

Town of Bowdoinham- Board of Appeals

June 21, 2023

Minutes

Meeting called to order at 6:30 by Chair David Jones

Members present: Bill Bryan, Ed Friedman, Secretary, Sylvia Hultman, David Jones, Chairman. Also present: Tina Magno, Town Clerk. The meeting is recorded for posting on the town website.

Public attendees: Liz Marks, realtor for Appellant, Matt Greaney, Appellant, Matt Bernier, Abutter, Matt James, Bowdoinham CEO, Mark Favreau, Bowdoinham Selectboard, daughter of Flora VanCour, seller

The Board has a quorum with all members present.

Dave reads Rules & procedures from agenda:

Rules & Procedures for the meeting:

- The Chair reads a statement of the case and identifies all correspondence and reports the Board members have received.
- The Board will then determine whether we have jurisdiction to hear the case.
- If the Board accepts jurisdiction, we will have the appellant and/or their representative present the appeal. Dave emphasizes, the burden of proof is on the appellant to demonstrate his/her case, so this presentation is very important. During the presentation or after the presentation, the Board members may ask questions or request clarification.
- Once the appellant's presentation is complete, Dave will open a Public Hearing, during which interested members of the public may speak. Any questions raised by the public will be directed at the Chair or the Board members and not the appellant. This is not to be an open discussion between the public and the appellant but is an opportunity for the public to ask questions and voice support or opposition of the appeal.
- After members of the public have completed their remarks, the appellant will have an opportunity to respond.
- Once all public comments have been heard, the Public Hearing will be closed and no further comments from either the appellant or the Public will be allowed during the deliberations of the Board.
- The Board will deliberate and decide if they have enough information and if so, will vote on the appeal.

Note: The Board may Waive any of the above rules if Good Cause is Shown.

Dave then reads Statement of the Case:

Statement of the Case:

A 24' X 24' two car garage was permitted and constructed in 1993. When the property was under contract for sale in late 2022, it was discovered the garage did not meet the 10-foot

sideline setback as a survey showed the setback to be approximately 7 feet. The Appellant is requesting an Undue Hardship Variance from the 10-foot setback requirement.

This seems to be a case where a mistake was made nearly 30 years ago resulting in the garage not meeting the setback requirement by ~3 feet. This may seem trivial, however at this point, Dave clarifies that everyone understands approval of an Undue Hardship Variance is very difficult to achieve. The State of Maine Revised Statutes Annotated (M.S.R.A.) requires strict adherence to four tests which require the Board not approve nor grant a zoning variance unless it finds:

- a. The land in question cannot yield a reasonable return unless a variance is granted.
- b. The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood.
- c. The granting of a variance will not alter the essential character of the locality; AND
- d. The hardship is not the result of action taken by the applicant or prior owner.

All four of these strict tests must be in place before a variance is granted.

Correspondence and Reports

The Board members have all received and have copies of:

1. The Application for Variance submitted by Elizabeth Marks (Realtor) on behalf of Matt and Holly Greaney including a sketch plan of the property, a copy of the warranty deed and a written justification of variance.
2. Planning Board Minutes for their meeting on February 23, 2023.
3. A letter signed by all Planning Board members recommending the Board of Selectman grant a Consent Agreement with no stipulations to Holly and Matt Greaney that grants continued use of the garage without violation or collecting of civil penalties.
4. Matt James (Code Enforcement Officer) 529 Bay Road (R09-001-A) timeline as of June, 12th, 2023.
5. Draft Consent Agreement & Compliance Order (unsigned) prepared by Matt James (CEO) that does have stipulations which would cure the violation.
6. All legal Notices to abutters and affected parties of the Board of Appeals meeting/hearing for the appeal.

Jurisdiction Establishment: Ed makes a motion that the Board accept jurisdiction to hear this variance request. Sylvia seconds and the Board unanimously approves.

Appellants present their case:

Elizabeth Marks, Realtor for the Appellants, Matt and Holly Greaney, now presents their case, reading from a prepared statement that is quite similar to Dave's "Statement of the Case." The Greaneys were under contract to purchase Flora VanCour's property in December of 2022 when their Title Insurance company became aware the garage did not meet side lot setback requirements (a residual violation from years ago) and so would not insure title, thus halting sale. Abutter to that side of the property, Matt Bernier, was more than happy to execute a land swap with the Greaneys so their setback violation could be cured.¹ He would give the Greaneys some of his land adjacent to the garage and they would give him the equivalent square footage (about 400sq/ft) from an uncontested area. Unfortunately for both parties, Matt's mortgage or title company, once local and now national, has not been forthcoming with their

approval for something like the last 7 months. The Appellants now come before the Appeals Board seeking relief.

Dave now opens the Public Hearing portion of the meeting at approximately 6:50:

We hear from Matt Bernier who provides some details on his title company's recalcitrance. All parties have been very frustrated through this process.

Ed suggests perhaps if the two title companies received letters from the Selectboard/ CEO/ Appeals Board that might help galvanize them into approving the desired land swap so the Greaneys could move ahead. While he understands the Selectboard did draft a consent agreement, contrary to the Planning Board recommendation, that did contain stipulations curing the present non-conforming lot status and he understands that desire, he also feels there might be a "softer way forward" the town could assist with. Hence the letter idea.

Matt Greaney speaks and notes this is just a few feet in question, that the seller is quite ill (her daughter mentions possible heart surgery) and wants/needs the sale to go through and that he hopes common sense can guide our decision. Mr Greaney also says he doesn't really understand this process but if the Secretary heard him correctly, he also claims to have been in real estate in the past and so these two statements seem somewhat incongruous.

Sylvia clarifies what the question before us is.

Mark Favreau says the Selectboard met for several hours on this issue including a couple with the Town Attorney and their ultimate action was to proffer the consent agreement with stipulations that if the non-conforming violation was remedied and money was paid into an escrow account by Greaneys for possible legal fees as a result of the process, then upon curing the violation, any non-conformance charge would be dropped by the Town. Apparently the Greaneys were unwilling to sign this.

Matt James clarifies the CEO cannot draft a consent agreement without conditions when there is a violation involved.

Bill briefly recaps case noting it seems to him that everything along the way has been done in good faith and that he sees our role not as going by the letter of the law but as being able to inject some humanity into cases that come before us and make our decisions accordingly.

Dave closes the Public Hearing at 7:08

The Board now goes through the four points that all must be met in order to grant a variance:

- a. The land in question cannot yield a reasonable return unless a variance is granted.
- b. The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood.
- c. The granting of a variance will not alter the essential character of the locality; AND
- d. The hardship is not the result of action taken by the applicant or prior owner.

Board Process & Findings:

a. Dave and Ed vote No because the land does not have to be sold to the Greaneys or with a mortgage or for whatever price is being asked and still can yield a reasonable return, Sylvia and Bill vote Yes. **2/2 vote. This question fails.**

b. Ed votes No because he feels the land itself is not unique, Dave Sylvia and Bill feel the situation is unique and vote Yes. **3/1 vote, this question passes.**

c. Unanimous vote that this condition is met, and that essential character of locality would not be changed by granting of a variance. **4/0 this question passes.**

d. Ed and Dave feel hardship is result of prior owner not clarifying setback before building garage. Blame could be shared by Greaneys for not doing due diligence. They vote No. Bill and Sylvia feel because the owner and Appellant did everything in good faith, they should not be penalized and vote Yes. **2/2, this stipulation fails.**

Board Decision: With only two of the four required conditions having been met by Appellant, their **request for a variance is denied.**

After the vote there is some attempt at clarification on generating a letter and I believe Matt Bernier will get us (via the CEO) contacts for Title Insurance companies.

Bill makes a final plea for common sense and compassion.

Mark Favreau relates a brief story of a garage he built in Topsham that upon inspection did not quite meet the setback requirement and although brand new, had to be corrected which was done by cutting off a section and rebuilding a portion of the wall at an angle.

The Chair asked if there was any other business and since there was none asked for a motion to adjourn which he received from the Secretary and that was seconded by Sylvia and passed unanimously.

We adjourned at 7:30

Respectfully Submitted,

Ed Friedman, Secretary

ⁱ When Ed got home, he realized rather than a somewhat complicated land swap which both title companies were squawking over, there is no reason why Mr. Bernier could not simply sell Mrs. VanCour a small piece of land (already plotted on the most recent survey) necessary to cure the non-conformance. A simple contract with Mr. Greaney could provide for return sale of the land equivalent once Greaney's were in possession if that were the goal of both parties.