



# Town of Middleton

182 Kings Highway, Middleton, New Hampshire 03887

Zoning Board of Adjustment

## ZONING BOARD OF ADJUSTMENT Meeting and Hearing (continued)

October 15, 2024, 6:30 p.m.

Middleton Old Town Hall  
200 Kings Highway  
Middleton, NH 03887

These minutes serve as the legal record of the meeting and are in the form of an overview of the Zoning Board of Adjustment meeting. It is neither intended nor is it represented that this is a full transcription. A recording of the meeting is available online at <https://www.youtube.com/@Townofmiddleton9741/streams> for a limited time for reference purposes.

*DRAFT: These minutes are strictly a draft copy and are awaiting amendment or approval at a subsequent, duly noticed public meeting. Amendments to these minutes will be noted in the minutes of said meeting. This draft is available for public review and the approved copy will be posted on the Town of Middleton website.*

**Meeting Called to Order** by Chair Therriault at 6:35 p.m.

### **Roll Call**

Members Present: Charles Therriault (Chair)  
Jim Keegan (Vice Chair)  
Dan Saliga  
Linda Adamo  
Lorri Gunnison  
Tim Cremmen (BOS Liaison)

Members Absent: Joe Varga (Alternate)

Public Present: Paul Gagnon  
Mark Corbett  
Debra Corbett  
Attorney Christopher A. Wyskiel, representing The Yvonne Arts Trust and Mark and Debra Corbett

### **Pledge of Allegiance**

### **Attachments**

Sign in sheet

### **Case #2024-05 Continued**

Duguay  
5 Sunrise Drive  
Map 4, Lot 217

The applicant was not present.

At approximately 7:40 p.m. **L. Gunnison** read a text message she received from **D. Duguay** concerning her variance request. **D. Duguay** texted she will be at the ZBA meeting on November 19, 2024 and agrees to continue her public hearing at that time and extend the decision deadline.

**Case #2024-04 Continued**

Gagnon  
30 Shore Drive  
Map 5, Lot 104

**P. Gagnon** presented a boundary plan for his property.

**J. Keegan** said the applicant was given a building permit for a 30 foot setback and that should not have been signed by the CEO without a variance granted beforehand. He asked how the garage ended up being built 23 – 24 feet from the road.

**P. Gagnon** said the contractor built the garage and no one followed up on the location of it. He said the building permit was posted.

**J. Keegan** said this is a big “flub up” on someone’s part. The contractor should have carefully measured the setbacks.

**L. Gunnison** asked if it was correct that because the garage was not built according to the permit they could not grant an equitable waiver and the applicant needed a variance instead.

**C. Therriault** said that’s correct. He said if the garage needs to be torn down, that’s on the contractor and his insurance. He said he is concerned that if the variance is approved it would set a precedent for others to not build in accordance with the permit they are issued.

**L. Gunnison** said she disagreed; the law is clear that every situation is different.

**C. Therriault** said they would be setting a standard.

**L. Adamo** disagreed. The only way to set a standard is to re-write the ordinance. This would be an exception, not a new standard.

**C. Therriault** said the attorney disagreed and was “flabbergasted” it was not built according to the permit.

**L. Gunnison** said there doesn’t seem to be any safety issues and the neighbors are fine with it. There are other buildings down the road closer to the setback than this one. There are many non-conforming lots in that neighborhood.

**J. Keegan** agreed there are many non-conforming lots that do not have the correct setbacks because they were built years ago. The ordinances were approved to prevent that from happening in the future. He suggested they speak to counsel as to the best

course of action in this situation. He said he doesn't think they are able to make a decision tonight.

**C. Therriault** said the applicant has the option. They can go forward and vote on the criteria or postpone the hearing and talk to counsel.

**P. Gagnon** said this is the third or fourth time he's been before the Board.

There was discussion about what happened at prior meetings and why a boundary plan was necessary.

**L. Adamo** asked where else on the lot the garage could have been built.

**C. Therriault** said you can't build a garage on this lot without changing the regulations.

**D. Saliga** said the Town messed up. The applicant should not have been given the permit before he came to the ZBA to request a variance. The contractor didn't do what he was supposed to do. Even with all of that, the applicant has gone around and around and it would be a big hardship for him to tear the garage down. He should have been denied the permit to begin with, but since he was not, he went ahead in good faith and did what he was asked to do.

**P. Gagnon** said he spent a lot of money on the survey.

**L. Adamo** made a motion to vote on the application.

**L. Gunnison** seconded the motion.

**J. Keegan** objected.

There was discussion about what happened with the variance request to date and the requirements and procedures for a variance to be granted.

**L. Gunnison** said based on the law the applicant needs to read the application and his answers to the ZBA before they vote.

**P. Gagnon** read his application aloud.

**L. Gunnison** said she has seen the garage and doesn't think there are any safety issues. She agrees it is well built. They applied for a 30 foot variance and are now saying it's 23.4 so we're looking at less than 7 feet difference from the initial application. She said it's also not contrary to the spirit of the ordinance.

**J. Keegan** questioned whether they were going to go over each of the criteria.

**L. Adamo** said this case has been on the docket for months now. The applicant and his family have done everything the Board asked him to do and they deserve to get an answer tonight.

**L. Adamo** changed her motion to vote on the entire application and suggested they vote on each criterion instead.

**1. The value of surrounding properties will not be diminished**

Vote: Yay-5 No-0 Abstain-0 Passes

**2. Granting the variance will not be contrary to the public interest**

**J. Keegan** does not agree that there were no safety issues.

**C. Therriault** feels it would be setting a precedent for not adhering to the setback ordinance or the terms of a building permit.

Vote: Yay-3 No-2 Abstain-0 Passes

**3.2 Denial of the variance would result in unnecessary hardship to the owner.**

**a. Special conditions of the property make an area variance necessary in order to allow the development as designed.**

Vote: Yay-3 No-1 Abstain-1 Passes

**b. The same benefit cannot be achieved by some other reasonable feasible method that would not impose an undue financial burden.**

Vote: Yay-4 No-1 Abstain-0 Passes

**4. Granting the variance would do substantial justice.**

**C. Therriault** feels approving this says it's okay to not call for inspections and that the Building Inspector can approve a variance, which is not true.

***L. Adamo said the Board wants it to be clear that in voting on criterion #4 that substantial justice exists, the Board does not accept the applicant's statement that the permit allowed a variance. Neither a building permit, nor the CEO, has the authority to grant a variance. A variance can only be granted by the Zoning Board of Adjustment.***

Vote: Yay-3 No-0 Abstain-2 Passes

**5. The use is not contrary to the spirit of the ordinance.**

**J. Keegan** disagrees that the garage does not create a safety hazard.

**L. Adamo** read The Spirit of the Ordinance aloud from the Zoning Ordinance, page 4, under Purpose and Authority aloud.

Vote: Yay-3 No-2 Abstain-0 Passes

***The five criterion each passed by a majority vote. Therefore, the variance is granted.***

**Conditions:** None

**Case #2024-06**

Yvonne M. Arts Trust  
56 Auclair Road  
Tax Map 3, Lot 37

Abutting Map 3, Lot 67 Owners  
Mark Corbett & Debra Corbett

**Variances Requested from:**

**Article 5, Section B3**

Structures, excluding steps and terraces, shall be at least fifty (50) feet from a property line abutting a public or private road and at least twenty (20) feet from all other property or right-of-way lines.

**Article 30, Section A.1.d.**

A non-conforming structure may be expanded provided that any expansion meets the setback requirements as required by the regulations for the district in which the structure is located.

The applicant proposes to replace the existing home on the property with a new structure that may not comply with these sections of the Zoning Ordinance and is therefore requesting variances.

The variances are being requested on the conditions of obtaining a NH DES approved septic design and Mark Corbett and Debra Corbett, owners of the abutting lot, Tax Map 3, Lot 67 granting an easement to accommodate the approved septic design.

**L. Gunnison** asked what happens if the land is sold in the future.

**Attorney Wyskiel** said the easement would be in the deed and that lot would be part of the description of the lot. The easement will run with the land.

**Attorney Wyskiel** presented his clients' plan and details on why the two variances are being requested. He said they are requesting them now, before construction begins and money is spent for a septic design and new manufactured home, because their plans are dependent on the variances being approved. He prefaced his presentation noting that granting a variance does not create a precedent as each situation is unique. He also said the variance criteria has changed and Middleton's application is outdated. The distinction between area and use for a variance was eliminated in 2009. However, he did address the former 3.1 and 3.2 criteria at the request of the Board.

**C. Therriault** asked **T. Cremmens** to take the outdated application down from the website.

**Attorney Wyskiel** addressed the applicant's responses to the criteria in the order indicated in the state statute as follows:

1. **The new manufactured home will not be contrary to the public interest** as it would not alter the essential character of the locality. The replacement structure essentially occupies the same space as the current dwelling. The neighborhood stays the same except for an upgrade in its appearance, utility and environmental enhancements.
2. **The spirit of the ordinance is observed** by granting the requested setback variance and allowing the modest square footage expansion. The new structure will not pose a threat to public health, welfare or safety and still provides essentially the same buffer between contiguous properties.
3. **Granting the requested variances will do substantial justice** because denying the variance will not provide any gain to the public that is greater than the loss suffered by the applicant if the variance is not granted.
4. **The value of surrounding properties will not be diminished** because it is more than reasonable to conclude that granting the variances will have a positive effect on surrounding property values.
5. **Literal enforcement of the setback requirement from which relief is requested would result in unnecessary hardship** because special conditions of the property distinguish it from others in the area and no fair and substantial relationship exists between the general public purposes of the express setback requirement and its specific application to this property.

Some of the discussion during his presentation included:

**J. Keegan** suggested the applicant get the approved septic plan before the ZBA considers the variance.

**Attorney Wyskiel** said that doesn't make sense for the applicant financially.

**J. Keegan** said they need to build a house that conforms to the Town's setbacks.

**C. Therriault** said replacing an existing structure with a building the same size is allowable.

**Attorney Wyskiel** said they won't do that; they would just keep the same structure. He said that's telling people not to make improvements to their property, don't put a new septic in, just keep the porta potty. A smaller manufactured home doesn't exist and it's not worthwhile to build a replica of the existing house.

**D. Corbett** said the new structure is 28 x 56.

**L. Adamo** said they do not want to build a new structure that would conform to the ordinances because the land is not level, it's overgrown and they want to keep the natural vegetation. They are trying to maintain as much of the footprint as they can.

**C. Therriault** asked if the Board has to keep using the application they've been using.

**J. Keegan** said he believes they do.

**T. Cremmen** said the new proposed application is being reviewed by the Selectboard and that review should be complete before the November 19, 2024 ZBA meeting.

**C. Therriault** said current lawsuits against the Town had to use the current application form. It's up to the Board if they want to allow the applicant to use the form presented or come back with the Town's current form completed.

**L. Adamo** said the attorney has addressed every question that's asked in the Town's application in a letter form. Making the applicant use the form of the Town's application is excessive.

**L. Adamo made a motion** that the application as presented along with the attorney's letter is adequate for the Board to review.

**L. Gunnison seconded the motion.**

**L. Gunnison** said she compared them and they are the same.

**Attorney Wyskiel** looked at the application the Chairman was referring to and said it is the same application he presented, just in a different font.

**L. Gunnison** asked how close the new structure would be to the road.

**Attorney Wyskiel** said it will be no closer than the existing structure.

**J. Keegan** said so we don't know how close it will be to the road.

**Attorney Wyskiel** said it's on the survey included.

There was discussion about Auclair Road being a private road and how that affects the Town's authority as well as the owners' property lines.

**J. Keegan** said this property is not unique because there are many properties that are on small lots. They were originally built as camps. Many of the lots are just not buildable considering the Town's current standards.

**Attorney Wyskiel** said this situation is unique because they are not putting the septic on the lot. They are asking for the variances with conditions of an easement and DES approved septic; if the conditions are not met the variances are no good.

**L. Gunnison** asked about putting the house even further back on the property.

**D. Corbett** said there is a big hill in back.

**J. Keegan** said so it may require some excavation work to build there.

**L. Adamo** said it's not going to be any closer to the road than the existing structure. If you say the proposed home will negatively affect public interest, then the existing home is affecting public interest. She asked if you have to have them knock down the existing home.

**J. Keegan** said no, you can't make them do that, they have the right to build in the same footprint. They *could* stay in the same footprint, they just want a bigger house.

**L. Adamo** said the part of the proposed building that is affected by the setback is in the footprint of the old building.

**C. Therriault** asked if someone was living there or if it is an abandoned structure.

**D. Corbett** said just in the summer.

**1. The value of surrounding properties will not be diminished.**

Vote: Yay-5 No-0 Abstain-0 Passes

**2. Granting the variance will not be contrary to the public interest.**

Vote: Yay-3 No-2 Abstain-0 Passes

**3.1 Denial of the variance would result in unnecessary hardship to the owner.**

a. The zoning restriction as to the property interferes with the reasonable use of the property, considering the unique setting of the property in its environment.

Vote: Yay-3 No-2 Abstain-0 Passes

b. No fair and substantial relationship exists between the general purpose of the zoning ordinance and the specific restriction on the property.

Vote: Yay-3 No-2 Abstain-0 Passes

c. The variance would not injure the public or private rights of others.

Vote: Yay-3 No-2 Abstain-0 Passes

**3.2 Denial of the variance would result in unnecessary hardship to the owner.**

a. There are special conditions of the property make an area variance necessary in order to allow the development as designed.

Vote: Yay- 3 No-2 Abstain-0 Passes

b. The same benefit cannot be achieved by some other reasonably feasible method that would not impose an undue financial burden.

Vote: Yay- 3 No-2 Abstain-0 Passes

**4. Granting the variance would do substantial justice.**

Vote: Yay- 3 No-1 Abstain-1 Passes



**5. The use is not contrary to the spirit of the ordinance.**

Vote: Yay- 3 No-2 Abstain-0 Passes

***The five criterion each passed by a majority vote. Therefore, the variance is granted.***

**L. Gunnison made a motion** that variances be granted from Zoning Ordinance Article 5, Section B.3 and Article 30, Section A.1.d. to allow a single story replacement residential structure to be located as depicted on Applicant's Exhibit 2 Zoning Sketch compliant with side yard setbacks and encroaching no further into the front yard setback than Applicant's current dwelling, **on the condition** that the disposal system serving the new residents be located on the abutting Map 3, Lot 67 by design approved by the New Hampshire Department of Environmental Services pursuant to an easement granted to the applicant by the said Lot 67 owners.

**L. Adamo seconded the motion.**

Vote: Yay- 5 No-0 Abstain-0

**Motion carried.**

***Review of Minutes***

**T. Cremmens** explained an error was discovered in the April 16, 2024 minutes after they were approved. They were amended to remove resident Craig Moody's name from the list of people who spoke at the meeting. Mr. Moody was not at the meeting; however, a comment was attributed to him in the original version of the minutes and has since been corrected.

**L. Adamo made a motion** to approve the amended minutes of April 16, 2024.

**D. Saliga seconded the motion**

**Motion carried**

**J. Keegan** added Mr. Moody was quite upset and on behalf of the Town he apologies for the mistake that was made.

**J. Keegan made a motion** to approve the minutes of September 17, 2024.

**C. Therriault seconded the motion**

**Motion carried**

***Budget***

**T. Cremmen** presented the ZBA Budget for next year and the Board Members discussed it and agreed on some changes.

**J. Keegan** suggested doing a warrant article to ask for more money to be budgeted for legal expenses.

It was decided to request a warrant article for \$15,000 for next year's legal expenses.

**J. Keegan made a motion** that the Board go into Nonpublic Session under RSA 91-A:3, II(1) – consideration of legal advice provided by legal counsel, either in writing or orally, to one or more members of the public body, even where legal counsel is not present.

**D. Saliga seconded the motion.**

**Roll Call vote – motion was unanimously approved.**

The Board reconvened the Public Session at 9:21 p.m.

***Adjournment***

**L. Adamo made a motion** to adjourn the meeting at 9:22 p.m.

**D. Saliga seconded the motion**

**Motion carried**

Respectfully submitted,

Robin Willis  
Administrative Clerk

DRAFT