ZBA Minutes Transcription 2/1/2023

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| PUBLIC HEARING |
| 19:00:01 | Carney | The Zoning Board of Adjustment meeting for February 1st, 2023 is called to order at 7:00 PM.Members present: Gary Carney, that's me chairman, Mark Florence, vice chairman, Linda Marshall, Andrew Hatch, and executive administrator, Deb Defosse. Visitors: Nancy Caruso, Mike G Corey Austin, Lloyd and Marya Sturges, Kim and Jim Stumpf, Kristine and Allan Chidester, Joel Chidester, and Cynthia and Mark Dressel. We only have 4 voting members, and not 5. We need a yes vote from 3 members to have anything passed. If you wish to wait until we have 5 Members, you can do so. It's been a year and a half since we've had 5 members. Any volunteers see me afterwards. We're trying something new tonight. We're going to try to tape the meetings for more transparency and to compile the minutes and make it a lot easier to do. After we compile the minutes and present them to the Members and we take a look at the Minutes, the recording will be deleted. Someone remind me before the meeting gets over tonight. I need to talk to you about the February 22nd meeting. We have some approval of minutes coming up. First of all, Deb passed out some minutes from. November. Everybody have a chance to just quickly peruse those? Any comments? I make a motion to accept these. Do I have a second? |
| 19:02:58 | Florence | I'll second that. |
| 19:03:00 | Carney | All those in favor? |
| 19:03:05 | All | Aye. |
| 19:03:08 | Carney | We also have minutes for a working workshop on January 5 at 10:00 AM in the Town Hall. The Members present were Gary Carney. Linda Marshall, Mark Florence, and Andrew Hatch. Did we have a chance to take a look at these? Is there anything that we have to change? |
| 19:03:44 | Hatch | No, I make it a motion to accept the minutes as presented. |
| 19:03:50 | Carney | I second that. All those in favor? |
| 19:03:55 | All | Aye. |
| 19:03:56 | Carney | The minutes for the working meeting of January 5 have been accepted. I couldn't think of anything for old business. Did we have anything we had to do for old business? |
| 19:04:17 | Hatch | Were there anything, I would bring it forward maybe after this hearing if we have time. We did speak about memorializing our dates of appointment. So it's something that we should keep on the agenda, but I don't think we need to hold up the Public Hearing for that. |
| 19:04:37 | Carney | Anything else? All right The order tonight is this: the first case will be Nancy Caruso, the second Corey Austin, the third Lloyd Sturgis, and the last one Joel Chidester, by the dates that you passed these things in. So Nancy, you’re first up tonight. I might add too: Let's use our outdoor voices so we can try to get this done. If it works pretty good and stuff, we'll get some speakers and stuff. Other than that, whenever you're ready, the floor is yours. |
| CARUSO |
| 19:05:43 | Christiensen | Thank you very much. My name is Jeffrey Christensen. I represent Nancy Caruso, on my left. With me is Frank Anzalone, the architect on my right. I do want to start by thanking the board for their patience as we've gone through this and we've been in front of you a few times on this matter. And I also want to thank Ms Defosse for her assistance as we've gone through Washington's procedures with this. So thank you very much. I'm going to try to keep this relatively brief. I know we've discussed this matter before. This particular proposal has been before you before. That being said, I do have to go through some of this just to create the record. If you have any questions, please feel free to ask. The property at 656 Highland Haven Rd. is a pre-existing nonconforming lot. It is fairly small. MS Caruso is intending to build a 24 by 24 garage on the property, as well as an enclosed walkway to provide her, particularly in the winter, with safe access to the property and ability of parking garage without having to slip in the snow. In order to do this, she needs a few variances, mostly from the setbacks, the front setback. She would need a variance to allow it to be only 17 feet and 1 inch and the side setback of 9 feet 8 inches, and also some of the impervious and building coverages, building coverage of 20.1% and impermeable coverage of 23.6%. We've submitted a written application that addresses all 5 of the variance elements in detail. I'm just going to try to hit the highlights, but if you have any questions about any of the particulars, I'm happy to address them in more detail. But I'd also like to incorporate the discussion we had in the prior proceedings as well just by reference. So I do want to start with the hardship. As you know, this is a small lot, substantially smaller than the four acres that is contemplated by the zoning ordinance. It's a little bit over 14,000 square feet, I think 14,600 and change. It's half the size of the nearby lots. There are some in the area that are similarly sized, but even those generally have more frontage than this particular lot. There are some unique features to this lot in its configuration. There's a significant portion of ledge and the septic that's already been installed on the property. The location of the septic is partially determined because of where the ledge is. That was the only place to put the septic. Siting the garage on the property without interfering with the septic creates some difficulties with siting and therefore it needs to be laid out. |
| 19:08:48 | Carney | I have a question on the subject. When I was looking at the plans, I noticed that the garage is 2 stories as there’s going to be living space above it. |
| 19:09:01 | Caruso | Yes, it's all storage. |
| 19:09:03 | Carney | All right. |
| 19:09:07 | Christiensen | There's also some unique characteristics to this property in connection with its location and the surrounding lots. As I mentioned, the surrounding lots are much larger, particularly the lot next door that's adjacent to where this garage will be. There is plenty of space between the proposed garage location and the buildings next door. Section 403.1 of the ordinance requires 35 feet between the buildings. There's at least 40 feet or more between this garage and the closest building on the adjacent property, which is actually also a detached garage. There's I think more than 120 feet between this garage and the residence on that property. This garage is a reasonable use. As I mentioned, the property next door has a garage. A lot of the properties in the area have garages. If it weren't for the unusual size and characteristics of this property, a garage would be completely permitted as an accessory use to the single family dwelling that's on there. This is not going to contribute to any overconcentration of population. There shouldn't be any problems with overcrowding. As I mentioned, the nearby buildings are a significant distance away. There's no real practical harm to the public or any of the neighbors. Also, with the connection with the environmental impact, this garage would be away from the lake, so it shouldn't impact the environment. There is a DES permit that has been submitted confirming that it should not have any aesthetic impact to the lake because it really won't be seen from the water. Additionally, we've submitted several letters from neighbors supporting this application, confirming that there really shouldn't be any problem to the surrounding area. I do know that one of the concerns the board had was the sort of cumulative impact, and the precedent that an application like this might set. First, from a legal angle, every application is separate, all real property is unique. A granted variance in one case does not bind the board in future applications, but it's also worth keeping in mind that because of the size of this property, a relatively small building has a large impact on a percentage basis when you compare this property to what might be a property that's 4 acres large as contemplated by the zoning ordinance. Percentages are very different. You're comparing apples and pumpkins. |
| 19:11:54 | Hatch | In that case, could I just point that out? Because this is a trope that you’ve repeated several times and I just want to make sure that you're aware that the zoning ordinance expanded from 2 to 4 acres in relatively recent times, but the actual setback requirements were not updated or changed. So to be fair, and I'm not sure even prior to that whether there were even smaller lots. But this argument on percentages needs to be put into context, |
| 19:12:27 | Christiensen | Absolutely. Now this property isn't even 2 acres. But in terms of the concern of sort of precedential impact, somebody else coming by and saying, Oh well, 23% on Nancy's lot, I have a 4 acre lot, I have a 2 acre lot, I'd like 20% building coverage too. I did the math and I think that's about a 35,000 square foot building. I don't think there's any concern of somebody building something that large on a residential lot in this case. It's about 394 square feet that creates about a 2.7% increase. If this were a 4 acre lot that would be a 0.2% increase. So that's all I'm trying to say in terms of the the precedential impact |
| 19:13:18 | Florence | Although we agree that you're right that any decision we make doesn't set a precedent, there's some case law that says that we are entitled to consider “what if everybody did it?” |
| 19:13:35 | Christiensen | Absolutely. Perfect. Yep, absolutely. What I'm suggesting is that it's more valuable to consider what if everybody had a garage of this size rather than what if everybody had 20% building coverage on their property. There are a lot of garages this size or larger already existing in the area, demonstrating that this shouldn't create any additional concern. No harm has been created by those garages existing in the area. There have been several variances for other similar garages, sometimes on smaller lots that have been granted by the board, and I am not aware of any harm that had come from any of those. This garage, it's set back from the lake. It's well separated from the adjacent buildings on abutting lots. The neighbors have expressed their support for this application. The design and the proposal that Mr. Anzalone has put together is the least impactful design that we could find, and therefore I'm asking this board to grant this variance. Happy to answer any questions you might have. |
| 19:14:45 | Florence | Mr. Chair, may I just get rid of this one issue, and dispense with it right up front. This was the subject of a meeting on January 5th because the board got a little bit concerned about various inaccuracies and inconsistencies in the applications that we received. We had a big discussion about whether they were showstoppers or what we wanted to do with them.Let me give you this sheet and also give it to the other board members. It's something that we just like to sort out before we get going. That's one for Deb there as well. So based on the various statements that were made, compared to Page 4, I'll call it the building permit application. It's not exactly called that, it's a longer title, but you know what I mean. Between page 4, page 6 and the plan there are different dimensions and we just want to clear up what the right one is. |
| 19:15:57 | Christiensen | Are you saying page 4 of the variance application? |
| 19:16:00 | Florence | No. Page 4 in the building permit application. That's where you say that the total square footage is 2904 and you need a 19.8% variance. And that's not actually what you're looking for in the end. |
| 19:16:25 | Christiensen | In the variance application, those are the numbers that we are looking for. I that case we're talking about the structure coverage we have sought, 20.1%. |
| 19:16:38 | Florence | Right, that's what we agree with, from the plan rounded up from 20.06%. Now Page 6 has yet another number and really the point where I'm going on all of this is that one way or another the board would like to get the paperwork cleaned up. So if we approve the variances, we'd set a condition precedent that the paperwork get cleaned up. If this variance is approved, the numbers that we are asking for are the ones that are in the variance application itself. |
|  | Christiensen | Once it's approved, we would absolutely submit a building permit application |
|  | Florence | Page 6 has another number. That's the enumeration of the square footage for the fees. That has a different number that adds up to 2922 feet. |
| 19:17:37 | Anzalone | So I would say to follow the variance application and follow the site plan. Because this gets very specific. And we have other items in here that are not on that. OK, the walkway. |
| 19:17:54 | Christiensen | So I yes, I'm not sure if that got picked up by the recording. The numbers that are in the building permit are not always the same number. For example, the impervious surface calculation, the application for the variance and the plan reference include the walkway in the calculation that may not have been included based on the requirements of the building permit application. So sometimes there are differences in the numbers. |
| 19:18:26 | Florence | We're not going to make a big deal out of this. We just would like the paperwork cleaned up. |
| 19:18:32 | Christiensen | We will absolutely do that. |
| 19:18:33 | Florence | OK and while we're looking at page 6, there's no dispute, is that right, that this is a 2-story structure? |
| 19:18:39 | Anzalone | But technically, no. It's a garage with an attic. And she's going to take advantage of that. Storage is always an issue for everyone. |
| 19:18:48 | Florence | But it does have a second floor. There's no dispute, right? If I may ask you, from the planning board perspective, there's no technicality that says this structure does not have a second floor? |
| 19:19:01 | Anzalone | So it's really not a full story.  |
| 19:19:07 | Florence | You see where I'm going? I'm sorry. |
| 19:19:09 | Caruso | There's a dormer. So bear with me. |
| 19:19:16 | Florence | The engineering plans clearly show a second floor. I mean it says “second story”, it says that and my issue, I think our issue, is on page 6. You're supposed to account and pay for the square footage of the second floor. |
| 19:19:32 | Anzalone | You are correct. |
| 19:19:33 | Florence | So we'd like that cleared up. One way or another, I think you owe the town $150 or something like that, if we can clear that up too. |
| 19:19:45 | Christiensen | We're happy to do that. |
| 19:19:46 | Florence | Thank you. Just to get that out of the way. |
| 19:19:55 | Hatch | I'd just like too obviously in the variance application as we have discussed 202 versus 403.1, the request is sort of either or. In the way presented. And, 202 is obviously a different setback requirement to 403.1. We are determining now which of these two were pursuing? |
| 19:20:33 | Christiensen | Oh, I wasn't sure if that question was for us. So part of the issue is that the 403.1 issue came up before. 403.1 presents a sort of exception to the existing rule. A variance is also an exception to the rule, so however the board wants to do it in either direction, whatever the boards comfortable with, we're happy with. |
| 19:20:57 | Florence | You didn't like it last time when we changed it to 403.1, |
| 19:21:00 | Christiensen | I think that's why the application before only referenced 202. So again, in the interest of keeping the clean record, that's the one that we were asking for, the variance in deference to the board's preference for 403. We included that as a possible remedy in this case just so that whichever way the board was comfortable with it had been requested in the initial application. |
| 19:21:24 | Hatch | Well, in fact 403.1 doesn't apply to variance #1, because that is a front setback and 403.1 is for side or rear setbacks. |
| 19:21:32 | Christiensen | That was part of the reason why we wanted to include both of them as an option. |
| 19:21:38 | Hatch | The discussion on the side setback variance #2 is the one that is perhaps remain to 403.1 correct? And that is a 25 foot setback. So just to make sure that the board's aware that is a subject for conversation. |
| 19:21:56 | Florence | So just to be clear, when we come up with our notice of decision, where we'll reiterate what we've approved or denied, variance #1 is looking for a variance from 202, variance #2 is looking for a variance from 403.1. |
|  | Christiensen | That's agreed. And we will then submit our building permit based on the board's determination and notice of decision. |
|  | Florence | I'm looking at my list of questions and I don't have any more, Mr. Chair. |
| 19:22:45 | Carney | Anybody else have anything, any questions? |
| 19:22:49 | Hatch | Obviously we've got a fairly well laid out background and description in lieu of just filling in the form and so that helps us to take each potential item in order. It was interesting to me that, despite your acknowledgement that the variance is considered in isolation to others, you took quite a lot of opportunity to remind the board of what it had previously done in other circumstances. I did not have the opportunity to research the full background to each of them, but I feel that along with the contention of the applicant situation rather than the specific nature of the lot, and what is particular to the lot. Those two things, we've gone down this road a couple of times already and are outside of our considerations. |
| 19:23:55 | Christiensen | Absolutely. The reasons are that those are just provided for context. Obviously a variance depends on the condition of the land and the property. But we wanted to provide the factual context, to give the board the full picture and to clarify. The reference to the prior variances was included not to suggest that there's precedential value to those, but simply to use those as examples of how a garage like this does not result in harm to the neighborhood because prior garages have been created on similarly sized lots without resulting in any harm in those cases. |
| 19:24:36 | Florence | I did that research. I have a list. Would it be interesting to summarize that, or should we just accept that we're good with it, having no precedential value? |
| 19:24:51 | Hatch | I wouldn't necessarily want to detain the time of the board tonight in debating something that I consider outside of the terms of why we're here. |
| 19:25:01 | Florence | Fair enough. I've got it on record and it's there. |
| 19:25:09 | Christiensen | Anything more? |
| 19:25:14 | Hatch | Carry on, because there's a couple of things, but I just need to remind myself before we get back to it |
| 19:25:23 | Defosse | Is anybody here on behalf of this case that would like to speak? |
| 19:25:31 | Christiensen | Bear with us for just a second.  |
|  | Carney | Take your time. |
| 19:25:43 | Hatch | No, I don't have any other specific questions. I think we've covered what I need. |
| 19:25:48 | Christiensen | All right. Thank you very much.  |
| F ROCK TRUST |
| 19:25:59 | Carney | Next, that would be Corey Austin. Tell us about your project. |
| 19:26:09 | Austin | So I'd like to put a garage up, but I guess the LUO requires a 50 foot variance from the road and I was kind of trying to keep the garage doors in line with my house, I guess for looks. And I think I'm going to be within like 27 or feet of the road, but I don't really know what exactly it is. |
| 19:26:55 | Carney | Not only does LAE have the 50 foot requirement, the whole town does. |
| 19:27:00 | Austin | I measured and I'm like about 27 or 28 feet or 30 feet from the road. It kind of goes at an angle depending on where you're standing. The closest part would be 27 feet. |
| 19:27:13 | Florence | I'm looking at your drawing, and that's what we've been looking at. Mr. Chair and I went to measure it and I think everybody else has been there to take a look. |
| 19:27:26 | Austin | I did mark it on it. I put some stakes about and if you guys saw them. |
| 19:27:34 | Carney | I measured it I think once before and after I saw that you have had the stakes out. I measured it again. |
| 19:27:41 | Hatch | It wouldn’t be fair for me to comment, having gone to the site, but it was icy on the weekend and I didn't want to fall. I didn't bring my skates so I couldn't get far. |
| 19:27:48 | Austin | It's all sanded now if you want to take a ride over it. |
| 19:27:52 | Hatch | But obviously it looks as if your rear view garage is almost kind of at the same set as your home, is that right or is it about as far as you can before that major drop off? |
| 19:28:13 | Austin | It’s 10 or 15 feet from that drop off. |
| 19:28:17 | Hatch | Obviously your variance application is for the front and your contention is that you've taken it as far back as practical. |
| 19:28:24 | Austin | Yes, pretty much, yes. |
| 19:28:26 | Hatch | What we're looking for is what I call maximum feasible compliance, meaning you've done your best in the circumstances. So I just wanted to be clear on if you've given some thought to that.  |
| 19:28:39 | Florence | Can I probe a little bit into that, Mr. Chair? When you and I visited the property we measured the rear. So you’ve got 27 feet from the road to the beginning of the garage. Then you’ve got another 40 feet going back and it seemed to us, if I remember the measurement, that there was plenty of space behind it. |
| 19:29:01 | Carney | What we did is when we measured that, we measured it two ways. We measured it to the where your stake was and then we added on another 23 feet to be conforming. So we also measured it with 23 feet. I'd still fit in the area. And at that point, you would need no variance. |
| 19:29:30 | Austin | Except for the road, right? |
| 19:29:32 | Florence | If you've moved it 23 feet back, further back to 50 feet. |
| 19:29:36 | Austin | But then I'll be right on the edge of that drop off where I have it filled in? Right there. Yes, I'd be pretty close to the edge of that. For 23 more feet, I think I'd be pretty close to the edge. I'm very close up front. I mean, I'm all, I think you guys mentioned. I measured it too. I don't know what the measurements were, but I wasn't trying to push it back too far because I don't want to get too close to where it's all filled in right there because I'm sure that garage is going to add some weight to it. And I was kind of trying to keep it in line with the front of the house. That's what my goal was. |
| 19:30:11 | Florence | Would it be fair to say that your primary goal was aesthetics in positioning the garage where it is? |
| 19:30:20 | Austin | For the aesthetics, yes, aesthetics. To keep it in line with the house, kind of because it would push back and just to me it looks out of place. |
| 19:30:30 | Florence | I just wanted to understand that while we're talking about measurements. So I'm going to do the same to you as I did to the Carusos, if I may, because on your application there's some anomalies as well. I think mainly there is an arithmetical error. If nothing, we would just like to get that fixed one way or another. I'll pass this out to the rest of the board, which I think everybody has seen. Let me walk you through one issue that is an issue for us because all of our paperwork is subject to some decent amount of scrutiny. If we look at what you wrote, it looks like you need a structure coverage variance because you claimed you were going to be covered to 11.19% and you can't be any more than 10%. Don't worry, the garage doesn't take you over that. OK. It actually works out to be 7.61%. But we need it corrected, so when anybody who reviews the paperwork, it's correct. Nobody's going to say ok, wait, a second. He needed this variance, but you didn't give it to him. What's up? Yes. So just one way or another, if we, if we grant the variance, there would be a condition on granting it that you fix it. And if we deny it and then, if you decide to appeal, it would be a condition before you appeal that you submitted the right number. |
| 19:31:59 | Austin | So, you guys already have the right numbers next to it over here. |
| 19:32:03 | Florence | Yes, the second column has the right numbers that we've all validated. |
| 19:32:13 | Austin | Anything more? |
| 19:32:15 | Florence | No, I think that's it. Any questions from the board? |
| 19:32:20 | Marshall |  If the garage is built where you want it to be built, will it be In the same line as the house or off to the house? |
| 19:32:32 | Austin | Not in line with the porch that's on the front of the house. So the corner of the house will be in line with the corner of the garage, I should say. |
| 19:32:41 | Marshall | OK. |
| 19:32:42 | Carney | And the garage will be parallel. In other words, the amount of space will be the same amount of space from front to rear, like 12 feet. |
| 19:32:50 | Austin | I think I mentioned something like that. So I can get something behind there if I had to get up. A tank or something back there. |
| 19:33:02 | Florence | It would in theory, right? It would be possible to extend the part that’s pad that you've built for yourself so that you could extend it backwards. You've got 100 feet from the front of the house, right back. There's plenty of space, plenty of space to go back because there's no rear setback problem under any circumstance. |
| 19:33:30 | Austin | OK, so I think I have 60 feet there now. I could go back, but then I'd be filling in a huge, huge hole. |
|  | Stumpfs | Just wanted to say we have no issues with the garage. |
| 19:33:42 | Carney | Any other questions? |
| 19:33:44 | Florence | No, I don't. Not for me. |
| 19:33:46 | Hatch | I don't have any questions. |
| 19:33:50 | Carney | Linda? |
| 19:33:53 | Carney | Alright, thank you. Is there anybody here to speak for you? |
| 19:34:02 | Austin | So now what, I just come back and file the paperwork again? |
| 19:34:10 | Carney | After we finish everybody's, then we'll go in and we'll make a decision on each. If you wish to stay for it, you can. If you don't wish to stay for it, you don't have to. It's up to you. |
| 19:34:33 | Defosse | You're going to pay before you get a permit if it's passed. So yes, you will. You will pay. Either way. [LAUGHTER] |
| STURGIS |
| 19:34:46 | Carney | Lloyd Sturgis |
| 19:35:04 | Sturgis | 39 Maple Way, I'm Interested In putting on a deck. It's encroaching about 10 feet of the variance for the set back from the road to the edge of the deck. So I'm looking for a 10 foot variance |
| 19:35:21 | Carney | If I remember right looking when we measured it, that 10 feet kind of narrows down. In other words, it's not totally parallel to the road. In other words, one corner of it is sticking out a little further than the other corner. Or is it perfectly parallel to the road? |
| 19:35:42 | Sturgis | It's actually an angle. And it's not the whole thing, 10 feet. Like a little wedge. |
| 19:35:51 | Carney | Just the front, I'm calling it standing on the street looking at your house. It's the front left corner. |
| 19:35:58 | Florence | This diagram shows that. I don’t know if you can see it from there. That's what we've been looking at and that's what we measured. |
| 19:36:09 | Sturgis | Put the 28. Full length. It's supposed to be 28 to the edge, the back part of the deck, right? 28 feet to the corner 28 feet to the corner, it's 12 feet. In 30 and 30 feet out. |
| 19:36:25 | Carney | When the house was built, did you build the house?  |
|  | Sturgis | I was there When it was built. |
|  | Carney | Were they planning on a deck? Because I noticed you didn’t have to cut anything. There's a ledger board or whatever you want to call it. |
| 19:36:48 | Sturgis | We kind of figured out already that we needed a variance because the house was put in and there was a ledge in the back. And we couldn't fit it. |
| 19:36:58 | Carney | So when the house was originally put in, in the back of your mind, a deck was sort of planned on. |
| 19:37:05 | Sturgis | Yes. |
| 19:37:09 | Florence | I'm going to do the same to you that I did to the last two applicants. I think your big problem was there was a decimal point in the wrong spot when you did your calculation. |
| 19:37:23 | Hatch | When I went I clarified that the shed was actually 12x12 rather than 12x2. |
| 19:37:29 | Florence | I don't know where I got that from. I was looking at Google maybe, but, as I said it was highly unlikely. |
| 19:37:38 | Hatch | I confirmed that it was a 12x12, although somewhat buried in the snow.   |
| 19:37:45 | Florence | So it's the same deal that, if we approve your variance, we’d just like you to submit an update to the building permit application if that makes sense. That's page 4 where you say what the size is and what the structure size is and what the percentage of coverage and that kind of stuff. |
| 19:38:10 | Sturgis | OK, but we already did that. |
| 19:38:12 | Florence | Yes, but it was wrong. It was arithmetically wrong and these are the right, well, approximately the right numbers because I made a guess to the shed size that was wrong. The “measured” column is the correction and in red are some notes. As Andrew pointed out, the shed is not 2x12 it is 12x12. Deb is it right that if Mr. Sturgis wanted to come in and get some help filling that out, it would be perfectly OK? |
| 19:38:41 | Defosse | OK. |
| 19:38:41 | Carney | What else have you got? Anything else? Questions from the board? |
| 19:38:51 | Marshall | When I was there I noticed there were excavators working up beyond you. Is that road going to be extended? |
| 19:38:59 | Sturgis | They're building. Their plan is to level that and put a structure there. The road stops there. They already made the driveway going up. Also they're going to make a driveway and then a building eventually. They're supposed to put some kind of building, I'm not sure what yet. |
| 19:39:22 | Marshall | And whether it's going to be a home or something?  |
|  | Sturgis | No, it's not going to be a house. He wants to store his stuff there. So it's going to be some kind of a, not a garage, but maybe a garage. I don't know for sure. Sorry. |
| 19:39:36 | Florence | Your essential claim – I've scribbled on your diagram but hopefully this is recognizable – is that due to the gradient of the lot, which is kind of down like this, your opportunity for outdoor space is really this deck, and that's the one opportunity you have due to the lay of the land there. |
|  | Sturgis | Yes. |
| 19:40:06 | Carney | Anything else? |
| 19:40:08 | Hatch | So I just wanted to be clear and I think Linda and I are both in agreement. If I could just hold this up. So I just drew this little line across here for illustration, if I was hearing you right. We're looking at 28 feet there. And then so this is 30 feet here and this is 28 feet here, And this is 10 feet wide. |
| 19:40:32 | Sturgis | Actually the other side is only 16 feet, or something. Its 30 feet from that far corner to the other corner. It's actually 30 feet from here to here. |
| 19:40:48 | Hatch | Yes, sorry, that's what I'm looking at. So we shouldn't count the 12 feet. Its 28 + 12. |
| 19:41:00 | Sturgis | I think we both have to double check to make sure the 640 square feet was correct. It's 12x30 and then 28x10. |
| 19:41:13 | All | I'm good. I'm good on it. Yes. Yes. Good. Thank you. We're all good. I think we're all good. Yes. Thank you very much. Thank you so much.  |
|  | Carney | Do you have anybody that's going to speak on this one? No. OK. |
| CHIDESTER |
| 19:41:33 | Carney | Joel. |
| 19:41:50 | Chidester | Good evening. Good evening. |
| 19:41:57 | Carney | Tell us about your plan. |
| 19:41:59 | Chidester | So I'm requesting a single variance tonight to section 306.2. Which is the permitting of a temporary RV for a temporary dwelling, during construction. And I'm looking to ask for variance to allow a contiguous lot that is not the same lot that construction is occurring on, to take advantage of existing utilities, and a driveway sitting on the lot that will be replaced to avoid duplication during the construction on the building. |
| 19:42:34 | Carney | What utilities? What are you going to do for the sewer? |
| 19:42:39 | Chidester | So the lot the RV is proposed to be placed on had a previously permitted dwelling that has been demolished. So there's existing state approved septic, well, power, and driveway access already existing on that lot. |
| 19:42:54 | Carney | OK, where are you going to place this? How many feet to your neighbors? |
| 19:43:03 | Chidester | So it's all a conforming lot. It meets all set back requirements for the existing dwelling that was previously there. You have these currently sited there now under the temporary RV permitting. My hope is to now transfer that into the building permitting phase for the temporary dwelling during the building permitting process. |
| 19:43:27 | Hatch | The way that you've stated it, this particular ordinance number is actually 306.0 item 2, because 306.2 is a separate ordinance for a required guest permit, which is not what you're looking to do. So just again for the record, we should clarify that. |
| 19:44:11 | Florence | So with your permission. We'll make that change. |
| 19:44:21 | Chidester | Agreed. |
| 19:44:24 | Florence | [Pointing to map] this is the lot that you're going to put the RV on, and this is a lot you're going to build on. Roughly whereabouts will the RV sit? |
| 19:44:39 | Chidester | Yes absolutely. Yes. Yes you can see that in the satellite imagery right there is the clearing for the previous dwelling that was there, and then the new house site would be.   |
| 19:44:58 | Florence | And the utilities you've got there are electric? |
| 19:45:01 | Chidester | State permitted septic system, well, driveway access, all from the previously permitted dwelling that was there. |
| 19:45:29 | Florence | [Pointing to map] This is advantageous because all of your traffic will go from old Marlow Road to get into your lot. You'll go through here and into your lot. |
| 19:45:42 | Chidester | Well so the new dwelling would have a new driveway. We would prevent residential traffic up and down that construction driveway. And track some dirt on the street and things. |
| 19:46:05 | Florence | How long ago was the house demolished? |
| 19:46:08 | Chidester | Spring of 2021. |
| 19:46:09 | Florence | So all of these utilities are in full working order? |
| 19:46:16 | Chidester | Yes. There are two abutters who came to support me tonight and offer any thoughts. |
| 19:46:32 | Carney | Your abutters can speak now. Come on down here. |
| 19:46:45 | Dressel | Mark and Cynthia Dressel from 304 Old Marlow Rd. We bought that property on the two sides to the north and east. Lots 19 and 38 are the numbers. We would probably be mostly impacted by this project and we’d just like to let the board know and hope you take it into consideration that we're in full support of it and we support the project 100%. |
| 19:47:29 | All | Good deal. Thank you. Thank you. Thank you, thank you. Thank you. |
| DELIBERATIVE SESSION |
| 19:47:48 | Carney | OK, now we'll close the public hearing. We're going to close the hearing and go into our deliberations at 7:48pm. The first one we’ll take up is Caruso. |
| CARUSO |
| 19:48:39 | Florence | I certainly have an issue that I'd like to discuss with the board if I could, but I don't want to seize the first shot. Do Andrew or Linda have something to say? |
| 19:48:57 | Hatch | Well, as I said in the Public Hearing I felt there was, I just wanted to get clear that I felt there was, quite a little bit about their testimony that was out of the realm of what we are here tonight to consider. The relative order of importance of the variances, I think, were mischaracterized by Ms Caruso's representatives to sort of suggest that the setbacks were of more primary interest and importance than the impervious coverage and the building coverageI think this unfortunate mischaracterization is what concerns me mostly. I felt that a lot of attention was to things that again don't have any bearing on that case. The fact that there is a lot of ledge on property is really of no consequence in my consideration. Because it doesn't affect the fact that whatever location this structure was going to be put on, it really doesn't change the percentage of building coverage. And secondly it's a rather Incorrect characterization that in fact what this structure will be in total could in fact be anywhere else, because it is not a garage, it's a garage with a breezeway and connector through the house. |
| 19:50:48 | Florence | I've been thinking of it as a 2-story addition actually, rather than a garage, to be honest. |
| 19:50:55 | Carney | Yes It is because it is fully connected. |
| 19:51:00 | Florence | And that was my point when I asked about the second story.Well, for me my biggest issue is the issue of unnecessary hardship. I think that was the issue that we struggled with most the last time and in my mind it hasn't gone away and I'd like to talk that through with the board if I could. I sent an email, as everybody knows because you were bcc’d on it. I asked NHMA for some advice on this and I'll lead up to that but I want to point out a statement that's made pretty much in the beginning of the “unnecessary hardship” part of the variance application. The applicant says that the property is “unique in its size and configuration.” I'd like to challenge that a little bit, because I think we're entitled to understand that sentence using the dictionary, and the rules of English grammar. If you look up the definition of the word “unique”, it says “being the only one of its kind, unlike anything else.” That's what the dictionary says. Even if we recognize that the property doesn't have to be literally different from every other single property, I think we proved last time that it is substantially the same as most of the neighboring properties. I had a little bit of an issue with that sentence. Now the claim is its “unique in its size, and configuration,” with the Oxford comma separating the configuration from the size. So the claim is that it's also separately unique in its configuration, but I think reading into it, it's not the configuration of this lot that is being claimed as special. It's the surrounding lots. The surrounding lots are said to have this attribute, that attribute, another attribute and it is clear to me that the applicant has absolutely no control over what the surrounding lots do, and that anything that was advantageous today could be disadvantageous tomorrow based on what those owners of those lots do. So I have a little bit of trouble with that. Also just going picking a little bit of this claim of uniqueness, at the beginning the claim is the property is “unique in its size and configuration” and then later in the in the statement here it says, I'm quoting, "both the small size of the property itself and the configuration of the neighboring properties are special conditions that are not shared by all lots in the area."  It took me a while to parse that, but what that tells me is that “unique” is now being redefined. Normally, unique means “different to all others.” But here this definition seems to me to be claiming that it is instead “different to at least one.” I have a hard time swallowing that. So that confusion led me to contact NHMA. I asked them, "How do we interpret this?” And NHMA wrote back politely saying “Figure it out yourself. You're on your own. You figure it out. But here's a clue. Take a look at Harborside.” So I did. I did a lot of reading on Harborside. And if I may, I'm going to give a short summary of the Harborside case. There were two hotels in Portsmouth, one operated by Parade. What Parade wanted to do was to put up some signs, some parapet signs and marquee signs but just think about the marquee signs right now. In that zone in Portsmouth, your marquee signs could only be, if I remember it right, 20 square feet but what Parade wanted to do was to put up 35 foot signs. The variance was granted but Harborside appealed. So what the ZBA said was that the special conditions of the Parade hotel was its size. That is, a big hotel. And they said that, well, it was reasonable for a big hotel to have these 35 foot signs. They used this formula: "Do the special conditions of the property render the variance requested reasonable?" Does the big size of the hotel render these 35 foot signs reasonable? They wrote yes, it is reasonable – and not overly aggressive. They specifically qualified “reasonable” with "not overly aggressive." |
| 19:56:51 | Florence | Harborside appeals and it goes all the way to the Supreme Court and, In their decision, they uphold the whole variance. The variance is approved and the Supreme Court echoed approvingly what the ZBA said: “The proposed use is reasonable and not overly aggressive.” What that tells me is that there was a size of sign that would have been overly aggressive and that the ZBA understood that: OK, 35 foot signs were good but 40 foot signs were not. Maybe not 40, maybe 50, whatever. There was some number that they said was too big, that it was reasonable for a certain size, but not reasonable afterwards. That's what led me to think that it's Reasonable for us to look at the 2-story addition to the Carusos property and ask ourselves: Do the special conditions of the property – it's claimed uniquely small size, which I'm not on board with anyway, but that's the claim – that its uniquely small size renders this large 2-story addition reasonable. That's the claim. I'm saying that I think it's within my understanding that yes, some addition would be reasonable, but there would be some addition that would be too large and therefore overly aggressive and that we were on solid ground in treading that path. |
| 19:58:51 | Hatch | And it's interesting that they've actually cited Harborside In here for reasonable use. |
| 19:59:01 | Florence | This [phrase] "and not overly aggressive", it's right there in the decision. |
| 19:59:12 | Hatch | I concur. It's a phrase that fits my sentiment. |
| 19:59:19 | Florence | Once I read that, I was thinking, OK, I understand what they were thinking. |
| 19:59:33 | Hatch | I think it articulates to me that again I felt the arguments were trying to sort of somewhat reverse the notion of reasonableness. Turning this concept that a small lot will represent, from a percentage standpoint, a major effect, whereas not so on a larger lot. I just got to the point of well, that's the problem, it seems to be counter to the application because it seems to be supportive of denial rather than a right. |
| 20:00:21 | Florence | It's a statement of the problem, not a statement of the solution. I think I agree.  |
| 20:00:32 | Hatch | Any other? |
| 20:00:36 | Florence | I'm sorry. Yes. On unnecessary hardship. Because there's a predicate condition. Special conditions have to be established first and I'm not convinced of that. Once special conditions are established, then you've got the question: Do the special conditions render the proposed variance reasonable? And that is the second part of the discussion that we just had. |
| 20:01:09 | Hatch | Well, we all have to be convinced one way or the other that all the 5 conditions are met or not met. |
| 20:01:22 | Florence | I think we do need to at least talk about all 5 conditions. Because this is a serious issue, we're at a serious junction here where this is the 4th time that the Carusos have been before us and it's a weighty decision for us to make. I was stuck on unnecessary hardship. Then I looked at the public interest and the spirit of the ordinance. That's when I did – we're not going to regurgitate it – that's when I did the analysis of the 5 other lots quoted in the application. They're talking about a garage and I just had a hard time thinking about this as a garage. I think of it as a 2-story addition, but that's a qualitative judgment. 4 of the 5 lots that they quoted, 4 of them were conforming. So that kind of took them off the table for me anyway. Whether they were garages or whatever, they were conforming In one respect or another. Here's something that I can pick on a little bit in the application. Under this section, the spirit of the ordinance, they say "The ordinance is expressly intended to encourage the most appropriate use of the land." To my mind that's a little bit of a misreading of what the ordinance says. The way that it's written, the LUO says "the regulations herein give consideration to the character and sustainable suitability for particular uses of areas in the town of Washington, the conservation of the value of property and buildings and the encouragement of the most appropriate use of land throughout the town." That's just like a predicate. It sets the stage for what the LUOs actually are intending to do, which is prevent the overcrowding of land, avoid undue concentration of population, lessen congestion, secure safety from fire, etcetera, promote health and the general welfare, facilitate adequate provision of water, light, etcetera, and ensure proper use of natural resources. I would like to judge whether the spirit of the ordinance is observed in relation to those six points. That's when I ask "what if everybody did it"? The big garage is going to be a big percentage on a small lot, whereas on a big lot it's not going to be any percentage at all. But I think that's a statement of the problem, not of the solution. |
| 20:04:48 | Hatch | Right. |
| 20:04:50 | Florence | So does that overcrowd the land? |
| 20:04:57 | Hatch | I was just looking for a reference. It was something that I wanted to bring up in a little bit, in addition to that, which is the contention that the property is not buildable. On the last paragraph of the first page it says that “the LUOs contemplate much larger lots of 4 acres. The frontage requirement and side setback requirements are intended for a much larger lot. The front side and shoreland setbacks zoning LUOs render almost the entire property unbuildable.” We're not talking about a vacant lot with no structure on it. We're not talking about whether a lot is or isn't unbuildable, accordingly any use or development of the property would require a variance. There is a structure and there is a property. This is an expansion of that property. So again I feel  it doesn't make sense to me. It doesn't apply to the case in hand. |
| 20:06:29 | Florence | There was an earlier claim, not made anymore, that the alternative definition of “unnecessary hardship” applied. I think that plays a little bit into this. We said that doesn't apply because there already is a use. That's just what you're saying. There's already a use of the property. |
| 20:06:55 | Hatch | So, should we be taking things in terms of the order of Our own application? |
| 20:07:05 | Florence | I started with what I thought was the most important and the most difficult. Just wrapping up what I thought about the public interest and the spirit of the ordinance, a question that we asked ourselves before and I think I want to answer as a board now, is: is the building and impervious coverage … the primary issue for us? Does the building and impervious coverage “unduly and to a marked degree conflict with the LUO such that it violates its basic zoning objectives?” |
| 20:07:53 | Hatch | Yes right |
| 20:07:58 | Florence | I think it's a question to ask, and I lean that way too. So, if we're taking them in order, what do we all think about that? |
| 20:08:23 | Hatch | Is the variance contrary to the public interest? |
| 20:08:27 | Florence | Yes, I think we have to couple them. It would be hard to vote up on one and down on another. Actually our Rules of Procedure say that we're not going to vote on each of them individually, we're going to reach a sentiment on them for sure. |
| 20:09:02 | Hatch | What I want to make sure is that the comments that have been made are now being apportioned to the respective criteria correctly. In some cases they apply to more than one. Is that correct? |
| 20:09:21 | Florence | Do you mean the claims made in the application or in our discussion? |
| 20:09:25 | Hatch | In our discussion. So are we under “contrary to public interest?” |
| 20:09:41 | Florence | My last comment about "unduly into a marked degree" would fit under both of these categories. |
| 20:09:57 | Hatch | That’s both #1 and #2. What about #3, substantial justice? |
| 20:10:02 | Florence | When I looked at this I did not know how to weigh that. That's where what we have to do we have to balance: if we deny the variances in one column of a ledger what's the gain to the public and how does that weigh up. Actually the burden of proof is on the applicant. The applicant has to show that if the variance is denied, that there is no corresponding gain to the general public. |
| 20:10:55 | Hatch | The surrounding property values: I don't think that is an issue.  |
| 20:11:02 | Florence | I would concede that issue because there's a number of statements, although one of them was not actually from a direct abutter, but they're all in favor and I would accept those. |
| 20:11:19 | Hatch | And then unnecessary hardship, which again is of the property and not the owner. But obviously we've covered that as an area of concern using Harborside. That's a uniqueness conversation, which does fit under unnecessary hardship, but I'm just trying to get my head around the argument that the Harborside appeal was based upon the special conditions, |
| 20:12:13 | Florence | Yes, do the special conditions and the size of the hotel render the 35 foot marquee signs reasonable? And the ZBA said yes, and it was "not overly aggressive" and that leads me to think that there is a case for it being overly aggressive. |
| 20:12:33 | Carney | Right. So what you're saying is, in the Harborside case, the fact that they wanted to put the bigger sign in is not overly aggressive. |
| 20:12:45 | Florence | The ZBA said the 35 foot signs were not overly aggressive and that in turn that told me that there was a size that would have been overly aggressive that they contemplated. That had Parade asked for 50 foot signs, they would have said no, because that is overly aggressive. That gave me confidence that we are on solid ground and following that same chain of thought here. |
| 20:13:23 | Carney | In other words, is the garage overly aggressive? |
| 20:13:25 | Florence | Is the garage overly aggressive? Yes. Is a 2-story addition overly aggressive? Is it? All of these arguments are related, they feed into the idea that the proposal unduly into a marked degree conflicts with etcetera, etcetera, etcetera. That's the position that I've solidified in my head. That the application fails on prongs one, two and five. If you remember that we kind of made it clear back in June, or at least maybe it was at the end of July at the rehearing, that our primary concern, just as you articulated, Andrew, was the coverage and not necessarily the setbacks. So It would be possible, I think, for us to deny the variance, to deny the coverage variances and hold the setback variances in abeyance and not make a decision on those. |
| 20:14:41 | Hatch | I understand the concept. |
| 20:14:43 | Florence | We were going in that direction at the hearing in the summer. Then it became moot because we vacated the whole issue because at the last minute all of the numbers were different and we wanted the Carusos to come back with the right numbers which they, plus or minus, have. Now I think we're faced with the same issues that we were last time. |
| 20:15:21 | Hatch | I do want to make sure that it's in the record. One of the contentions about the proposed work is that stormwater runoff mitigation is a part of their proposal and that is an advantage to the lot as it currently stands, which is not sufficiently protecting walkway stormwater runoff from the existing structure. By adding this, there was a mitigating aspect to it. I think that's a good thing, but I don't think it changes the fundamentals of what we're talking about. I just wanted to bring up that it was described as a distinct benefit. |
| 20:16:11 | Florence | It would be a great benefit if the structure as proposed was built of course, but the lot without the proposed structure has got to be more pervious than with the structure, even with the mitigation. |
| 20:16:42 | Marshall | Mitigation doesn't do anything for the existing structure. And really, not that much for the proposed structure. |
| 20:16:55 | Hatch | Clearly, there's a lot of different factors that in any notice of decision we have to put some time into articulating. Clearly, It's not something that I feel that we are ready to author by committee tonight. |
| 20:17:15 | Florence | No, we can't. Also we can't write anything down, I think, that we have not discussed and said tonight. I'd be happy to draft that. But it's not really a draft. It's not something that we can draft and then edit between us because we would have to have a meeting. To do that we have to have a meeting. So it has to be written based on basically the minutes. But the gist is: We would make a motion to deny the 2 coverage variances, I think that's #3 and #4 and put #1 and #2 in abeyance. The reasoning would be that prongs 1, 2 and 5 have not been satisfied based on all of the discussions we've just had. |
| 20:18:21 | Hatch | If I'm hearing you right, you might be making a motion tonight. |
| 20:18:25 | Florence | I was rehearsing a motion. |
| 20:18:26 | Hatch | Yes, that was rehearsing a motion. The motion would be: To deny variances #3 and #4, building coverage and impermeable coverage, and put in abeyance variances #1 and #2 for consideration on a rehearing or an appeal. |
| 20:18:58 | Florence | I think you just made that motion, is that right? |
| 20:19:00 | Hatch | Believe I did. |
| 20:19:01 | Florence | I second that motion. |
| 20:19:04 | Carney | All in favor? |
| 20:19:05 | All | Aye. |
| 20:19:28 | Carney | Anybody need a break or do we keep going? |
| 20:19:31 | All | I'm ready to keep going. I'm OK. We're all set, yes. |
| 20:19:36 | Hatch | You feel that, and obviously we've got the record on record and you can obviously access that to refresh, but you felt that we didn't bounce around as much as in some other decision points and you were clear as to where we're at? |
| 20:19:55 | Defosse | Yes, I’ve recorded the motion. |
| 20:20:04 | Hatch | Obviously we have this notice of decision procedure that is relatively new to the board. I think it's been extremely useful and very important particularly if any of our decisions have been brought into question or further legal scrutiny. To your point, Mark, We obviously need to author it based upon our public discussion tonight. So, given that we are facing a denial here, can we just be clear procedurally? The way we're going to author our notice of decision. |
| 20:20:46 | Florence | Well I put my hand up to write it. You'll be gone on vacation tomorrow or the day after tomorrow, right? So I put my hand up figuratively. I think we have 5 days. I think we have 5 days right to publish the notice of decision, which basically means Monday morning that it has to be in Deb's hands. I will put my hand up to do that. I can circulate it, but nobody can comment. We can't comment, we can't change it. |
| 20:21:29 | Hatch | Yes, I was just going to say working day, so that would be… |
| 20:21:31 | Defosse | Wednesday. |
| 20:21:32 | Hatch | Next Wednesday. OK. Yes, alright. And I know I will be in a position to receive email so I can review. OK, OK.  |
| 20:22:04 | Florence | Mr. Chair, you're happy with me doing that? |
|  | Carney | Yes. I am very happy with you doing that.  |
| F ROCK TRUST |
| 20:22:07 | Carney | OK, let's take up Corey Austin. He needs that variance on the setback in the front from the road to the structure, right? |
| 20:22:34 | Florence | Well, I unfortunately think that the principle that, if the project can be completed with no variance needed, if it can be made in a conforming way, that we can't grant the variance. |
| 20:22:53 | Carney | That's exactly what I was going to bring up. We had the same type of situation before, just 1 or 2 meetings ago when we went from needing 4 variances to no variances, simply by moving the structure a couple of feet. I guess the whole thing about asking for a variance is you ask for a variance when there's no other way of putting something up. |
| 20:23:38 | Florence | I'll read out a paragraph, if I may, for the record that I got from the housing appeals board. Tt says this, "while the ZBA must look at the project as proposed by the applicant and may not weigh the utility of alternate uses in its consideration of the variance application, it can examine whether there is a reasonably feasible method or methods of effectuating proposed use without the need for a variance." And finally it says "this coincides with the premise that land uses should move towards zoning conformity and that variances are only requested when essential for project viability." That's something that we should burn in our brains about granting variances. |
| 20:24:32 | Carney | It was when I first read that I and that's been true for a couple of other things. We had a structure on a piece of property that was a large structure, but because of the ledge and everything in the back the structure had to be pushed forward and therefore we had to have a variance for the front setback because there was no possible way of digging out a mountain behind the building. |
| 20:25:14 | Florence | There can be no hardship if it can be done another way. |
| 20:25:17 | Carney | Correct. |
| 20:25:18 | Hatch | What I struggled with a little bit was this. This is your Google view? The way this sketch plan represents the current orientation of the house, which is perpendicular to the road frontage, but is clearly not so by quite a marked angle. So the notion that these two buildings could somehow be aligned doesn't seem to make any sort of sense to me.  |
| 20:25:59 | Florence | As you say it looks like they're parallel to the road but they're not. You can see it from the satellite. |
| 20:26:14 | Hatch | From my site visit, I was not able to get a detailed impression of what was actually directly behind where the proposed location is. I could see that there was clearly a drop off, but I it was not possible for me with the snow cover to get a strong impression of, for want of a better description, what wiggle room there was in that. But as you asked in the Public Hearing, was it for aesthetic purposes and the contention was that it was to have everything in a straight line and I just don't understand the notion of that given the current structure’s orientation on the lot. |
| 20:27:21 | Florence | When Mr. Chair and I measured, I think you agree right all you need is 23 feet back there. I believe that it was in my notes and 23 feet from the front, we'll give it, we'll make it conforming. So that just pushes it back 23 feet and there was plenty of room on that pad, 23 feet. That was my judgment. |
| 20:27:49 | Hatch | If you were going to build it across to the line there, then the question I had was how far would it have to go back in order for this corner, which would clearly be the one that would be the closest to the property line. I'm just trying to be completely fair to the applicant to say If you were putting it at a kind of snaggle tooth just to sort of like go parallel to the property line and and back. It would be less of a move backwards, but it would be a disorientation, If you're looking at the lot, the left hand front corner of the proposed garage. The question is how far is that to go back in order to get 50 feet right.  |
| 20:29:25 | Carney | When I measured, let's say this is, this is the road like this, and the building was here, we didn't measure from the road the bigger distance, we measured the smaller distance. That's where we said they needed 23 feet and then we just pushed it back from there. |
| 20:29:56 | Hatch | Then you've answered my rather poorly articulated question. Thank you. So it's still your contention that there is enough room behind there without it being a massive backfilling operation. |
| 20:30:13 | Florence | Yes, that's actually my judgment. I think in conclusion that we have to deny the variance request because it's not needed. |
| 20:30:32 | Carney | I concur on that because if the plan got moved, it wouldn't even be coming here. |
| 20:30:59 | Florence | I don't have the handbook in front of me, but I do recall that the handbook does say that before we consider any of the criteria, we need to look at whether a variance is needed or not |
| 20:31:13 | Hatch | Which is consistent with your statement that you just read out.  |
|  | Florence | We can fall back on the position that, if the project can be moved to be conforming, the unnecessary hardship condition can't be established. There cannot be a hardship if you can build it conforming. So that would be our fallback. I'll put my hand up to write this notice of decision too unless anybody else wants to. That would be the wording that I would use |
| 20:31:52 | Austin | It does put me pretty close to the edge of that drop off, if I go back maybe 20 feet or something like that or whatever that would be. Because I'm 23 feet off the road, you're supposed to be 50, the closest corner because that road doesn't ... So I would have to go back at least 23 or 25 feet. That's going to put me right on the edge of that. I want to be able to get around it with a lawn mower, if it's going to be pushed back, without failing off. |
| 20:32:23 | Carney | Reasonably speaking, there wouldn't be much of an effort to put in some more fill or whatever. |
| 20:32:33 | Austin | I got about $10,000 invested in fill already |
| 20:32:43 | Carney | I mean the fact that you can do something without a variance Is what we're trying to do here. |
| 20:32:55 | Florence | Unfortunately, we can't really discuss it anymore. Yes, the Public Hearing is closed, unfortunately. The decision is appealable, obviously. |
| 20:33:07 | Carney | But we didn't vote on it yet. We haven't voted on it yet. |
| 20:33:16 | Florence | I'm going to make a motion. |
| 20:33:36 | Carney | If you're going to make a motion, I'm ready to go with it. |
| 20:33:41 | Florence | I motion that we deny the requested variance on the grounds that the proposal can be completed in a conforming manner. |
| 20:33:53 | Carney | I'll second that. All in favor? |
| 20:34:11 | Marshall | Aye. |
| 20:34:12 | Carney | Aye. |
| 20:34:12 | Florence | Aye. |
| 20:34:14 | Hatch | I'm going to abstain. |
| 20:34:16 | Carney | 3 ayes one abstain.  |
| 20:34:28 | Austin | I'll move it back. |
| STURGIS |
| 20:34:51 | Carney | Mr. Sturgis is here, right? I remember being out there to measure it and … what do I want to say? I don't know what I want to say. |
| 20:35:11 | Hatch | Well, you're on your game tonight. |
| 20:35:14 | Carney | I am not on my game tonight. |
| 20:35:19 | Florence | Personally had no trouble with Mr. Sturgis's application. |
| 20:35:24 | Hatch | We all went out and did our own visits, and I was fortunate enough to meet Mr. Sturgis and discuss some of the anomalies with the application And he answered any concerns that I had. I think Linda's question was pertinent because it's unclear particularly at this time of year what's going on with the road. It's not a setback from a road frontage that is regularly traveled So I don't feel There's much of a concern over public interest. |
| 20:36:19 | Florence | And things like the spirit of the ordinance, I think it manages to tick those boxes. |
| 20:36:25 | Carney | The other thing I was trying to think of is it only affects one corner of the proposed deck because it does go back on an angle. The house is situated in a way that, if you're standing on the road looking at the house, it's only the left hand corner that's affected by this. And I do believe too, although it doesn't really have anything to do with this, when the house was built, it was already built for this to be here because they have and I'm going to call it a ledger board, whatever you want to call it. The siding was down and all cut around it. So obviously when the house was built, it was made to be here. |
| 20:37:19 | Hatch | Going back to what Mr. Sturgis said at the house itself had to be located where it was because of ledge concerns. This is a bit of a knock on effect. I guess they didn't go for the application because they didn't know when they were going to be building and the building permit might expire. So it was a year or two at least in the future, but they did their best to orientate the house with the intention of this debt. |
| 20:37:50 | Carney | Yes, and I know this but it was in, wasn't it? It wasn't an afterthought, right? |
| 20:37:58 | Hatch | The hardship was baked into the house construction. We use this term hardship and it gets confusing because I don't want to then say it would be a hardship to deny Mr Sturgis because of the Inconvenience I put it the hardship to the property is based. So the hardship is the property and the state and is that grade going down there grade it's going down also. So I'm going to move that we approve the variance application and I believe that all 5 criteria have been clearly met. |
| 20:38:57 | Marshall | I'll second that. |
| 20:39:03 | Carney | All in favor? |
| 20:39:05 | All | Aye. |
| 20:39:07 | Carney | Approved. |
| 20:39:17 | Defosse | If you can bring in the correction tomorrow, the application can be approved by the selectmen tomorrow evening. If you bring at least the corrections during the day that would be the best thing and then they can fully approve it Thursday. |
| CHIDESTER |
| 20:39:55 | Carney | The last one on our agenda here is – it looks like Joel had to leave. So anyways, that reminds me of another case we had within this last year. Down towards Mill St and the pond down there, it's the same type of thing. You had a house that's no longer there, but you still have the well, the septic, the utilities, and all he wants to do is bring a – I'll call it an RV or trailer whatever we have – and hitch it all up so he has the convenience of staying someplace so he can build a structure. Obviously this also has a sunset to it. This thing will be done in a  couple of years. Whenever the house is done, when the house is finished, it'll be contingent on when that house is finished. Then the permit for this stops also. He's not going to be encroaching on the neighbors on either side. He's well within the 30 feet of the sideline variance. He's within the 50 feet of the street variance. |
| 20:41:59 | Hatch | There is a wrinkle here, and it is, if the property on which the house will be built and the property he wants to have his variant were on the same lot, we wouldn't be here. We wouldn't be here. It's a very unique situation. I don't In any way want to suggest that it leaves me any less inclined to want to be helping in this situation. I think it is a perfectly reasonable request. But I think we need to be careful of the precedent. Were we to be granting this, hmm, what wording we would use to acknowledge this particular uniqueness. It is a convenient solution. It doesn't seem to have any downside other than strictly speaking 306.0 Section 2 is a temporary dwelling that goes with the building permit for a long time. What we would be asked to grant tonight would be for the construction permit of an RV put on an adjacent lot. |
| 20:43:39 | Florence | Provided it meets all 5 prongs of the criteria. |
| 20:43:42 | Carney | The important thing is to be adjacent. The other thing is if someone came in and was doing the same thing but the they were going to be 10 miles away That's not adjacent, you know what I mean? It's and I do believe, and correct me if I'm wrong, when we're talking about pieces of property here that are all the people are relatives. I think that makes it totally unique too. That the fact just and the same thing about Mr. Blacks was was a unique type of thing. I do think we'll probably see this in the future, but I don't, I don't see this happening a lot. No, in fact these are the first two in all the years that I've been on here. |
| 20:44:36 | Hatch | Well, I think obviously it's something to do with the fact that there's been a lot more construction going on, but also I think the scrutiny that the Select Board put to the letter of the ordinance has brought it in front of us So it requires a variance because it doesn't fit strict terms of the LUO enough. Will we be granting this? We need to be careful with what we're granting and why we're granting it. |
| 20:45:17 | Florence | I have a clue that might help us on the why. It was a bone that was thrown to us by the Carusos actually, when they were claiming that some conditions are conducive to granting the requested variance. If a lot is uniquely suited, it has special conditions. I've rejected the Caruso's claim because they were making that claim about surrounding lots over which they had no control. But this lot is especially conducive to the project because it has the demolished house, the pad, the flat land, the electricity, the sewage and the utilities. The Caruso application has helped us because there's even case law – Rancourt vs City of Manchester – where this whole idea that special conditions exist when the lot is conducive to the proposal. All of the reasons were well articulated in the application, but I felt good about the unnecessary hardship because the special conditions do apply to this case. |
| 20:46:41 | Hatch | So I make a motion to accept the application for the variance of an RV under the terms of the Temporary permit for built construction purposes be approved due to the special conditions ...  how should I finish this? |
| 20:47:51 | Florence | Let's not overcomplicate it. Do we have to actually say that in the motion? We, for the record, are agreeing that all 5 prongs  of the variances are met. And in particular, the unnecessary hardship is met because the lot is especially conducive to the project. The motion is simply that we grant the variance because it meets all 5 criteria. |
| 20:48:30 | Hatch | That's exactly what I said. |
| 20:48:33 | Carney | I'll second that. All in favor. |
| 20:48:38 | All | Aye. |
| 20:48:42 | Carney | Alright, thank you for staying. |
| OTHER BUSINESS |
| 20:49:12 | Hatch | So you mentioned, Gary, February 22. |
| 20:49:15 | Carney | Yes, on February 22, that would be our regular monthly Wednesday night meeting. I will not be here. I'll be snowmobiling up in Caribou, Maine that whole week. |
| 20:49:31 | Hatch | Caribou, that's a long way from anywhere, Caribou. |
| 20:49:34 | Carney | And actually we're staying at the Air Force Base there. So the next one, the following Wednesday, would be March 1st and that's free. Well I'm looking at my own thing because I think on Thursday I'll be going back up there. I tried to call the guy that's supposed to be picking me up. |
| 20:50:22 | Florence | It’s very likely that we'll get an appeal from Mr. Austin and from the Carusos, or at least a request for a rehearing. |
| 20:50:33 | Defosse | He said he was just going to move it |
| 20:50:35 | Florence | Did he say that? I didn't catch it. Oh. I'm sorry. |
| 20:50:38 | Defosse | You couldn't hear that? I just told him, please submit a new permit. |
| 20:50:41 | Florence | Oh, oh, oh, brilliant. OK, brilliant. I misheard. |
|  | Carney | Next meeting schedule for March 1, 2023, all in favor.  |