

**Town of Boscawen, NH**  
**ZONING BOARD OF ADJUSTMENT**  
**Boscawen Municipal Complex**

**MEETING MINUTES**  
**Tuesday, October 23, 2018 at 7:00 PM**

Members Present: Dr. Gail Devoid, Chair, Ann Dominguez, Tracy Jo Bartlett, and Ed Cherian Jr. Ex-Officio.

Others present: Kellee Jo Easler, Planning & Development Community Assistant, and Alan Hardy, Planning & Community Development Director, Recording Secretary Rose Fife.

Absent: Roger Sanborn, Doug Supry

Meeting opened at 7:02 pm.

Roll Call by Secretary.

Open the public meeting.

Review and Acceptance of draft minutes of 08.23.18. A motion to approve the minutes was made by Cherian, seconded by Dominguez and passed by a unanimous vote.

**New Business:**

Discussion regarding Map 81D, Lot 8 & 81D, Lot 8, Sublot 1 LLA & Variance from 1989.

Hardy presented. In his opinion this is an injustice. The Board could have looked at this differently back then. The notice of decision makes reference to a future decision of the home owner. If the home owner sells the property to family, the two car garage could stay. If it is sold to a non-family member, the garage will have to be destroyed and that would reduce the value of at least one of the properties to simply gain setback. Looking at the history of decisions he feels that is unfair.

What was considered a natural progression from father to son as happened in the prior generation is not happening in this case. Cherian asked if the ZBA had the right to require that type of condition. The variance runs with the land, but this approval came with a condition telling the home owners how they can sell it. Devoid said the board can put stipulations on anything at any time, but it could have been done incorrectly. Cherian felt that this condition could diminish the value of the property. Bartlett asked if it wouldn't be grandfathered in because of the stipulation. Hardy felt it was grandfathered due to the age of the structures. The buildings were put in prior to the Zoning Ordinance's existence. Hardy said that they had to get a variance in order to apply for the subdivision as the setbacks existed. Planning Board could have waived the setbacks but felt it was the ZBA's decision to make. Cherian asked if the Zoning Board could say its preexisting nonconforming and pass it along to the Planning Board. Hardy said it was possible. Devoid asked if there was an appeal before the Board this evening. Hardy explained that there was not. He brought this before the Board for discussion purposes. Bartlett asked if it was one lot before the variance. Hardy said yes. Hardy noted that this could be a reconsideration of the previously approved variance. Cherian asked what the Board was limited to as far as going back to change a prior Board's decision. Devoid said the stipulation was put there so that the lot would be more in conformance if the lot was sold. Hardy submitted that right nearby there is a zero separation between property lines. Kellee feels as it stands now they meet setbacks as they are in a commercial zone. Easler asked if the property met the setbacks now as a commercial property. Hardy answered that they do, but the condition is still there. Cherian reviewed the decision which includes a condition that is only triggered if it's sold

outside of the family. He feels that's unreasonable. Devoid said that had nothing to do with zoning regulations. This request is for future separation of buildings and business lots.

Devoid asked what the procedure would be going forward. There is no application before the Board for appeal. It's not a renewable stipulation. Hardy said no action will be taken tonight. He brought it forward for discussion purposes and to get a feel for how the Board would look at this type of request so that they could help the home owner to structure the appeal to remove the condition. Cherian asked how the property owner could appeal something approved 20+ years ago. Hardy said he was planning on sitting down the town Counsel to discuss this after he found out how the Board wanted to proceed. Devoid said he needs to move the garage. The applicant agreed to the stipulation. The variance goes with the land. Cherian's concern is that it applies only if they sell outside the family. This variance should run with the land, but whether it's sold to family or not muddies up the decision. Hardy asked if the Board would consider a new appeal. Devoid said she'd consider a new variance. Hardy will ask town Counsel if they can open a case that was decided 20 years ago. Devoid doesn't believe they should reopen it. Hardy will ask Counsel if there are any options based on Case Law. The new appeal may be a viable solution. Hardy asked if they could vacate. Does the ZBA have the power to vacate their decision? Devoid doesn't believe so. Cherian cited 674:33, powers of the Zoning Board. The other is if he wants to make a new appeal, there is a hardship imposed. Devoid said that would be a new variance and that would be the most proper way. That would have the protections of that procedure. Devoid feels he needs a new variance. Easler noted that would be for both of the properties. Devoid said he needs two variances. Devoid said the decision stands as it was given 20 years ago. They need a new variance for each property. If the owner is going to sell one piece of property they need relief from what was granted. Discussion regarding covenants and whether the Board had any standing in breaking covenants. The covenants is recorded and is attached to the deed. Bartlett asked if it was R1 or a commercial zone now. Easler explained it was a commercial zone now so the setbacks are 10 feet. Cherian noted that the restrictions do not meet any of their zoning goals. On the other hand, in granting any variance the ZBA may provide that the variance should survive only so long as the person needs to use the variance. Hardy said that change was recent. Hardy was just trying to frame the research and what are the viable options. Cherian asked to see the deed and see if it was recorded. Easler provided a copy of the deed. Devoid wants to be sure the procedure is clear. Cherian's concern is the condition that says he can only sell the property if it's sold to his family. Hardy asked if the Board would make the same decision today. Devoid said they would never make that decision today. Easler noted that the condition is recorded in their deed. It doesn't say anything about the family aspect though. Cherian says that goes beyond the decision and says it doesn't matter who they sell it to, which is not what the ZBA decided. It's a quit claim deed, not a warrantee deed. Cherian wanted to have staff check with the town's Counsel. Hardy noted that the property owner didn't appeal the decision. Devoid felt that going back in time to change a variance would be a huge mistake and doesn't believe they have the authority to do it. Cherian said the garage being removed would be the simple answer to the issue. Hardy said there is a lot of questions in this case, that is why he wanted to discuss it with the Board.

A **motion** to adjourn the meeting at 7:45 pm was made by Bartlett, seconded by Dominguez and passed by a unanimous vote.

#### **Other Business:**

Next Meeting is scheduled for **November 27, 2018.**

*Respectfully submitted,  
Rose Fife, Recording Secretary*