

**Town of Bartlett
Zoning Board of Adjustment
Public Hearing
May 10, 2021**

Members present: Richard Plusch; Julia King; Peter Gagne; Norman Head; Doug Garland.

Members absent: None.

Also present: Atty. Chris Meier, Ray Hodgkins; Ramona Hodgkins; LeeAnn Cutter; Harold Dale; Don Mayer; Karen Lufkin; Jon Lufkin.

The Chairman called the meeting to order at 7:00 pm.

1. Review and Approve Minutes. The minutes of the September 16, 2020 meeting were reviewed. Motion to approve the minutes, as written, was made by Norman Head; seconded by Julia King. Vote: All in favor.

2. Public Hearing – File: 2021-01

Applicant:	Jon and Karen Lufkin
Location:	38 Allen Road, Glen, NH
Bartlett Tax Map:	Tax Map 2ALLEN, Lot 2-0
Purpose:	An appeal for a Variance to allow a proposed garage to be constructed 30-ft. from the centerline of Allen Road, and an Equitable Waiver of Dimensional Requirements to correct an approximate 6-ft. encroachment of the existing house into the side setback.
Zoning Ordinance:	Article XVIII, Section E (Variance). NH RSA 674:33 (Equitable Waiver).

Atty. Chris Meier of Cooper Cargill Chant presented and advised he was representing Jon and Karen Lufkin who were looking to build a garage on their property at 38 Allen Road. Atty. Meier noted his clients had originally requested a variance to reduce the front setback by 30-ft., however after hearing feedback from the Chairman and others on the difficulty of obtaining a variance, they “sharpened their pencils” and moved the garage further back onto the property. Atty. Meier said after having the contractor visit the site and engaging HEB to do additional surveying, a more-accurate and detailed plan was produced which found it would be possible to reduce the garage setback from the 30-ft. originally requested to 10-ft. Atty. Meier distributed copies of the new plan to board members. He noted that the reduced setback now qualified for a special exception under the 20% reduction provision. He asked, given that they were now asking for a lot less encroachment than originally requested, would the board be willing to shift the application request from a variance to a special exception. The Chairman said he did not know what the legal implications of doing that may be, and expressed concern that if the selectmen did not like it, they may deny their building permit. He suggested a cleaner way of doing things may be to consider a 10-ft. variance. Atty. Meier indicated he was agreeable to that if it was possible.

Attorney Meier went on to describe items on the property which affected where the garage could be located. These included a large 3-ft. deep depression on the front of the property, a propane tank, well, garden shed, septic and the rear portion of the lot sloped steeply down to the river. There was also a limited amount of space for snow storage. He said given the topography of the parcel, the optimal place for the garage was where it was being proposed. Atty. Meier said the garage would look no different than many other houses in the neighborhood and along Allen Road, which all encroached into the setback with some being built right up to the road. Noting the garage appeared to be located over some of the depressed area, Julia King asked whether the depression was going to be filled and if it retained water which could cause a wet area. Atty. Meier said the contractor was proposing to add two truck loads of gravel to extend the driveway. As far as the depression creating a wet area, Atty. Meier said he wasn’t sure but added he believed it was the responsibility of survey companies to document any wet areas detected during their survey and to show them on the plan. Since the HEB plan did not show this area as being wet, he said he could only assume standing water was not an issue.

Atty. Meier went through each of the variance criteria to show that this application met them all. Doug Garland said it was his understanding that a variance could only be granted if the ordinance regulations could not be complied with.

He suggested rotating the corner of the garage which was in violation so that it met setbacks. Atty. Meier said that would make getting into the garage difficult. He said several criteria had to be met before a variance could be granted, including hardship, but the ordinance does not say you could not get a variance if there was a possibility of compliance. Mr. Garland said he did not see how kitty-cornering the garage would make getting into it difficult. Atty. Meier said the tightness of the area would require a sharp 90-degree turn to enter the garage. Karen Lufkin approached the table and explained further. She said the driveway was shaped like an hour-glass with a very narrow portion in the area of the well and the propane tank. She said this narrow portion would not be wide enough to make a turn if the garage was straightened-up. She said by angling the garage, she could drive into it diagonally. Additionally, winter plowing caused the area to become even narrower. Doug Garland said he was still stuck on the fact that variances should only be granted for things that can't comply with the existing ordinance; they should not be granted just for convenience. He said if there was a way to be in compliance, then that is what needed to happen. He said he still did not see how straightening the garage would create the problems Ms. Lufkin cited. The Chairman and Norman Head both agreed it would create a tight turn.

Peter Gagne said he would prefer to see this submitted as a special exception. When the Chairman said there would still be the same problems, Mr. Gagne agreed but noted a variance was always more difficult to obtain. Norman Head confirmed with Atty. Meier that what he wanted approved tonight was not technically what had been originally applied for. Atty. Meier said what the applicant had technically applied for was a variance, and he had merely introduced the variance criteria to show that the application could meet those criteria. Atty. Meier said the application actually met the criteria for both a variance and a special exception, and said if the board was more inclined to grant the special exception, that he would withdraw the variance request and reapply as a special exception. Mr. Head asked how much reduction was being requested under the variance. Atty. Meier said they had originally asked for 30-ft., but that had now been reduced to 10-ft. Peter Gagne noted he could not recall an appeal for a special exception ever being denied. Atty. Meier said the main difference was that the hardship criteria did not have to be met for a special exception. Doug Garland said he would feel more comfortable granting a special exception and reiterated his earlier statements that if the project can comply with the regulations, then it should. He did not believe a variance or a special exception should be granted purely for convenience. Norman Head asked Ms. Lufkin what effect waiting another month would have on the contractor. When Ms. Lufkin said it would just put everything back a month, Mr. Head said, in his opinion, if it did not create a financial hardship or a time hardship for the applicant, then he would be inclined to go with a special exception. Other members agreed, feeling it was a cleaner process. Atty. Meier said with that knowledge, he was withdrawing the variance application and would resubmit as a special exception.

Peter Gagne asked about the request for an Equitable Waiver of Dimensional Requirements. Atty. Meier described how a recent survey had found the back corner of the house encroached approximately 5½-ft. into the side setback. He said the violation had existed since 1991 when the house was built. He explained that if a violation existed for ten years or more without any enforcement being taken by the town, then it qualified for an Equitable Waiver of Dimensional Requirement. He said since the applicant was appearing before the board for a variance, it made sense to take care of the encroachment at the same time. Atty. Meier said, basically, what the waiver did was give permission for the violation to continue. Doug Garland questioned the ten-year rule, asking whether that meant ten years from the time the violation was created or ten years from when it was noticed. He said he believed it was from when it was noticed. The Chairman read RSA 674:33 which verified Atty. Meier's interpretation, and which allowed the violation to be addressed in this manner. Mr. Garland said if the selectmen knew about the violation for ten or more years and did nothing about, then he would agree with the wording, but he did not see how they could be held accountable for violations they were not aware of. He said this particular case did not bother him, but he did not like the interpretation of the law. He felt it would encourage people to break the law and keep quiet about it for ten years. Mr. Garland said he would like to see the building permit from 1991, suggesting someone must have misrepresented it. The Chairman read further from the statute which said if the violation was unintentional or noticed before the ten-year period was up, an equitable waiver could also be granted if the cost of correction outweighed any benefit to the public. He called for a motion to grant the Equitable Waiver of Dimensional Requirements. Motion was made by Norman Head; seconded by Peter Gagne. Vote: All in favor.

3. Public Hearing – File: 2021-02

Applicant: Raymond C. Hodgkins
Location: 18 Albany Avenue, Bartlett Village
Bartlett Tax Map: Tax Map 5VILLG, Lot ALB-80
Purpose: An appeal for a Special Exception to allow a proposed garage to be constructed 50-ft. from the centerline of Church Street and 12-ft. from the rear boundary line.
Zoning Ordinance: Article XVIII, Section D-1(b).

The Chairman invited Mr. Hodgkins to present his case. Mr. Hodgkins said this was his family home which he was planning to live in now that he was retiring. He explained his need for a garage by saying he was a disabled veteran and an attached garage would enable him and his wife to better negotiate and avoid slippery ice and snow in the winter months. Mr. Hodgkins said the garage would have a low profile and would complement the existing house and surrounding neighborhood. A sketch from Leonard Builders was provided with his application which showed an attractive structure.

Norman Head asked who owned the abutting lots where the setbacks could not be met. Mr. Hodgkins said Church Street was a curved street and he owned all the lots within the curve. Mr. Head asked if the driveway shown off Church Street serving the new garage was an existing one. Mr. Hodgkins said it was not. This was a straight-forward request for a special exception. The Chairman asked if there were any questions. With none, the board deliberated and voted on the criteria which had to be met before a special exception could be granted, as follows:

1. The site is an appropriate location for the proposed use: Vote taken: 5 yes (unanimous).
2. A preponderance of evidence is found that property values will not be reduced due to incompatible land use by such a use: Vote taken: 5 yes (unanimous).
3. No traffic hazard will be created: Vote taken: 5 yes (unanimous).
4. No nuisance or other hazard is involved: Vote taken: 5 yes (unanimous).
5. Adequate and appropriate facilities will be provided for the proper operation of the proposed use: Vote taken: 5 yes (unanimous).
6. There is adequate area for safe and sanitary sewage disposal according to state regulations: N/A.
7. Operations in connection with such a use shall not violate the provisions of Article IV of this ordinance: Vote taken: 5 yes (unanimous).

Based on the above vote, the Chairman called for a motion to grant the special exception to allow a proposed garage to be constructed 50-ft. from the centerline of Church Street and 12-ft. from the rear property line. Motion made by Norman Head; seconded by Doug Garland. Vote: All in favor. The selectmen will be advised of the board's decision.

4. Other Business: An email from Atty. John Ratigan was reviewed in which he suggested the board adopt a new version of the ZBA application form which shifts the order of the variance criteria to follow the order that is set forth in the state RSA. It also updated language for the hardship and the spirit of the ordinance criteria. Atty. Ratigan said the law does not require the ordering of the criteria to be in any particular order, but felt we may want to follow the order that most other municipalities use. The board was not opposed to the change, and a motion to adopt the new application form as provided by Atty. Ratigan was made by Doug Garland; seconded by Julia King. Vote: All in favor.

Peter Gagne, who had not run for re-election, offered his services as an alternate.

With no further discussion, the meeting adjourned at 7:48 pm.

Respectfully submitted,
Barbara Bush, Recording Secretary