazards, especially after my father accidentally backed into the garage recently. The proposed guard rail would be eight by eight and would support a roof, making it a suitable solution for this situation. That is why I am here before you today.
- 7:58 pm **Florence** Let's talk about the DES permit.
- 7:58 pm **Carney** Eventually, you will need a shoreland permit from DES. The Town allows you to apply for a variance first, in case the DES permit is denied, potentially saving you an expensive process if the variance is denied.
- 7:58 pm **Max** I am aware of that and will obtain the necessary DES permits if and when my variances are granted.
- 7:59 pm **Florence** It looks like all the building materials are sitting there, right?
- 7:59 pm **Max** Yes, I've spent several thousand dollars on lumber that's under tarps and ready to use.
- 7:59 pm **Florence** So you were pretty sure you were going to get the variances and the DES permit?
- 8:00 pm **Max** I wasn't aware of any of this to be perfectly honest.
- I am currently in the process of obtaining a building permit to construct a bedroom above the garage. This is important because my parents and I need our own separate spaces. As part of the safety measures, I am ensuring that there are four different exits from the garage in case of a fire. This is crucial because there are flammable materials such as gas, oil, and lawn mowers stored in the garage. Having a second floor with a set of stairs will provide an additional escape route in case the first one is blocked by fire.
- That's why I'm asking for this variance. I believe it's important to have a safety measure in place, like a guard rail on top of the retaining wall, to prevent accidents and provide a way for me to escape in case of a fire.
- 8:01 pm **Florence** The Board understands your arguments and statements, but I feel we are starting to cover the same ground. Is there anything new you'd like to add?
- 8:01 pm **Martin** I'd like to learn more about the implications of the construction of the retaining walls or terraces. But their impact on the impervious coverage is not before us tonight, is that right? So what is in the Butcher email that bears directly on Mr Max's request?
- 8:02 pm **Florence** I think that's for us to discuss during our deliberative session.
- 8:02 pm **Martin** Can you re-read the Butcher email?
- 8:02 pm **Hatch** I have that up on my computer and I'll read it.
- 8:02 pm
- Will the BOA (*he means the ZBA*) be taking into account an impervious surface % variance for this project. Multiple construction projects, including driveway expansion, covered walkways as well as retaining wall structures have been recently (within 1 yr) built on this lot.

- 8:03 pm **Martin** So I think what I'm hearing is that John Butcher asserts that doing that terracing reduced the amount of impervious surface, and that the Board should take that fact into account.
- 8:03 pm **Florence** That's what he's saying.
- 8:03 pm **Martin** And that bears on this case because ... ?
- 8:03 pm **Florence** I'm not going to let you try to back us into a corner about what we're going to discuss during in the deliberative session. That's our privilege. We're going to consider the evidence and we're going to talk about it. if you are prepared to sit into the deliberative session, you'll find out.
- Is there anybody else want to talk on this case? If not the Public Hearing is not yet closed. If there's anything that occurs to you before we do close it, please say it. Otherwise, I'd like to move on to My Szymanski and talk about his case.

### Joseph Szymanski hearing

- 8:04 pm **Szymanski** I'm here to request a 25' front setback variance for my shed, which is not in compliance. So, I'll just make sure you guys have been to my property. It's now located in basically only place I can put it, where it's dry. It's not a n eyesore, even though it's closer to the road than it is supposed to be. I believe I have plenty of space.
- 8:05 pm **Florence** Did you did you consider alternate, conforming locations for that shed?
- 8:05 pm **Szymanski** There are no other locations that are dry.
- 8:05 pm **Florence** if it had gone on the other side of your driveway. on the opposite side of where it is now, would it have been conforming, do you think?
- 8:06 pm **Szymanski** Perhaps. But it would be underwater too many times.
- 8:06 pm **Florence** When vice-chair Carney and I visited your site, we say that you had elevated your shed shed three or four inches above grade on riprap to get it above the grade, it didn't appear that slope was that significant from one side to the other.
- 8:06 pm **Szymanski** That side of the driveway is often inundated.
- 8:07 pm **Florence** With sufficient riprap in the alternate location, on the other side of the driveway, protect the shed?
- 8:07 pm **Szymanski** No. I don't believe so.
- 8:07 pm **Florence** It is true that a significant portion of your property is wetland. Over the years, you have filled some of the wetland to keep it away. We have measured and found that you have the required 50 foot clearance from the wetland, but it is unclear if your fill encroached on the officially designated wetland area. Here is a map showing the extent of the wetland according to the Department of Environmental Services database.

8:07 pm



- 8:09 pm **Florence** The map shows the exact GPS location of the shed and it is clearly within 50 feet of the wetland, although it appears you have pushed the extent back a bit.
- 8:09 pm **Szymanski** OK, I won't deny that.
- 8:09 pm **Carney** When we have high water, does that water encircle that other structure you have, the boat house?
- 8:09 pm **Szymanski** Yes, it does.
- 8:09 pm **Carney** Now that that water that you do get, that's that's the overflow from Millen Pond is that correct?
- 8:09 pm **Szymanski** Water also encroaches from the culvert under Ashuelot Drive.
- 8:10 pm **Florence** Yes, I see that now on the map.
- 8:10 pm **Szymanski** As an example of how much water I get, I just got rid of a couple of snowmobiles that were underwater.
- 8:10 pm **Florence** Now I thought you had some abutters ready to speak on your behalf. Ms Domato and Ms Downey, are you hear to speak for or against the project?
- 8:10 pm **Both** Neither
- 8:10 pm **Burt** I think it is clear that there is no other location suitable for this shed. The septic system precludes setting it on the other side of the house, and the water restricts its location to only where it is now.
- 8:12 pm **Florence** Thank you everyone. If no one has any more questions for Mr Szymanski, we'll move on.

**Conclusion of hearing including approval of minutes**

- 8:12 pm **Florence** is Ms Bueno on the line? if not, let's call her to see if she has any more comments before we close the Public Hearing. I also want to advise her that if, at the conclusion of the deliberative session. she disagrees with our decision, she has the right of appeal.
- 8:14 pm **Carney** I will call her now.

- 8:14 pm **Florence** Hello Ms Bueno. Sorry to disturb you again so late, but we're about to close the public hearing. I want to make sure that you haven't thought of anything else you want to say.
- 8:14 pm **Bueno** I have an idea that I missed the last half hour. All the sudden we couldn't hear anything after 7:35.
- 8:15 pm **Carney** That was a different case, so you didn't miss anything that had to do with yours.
- 8:15 pm **Bueno** I would like to express my gratitude for the opportunity to provide my testimony today. I want to emphasize that if the proposed variances are approved, it will have a significant impact on our property and our ability to pursue our desired plans. Therefore, I strongly believe that alternative options should be considered. This concludes my statement. Thank you for your attention.
- 8:15 pm **Florence** You can listen to the deliberative session if you want to. If you disagree with the final decision, as an abutter, you have the right to appeal and request a rehearing within 30 days. The 30-day limit starts tomorrow or when the meeting minutes are posted, if it takes longer than five business days. It's important for you to know that you have the right to appeal.
- 8:16 pm **Bueno** I understand.
- 8:16 pm **Carney** Before we close the Public Hearing, I want to point out that we forgot to vote to approve last month's minutes, and I suggest we do that now. I move that we accept the minutes from last month's meeting. Do I have a second?
- 8:17 pm **Marshall** I second.
- 8:17 pm **Carney** All those in favor?
- 8:17 pm **Carney** Aye
- 8:17 pm **Florence** Aye
- 8:17 pm **Marshall** Aye
- 8:17 pm **Hatch** I abstain, as I was not present at that meeting.
- 8:17 pm **Tapp** Aye
- 8:17 pm **Florence** The motion passes 4-0, with one abstention.
- 8:17 pm **Carney** That takes care of the approval of the minutes. So we're all set and you can close out the Public Hearing.
- 8:17 pm **Florence** I move that, at 8:17 pm, we close the Public Hearing and move on to the deliberative session. Do I have a second?
- 8:17 pm **Carney** Second.
- 8:17 pm **Florence** All those in favor?
- 8:17 pm **All** Aye
- 8:17 pm **Florence** The motion passes unanimously and the Public Hearing is now closed. Everyone present is encouraged to remain for the deliberative session, bearing in mind that you can no longer participate in the discussion.

### **Tim Crouss deliberation**

- 8:18 pm **Hatch** I didn't see any stakes to mark the location of the proposed shed but I could more-or-less understand from the topography where it was intended.
- 8:19 pm **Carney** I had the same comment but within a couple of feet there's only a certain place you can put it.
- 8:19 pm **Hatch** In the past, we have had problems with unclear situations. While I acknowledge that this current situation is fairly clear, it is important to consider that it is difficult to accurately measure something that is not properly staked out. I'm not disputing the measurement and that's why I decided not to make a fuss about it

- 8:20 pm **Florence** I agree with the comment made. On our site visit, vice-chair Carney and I noticed and agreed on the same thing.
- 8:20 pm **Marshall** I firmly believe that all applicants should be required to clearly mark their desired location with visible stakes for easy identification by anyone visiting the area.
- 8:20 pm **Florence** Do you think the absence of stakes is disqualifying?
- 8:20 pm **Marshall** Not in this instance, because we have not mandated stakes as a prerequisite, but in the future I think we should.
- 8:21 pm **Florence** In any other situation, I would have preferred to use stakes for accuracy. However, due to the limited space and precise measurements, there is only a small margin of error, approximately one foot, in determining the actual location.
- 8:21 pm **Tapp** I feel that the project should be staked, and those stakes remain throughout the process for us all to see.
- 8:21 pm
- 8:21 pm **Hatch** I didn't want to make an overly big deal out of it in this case because I satisfied myself that there's really only one possible location. I think what Ms Marshall is saying is that we should consider a place where our requirement for stakes is stated, perhaps within the Application for Variance,
- 8:22 pm **Florence** Certainly. Also, our Rules of Procedure could be updated too.
- 8:22 pm **Hatch** Let's make a note of this concern for future discussion.
- 8:22 pm **Florence** Before us now is I think only the issue, is it disqualifying or not. We can vote on that or we just agree among ourselves that it's not disqualifying and we'll move on.
- 8:22 pm **Hatch** Let's just move on. Another thing I want to note, is that the application indicates that there's a carport, whereas it is self-evident that it no longer exists. I thought it odd that the application was submitted in July, but the carport had already been destroyed by the earlier March snowstorm.
- 8:22 pm
- 8:22 pm
- 8:23 pm **Carney** For my part, I'd like to point out that although the carport is no longer there, the ground below is still impervious. For this variance to be granted, the ground would have to be restored to a pervious state with grass, or something like it.
- 8:23 pm **Hatch** My concern is that as the carport no longer stands, should its extent still be counted toward the lot's building coverage? Or just it just count to its impervious coverage?
- 8:23 pm **Florence** I believe that because we are well within the time period where the carport is grandfathered, such that it could be rebuilt on the same footprint without any variances, we must consider it as existing as stated.
- 8:23 pm **Hstch** Agreed
- 8:24 pm **Florence** I want to bring up the issue of 5 variances being requested. It's important to note that the criteria for granting or denying a variance does not mention the number of variances. We should focus on evaluating the project itself, whether it has 10 variances or just one. Each variance should be judged based on its own merits, without any prejudice against the application having five variances. Additionally, I agree that if granted, this would make the property more conforming, which is a significant positive aspect in my opinion.
- 8:25 pm **Hatch** I was only focused on locating the property line in the wooded area and didn't pay much attention to the abutter's lot. The lot appeared undeveloped with an abandoned trailer on it. The abutter is claiming that this situation is negative, but it is difficult for me to understand their argument. We believe that this actually improves setbacks overall, specifically in the back of the property which affects them.
- 8:26 pm **Carney** During my morning walk, I had the same idea regarding the applicant's building plans. Instead of constructing a new building, they could simply remove the carport and old shed down to the foundation and build a two-story barn in those same spots. This way, they

wouldn't need to consult with us or obtain a variance for the shed. Since it would be on the same footprint, they would only need to obtain a building permit, which couldn't be denied. Whereas the new construction involves removing two items that are very close to the boundary. Although the reduction may not be significant, it still results in a decrease in the overall impervious area. I did not calculate the exact percentage, but it is being reduced.

- 8:28 pm **Florence** Agreed. The building coverage is less, the impervious coverage is less, and the setbacks are less. Correct. All of those are true.
- 8:28 pm **Carney** And the distance from the road is less because it's less than the carport.
- 8:28 pm **Tapp** Now the abutter stated that her intention is to build on her lot. That house would have to be 30 feet from the applicant's lot to the side and 35 feet away from any structure on the applicants lot.
- 8:29 pm **Hatch** Given all those measurement and requirements, it is clear to me that the abutter is better off and has more flexibility in building a future home once the old shed and carport are demolished and the new shed built.
- 8:30 pm **Florence** Ms. Bueno presented compelling arguments and I empathize with her situation. However, it is important to note that her property, which consists of two combined lots, is quite small, measuring approximately 0.38 acres. In order to construct a house on this property, she would require at least four variances. I want to also make the point that privacy works both ways. While Ms. Bueno is concerned about Mr. Crouss's building impacting her privacy, Mr. Crouss will also be upset if Ms. Bueno's building encroaches on his privacy. I believe that although Ms. Bueno presented a strong case, these concerns cancel each other out.
- 8:31 pm **Hatch** Because we have had previous bad experience where we were not careful about setting conditions on approval, this 12 x 24 foot shed can't become 35 feet high.
- 8:32 pm **Florence** I agree, it must be one story. Other conditions should be that, before the new shed is erected, the old shed be demolished, and the ground underneath restored to a pervious state. Similarly, the ground underneath the old carport must be restored.
- 8:32 pm **Carney** That's right. This way, at no time is the impervious coverage of the lot *increased*.
- 8:33 pm **Florence** I don't want to preempt a motion, but I'd like to put it to the Board that I'm inclined to approve all these variances.
- 8:33 pm **Carney** I move that we grant all five variances subject to the following conditions: that prior to the installation of the new shed, the existing shed shall be demolished and the surface thereunder restored to a fully pervious state and the surface below the now-removed carport also shall be restored to a fully pervious state. In addition, the new shed shall have a footprint of 12' x 24' and shall not exceed one story in height. Do I have a second?
- 8:34 pm **Florence** Seconded. All those in favor?
- 8:34 pm **All** Aye.
- 8:34 pm **Florence** The motion passes unanimously and the variances are granted. Ms Bueno, if you are still on the line, I just want to remind you that you have the right to appeal this decision.

### Doug Max deliberation

- 8:34 pm **Florence** I want to bring attention to the fact that this is the second public hearing where we have encountered a discrepancy between the measurements provided in the application and the actual measurements. I don't want to mention specific names at this moment, but this issue also arose during our previous public hearing. I am not pleased with this situation.
- 8:35 pm **Tapp** When I visited the site, I saw a number of retaining walls and areas of crushed stone.
- 8:36 pm **Florence** Yes, they are very well-constructed walls, with a large flat top which contributes perhaps significantly to the impervious coverage.
- 8:36 pm **Carney** I like the idea of planting grass over those walls, to reduce the impervious coverage, as suggested earlier.
- 8:37 pm **Florence** I believe it has been established that the impervious coverage is not currently under consideration. While it is clearly not in compliance, there is nothing we can do about it. We

could inform the Select Board about the issue, but reducing the impervious coverage will not have any impact.

- 8:37 pm **Tapp** He could reduce the extent of the driveway as it leads down the side of the house, below the proposed lean-to.
- 8:38 pm **Carney** But what is before us today is simply whether the lean-to gets built or not. Either way, the impervious coverage is not affected, as the surface below it is already impervious.
- 8:38 pm
- 8:38 pm **Florence** But it does affect the building coverage because it's going to cover what wasn't covered before. It will require both a side setback and a front setback variance in order to be built, plus a building coverage variance. I want to emphasize again that, at 15%, the building coverage is wildly non-conforming.
- 8:39 pm **Carney** Is that 15% *including* the new carport
- 8:39 pm **Florence** Correct. I noted that on the worksheet I distributed earlier. The 15% is the sum of our measurements, plus 432 feet for the lean-to and 32 feet for the stairway.
- 8:39 pm **Carney** What is the building coverage percent right now, without the proposed additions?
- 8:39 pm **Florence** I believe it is 13.6%
- 8:40 pm **Carney** So the proposal increases the building coverage from 13.6% to 15%.
- 8:40 pm **Tapp** Can you confirm that you found that while the application states that 3454 feet of impervious surface, you found 7661?
- 8:40 pm **Florence** Yes, when we measured the building surface and the impervious surface, that's what we found. But we didn't measure all the impervious surfaces. That was too hard and too error-prone.
- 8:40 pm **Carney** We just used a wheel, not a tape measure.
- 8:41 pm **Florence** We did not measure the walkway or the surface of the terracing on the retaining walls. We overlooked several measurements, so the impervious surface is at least as high as our estimated number.
- 8:41 pm **Florence** In conclusion, we must evaluate this situation based on the five variance criteria. If we have concerns, we should assess our position in relation to these criteria because they are the only valid basis for judgment. We cannot simply reject it based on unexpected numbers.
- 8:42 pm **Carney** I am considering the distance of the garage from the street. Currently, the garage is already 45 feet away from the street. The hardship in this situation is that the garage is already existing and not encroaching further on the required distance. If we were starting from scratch, we could have easily moved it back another five feet, but since the garage is already there, it was likely approved by the town or another board in the past. I believe granting the additional five feet would not cause any significant damage, as it would simply align with the existing garage. That's all I have to say about the matter.
- 8:43 pm **Florence** I am considering two of the five prongs. Specifically, I am concerned about the concept of substantial justice and the fifth prong, which asks whether literal enforcement would fail to advance the intended purpose of the LUOs. I am questioning whether it would be fair to the applicant if we strictly enforce the LUO and deny the requested variances. I am also wondering if this would create an undue burden or if it is disproportionate to the variances. In simpler terms, what would be the consequences if this specific part of the project was not built? Would that be fair to the applicant or would it be an excessive hardship?
- 8:45 pm **Carney** I tend to think that there is a genuine hardship here.
- 8:45 pm **Tapp** I agree.
- 8:45 pm **Florence** Let's consider what the consequences would be if this lean-to is *not* built.
- 8:46 pm **Carney** One consequence would be that, without the stairway, there would be no additional egress from the second floor. I would hate to deny these variances and, God forbid, anything happen.

- 8:46 pm **Florence** Could we consider the stairway separately from the lean-to?
- 8:46 pm **Carney** I think they go together.
- 8:46 pm **Florence** Is the justification the same for both?
- 8:47 pm **Tapp** I think so.
- 8:47 pm **Carney** I agree. I think so myself.
- 8:47 pm **Hatch** I'm trying to understand and move forward with what you're saying. It seems like the impervious coverage issue is significant, and the proposed changes are having a big impact on it. However, the changes aren't causing more coverage than what already exists. We're currently assessing how the addition of the lean-to will affect everything.
- 8:48 pm **Florence** Well, the impervious is only one part of that. The building coverage is is, is is important. Because because the the this lean to and the stairway will bring the building coverage up to 15%. It will be 5% over
- 8:48 pm **Hatch** So, if I understand correctly, you're saying that we shouldn't think of the stairwell and the second egress as separate from the lean-to. Instead, you believe that we should consider the benefits of the stairwell on its own and not mix it up with adding a lean-to to an existing focus. Is that right?
- 8:49 pm **Florence** So, basically, what I meant was that I was asking rhetorically: can we discuss these things individually? I was already starting to think about them separately in my own thoughts.
- 8:49 pm **Hatch** That's where I'm at too.
- 8:49 pm **Florence** I'm not really sure if we have the authority to both approve one and reject another, since that is not before us now.
- 8:50 pm **Carney** I think the only thing that's before us is the the front setback on the side setback.
- 8:50 pm **Florence** No, the building coverage is absolutely before us.
- 8:50 pm **Carney** Yes, you are right.
- 8:50 pm **Florence** So a question we've asked ourselves before to help us is "do the special conditions of the property render the requested variances reasonable?"
- 8:51 pm **Tapp** I think they do.
- 8:51 pm **Carney** I'd have to say, yes.
- 8:51 pm **Florence** Is anybody ready to make a motion? Or we still mulling this over?
- 8:51 pm **Carney** I'm ready to go with him.
- 8:51 pm **Florence** How about you, Mr Hatch?
- 8:51 pm **Hatch** I wouldn't be quite ready to make a motion. I'm ready to consider one.
- 8:51 pm **Tapp** I'm ready to consider one as well.
- 8:52 pm **Florence** So Mr Carney, it looks like what they're saying is: if *you* want to make a motion, we'll vote on it.
- 8:52 pm **Carney** Fair enough. I move that we grant all three variances: the front and side setbacks, and the increased building coverage.
- 8:52 pm **Tapp** What about the impervious coverage?
- 8:52 pm **Florence** I thought we had all agreed that the impervious was off the table. We don't like it, and we can voice our concerns to the Select Board, but we don't have the power to vote against it tonight.
- 8:53 pm **Carney** So I've made my motion. Do I have a second?
- 8:53 pm **Marshall** I'll second it.
- 8:53 pm **Florence** All those in favor, say aye.
- 8:53 pm **Carney** Aye

- 8:53 pm **Marshall** Aye
- 8:53 pm **Tapp** Aye
- 8:53 pm **Florence** All those opposed, say nay. I say nay, as I don't believe the variances are justified by the scope of the project.
- 8:53 pm **Hatch** I also vote no.
- 8:53 pm **Florence** So the motion passes 3-2, with Carney, Marshall, and Tapp in favor, Florence and Hatch opposed.
- 8:53 pm **Max** Thanks, I appreciate it. This has been quite an intriguing experience for me since it's my first time attempting something like this. So, once again, thank you.
- 8:54 pm **Carney** Don't forget, your next important step is to obtain the shoreland permit from DES. Everything depends on you successfully acquiring it.

### Joseph Szymanski deliberation

- 8:54 pm **Carney** So basically, when I first saw the property, it seemed like no big deal because it was about two acres. But when we looked closer and factored in the wetland, the size actually changed to something much smaller. It's important to consider this because the presence of the stream also influenced my experience there. If I could hear it with my hearing, which is very poor according to my wife, it was very close.
- Before the recent rain, I can only imagine how much worse it was in July when we had a lot of rain and the lake almost overflowed. When I walk my dog in the morning, I have time to think, and I realized that there was probably no better place to put the shed building than where it is now. If we moved it to the center parking area, it would be even lower and encroach on the wetlands. Putting it next to the other barn seems like a bad plan because the highest spot is where it currently is.
- I noticed that they actually made it a bit higher. You know, they brought in some riprap or whatever it's called, put it on blocks, and did some other stuff to raise it up in the air a little. And let me tell you, if the water manages to get into it now, he'd have a lot more than just a couple of inches. I mean, I think his cellar would be flooded with over a foot of water. Anyways, that's pretty much all I got to say about it. That's just my thoughts on the matter.
- 8:58 pm **Florence** I've been thinking about the situation with Mr Szymanski's shed. One way to approach it is to consider it as if it was starting from scratch, *de novo*. imagine if Mr Szymanski came to us with just a sketch of his shed in its current location. Would we have granted permission for it then?
- 8:58 pm **Carney** To answer your question, it's quite simple. He would have needed to go to the Select Board for a building permit, but they would have rejected it. When we went there, instead of seeing the shed, we would have seen four markers in the ground. Regardless, we would have still come to the same conclusion. We would have walked around, taken some measurements, and determined that it should be 25 feet from the road. Honestly, the fact that the shed is there didn't really affect my thinking. It was nice to see it, but it wouldn't have made any difference to me. My thoughts on the matter would have remained the same.
- 8:59 pm **Florence** Would an alternative have occurred to us? Perhaps make the boat house a bit bigger, perhaps it could be enlarged.
- 8:59 pm **Carne** If you were to dismantle the boat house and make it bigger, I would estimate that it would cost around "x" amount of money. He had to pay to build that small shed, so it would definitely be more expensive to tear it down and construct a larger boat house. It would probably be two or three times the price of the current shed to do something like that.
- 9:00 pm **Hatch** Is there anything in the five prongs that we must consider to grant a variance, is there anything that indicates we must consider the financial burden to the applicant? Perhaps the category of "substantial justice?"
- 9:01 pm **Florence** Yes, if we literally enforce the LUO and say the shed should not be there, are we advancing the purpose of the LUO in a fair and substantial way?

- 9:01 pm **Hatch** I agree with Mr Carney that if we took that approach, we would not be proportionally advancing the purpose of the LUO and we would put an unfair burden on the applicant.
- 9:01 pm **Florence** I'm a bit concerned that the wetland used to be bigger than it is now. But is that something we can consider here?
- 9:02 pm **Carney** No, I don't think it is. That all happened when the house was built, 20 or 30 years ago.
- 9:02 pm **Hatch** Also, the wetland setbacks were enacted sometime after 2002.
- 9:02 pm **Florence** When we measured, the shed is marginally further than the required 50 feet from the existing wetland anyway.
- 9:03 pm **Hatch** I move to grant the requested variance of a 25 foot front setback, where 50 feet is required.
- 9:03 pm **Carney** I'll second that.
- 9:03 pm **Florence** All those in favor. Say, aye,
- 9:03 pm **All** Aye
- 9:03 pm **Florence** The motion passes unanimously.

### **Conclusion of deliberative session**

- 9:03 pm **Florence** I move to adjourn the meeting at 9:03 pm. Do I have a second?
- 9:03 pm **Carney** I'll second that.
- 9:04 pm **Florence** All those in favor say, aye.
- 9:04 pm **All** Aye
- 9:04 pm **Florence** The motion passes unanimously and the meeting is adjourned.