



**Town of Whitingham
Zoning Board of Adjustment
Planning Commission**

**MINUTES OF JANUARY 8, 2020
ZONING BOARD OF ADJUSTMENT HEARING**

Attendees:

ZBA members: Chair David Dumaine, Marshall Dix, Craig Aekus, Dana Dix, Marshall Dix, Lyman Tefft, Phil Edelstein and Troy Felisko. Terrie Dumaine, acting clerk.

Zoning Administrator: Gig Zboray

Applicant: Michael Singer with Jonathan Dupras, Engineer; and David Cooper, Attorney

Abutters: none

Others: Seth Boyd, Skyler Boyd and Wayne Corse, residents

At 7:05pm David Dumaine opened the hearing by reading the legal warning. He then explained the process of the hearing.

Application overview:

A zoning permit was issued in 2017 to allow the demolition of the original camp and to build a single-family home on the exact same footprint. A pre-fabricated home was placed on the property but not on the same footprint. After the property went through Shorelands and Wetlands review the Zoning Administrator felt the best way to handle the building error was for the applicant to apply for a new permit for the house as it sits on the property now. The new building does not meet the required setback from the lake or the street. Mr. Dupras presented the map of the property; it now offers more set back from the lake and street than the original house. The applicant went through Shorelands, Wetlands and Waste Water permitting; they were in compliance, but Wetlands has required that they remove the retaining wall. This application (W-33-19) also seeks to rebuild the garage.

Discussion:

Mr. Dumaine noted that in item 1.6 of the Waste Water Permit of 7/2017 there is no mention of a garage, however it does state there are to be no changes of buildings on this permit.

Mr. Felisko questioned why the pre-fab house was not placed on the exact footprint, Attorney Cooper indicated that this was a mistake. The house sits on drilled piers.

Mr. Edelstein questioned why would we issue permits to build on non-conforming lots? Gig Zboray indicated that the Zoning Regulations are not exactly clear; her interpretation of the Zoning Regulations indicated that a rebuild on the exact same footprint would be allowable. The Planning Commission is currently working on updating the Zoning Regulations to clarify them.

Marshall Dix questioned when the garage came down. There was discussion that it came down in 2018 by Jonathan Dupras. Marshall Dix asked if there was a permit, Gig clarified that it was demolished before obtaining a demolition permit, however a demolition permit was issued after the fact.

There was discussion pertaining to the retaining wall. Mr. Dupras clarified for Mr. Dumaine that it was to come down and to Mr. Felisko that it is 3 ½ ft. high. Mr. Dupras also mentioned that there will be plants that are natural to the environment to make the house less visible from the road. The porch elevation is almost the same size as the house.

Seth Boyd, as an interested person, wants to know exactly why we are here. Mr. Dumaine clarified that we are here to issue a waiver is for the insufficient setbacks of the house and building of the garage. Mr. Boyd shared concern that Mr. Singer is a planner/designer by trade, he did not follow the permit or posting requirements for work already done. The original permit indicated that the garage was 620 sq. ft, and now is proposed to be 829 sq. ft, which will change the setbacks. Further concern that the plans submitted have changed, the scale of the house and garage are bigger than originals. He questioned if this meets with requirements of variances. Furthermore, that the garage demolition was non-conforming, as it's been over a year since the garage was demolished. The applicant indicated they measured the footprint out to the end of the 2' eaves. A Zoning Permit allows 2 years for work to be done, it is not clear if the Zoning Regulations allow for more than one year. Mr. Boyd pointed out the ambiguities.

Discussion by Mr. Dupras of the 2017 Waste Water plans indicate the plan to not move the house, regulations with the state say they can build on the same footprint, he also indicated that they were not trying to be evasive, the bump-outs cause the house to be larger, however the foundation is the same size as previous house.

Mr. Singer clarified that he was not a developer, however, is an artist. Also, that the footprint of the garage is on the survey and shows the square footage of the garage to be 829 sq. ft. as measured out to the eaves. Mr. Boyd pointed out that the original survey and new survey as well as the original permit and new permit differ. Mr. Felisko pointed out the difference as well. Mr. Dupras clarified again that the 829 sq. ft includes the eaves, and that he did not do the original survey.

Further discussion on the square footage discrepancies of the garage. Marshall Dix questioned if the eaves are more than 1', Dana Dix asked for clarification of the foundation size. Wayne Corse pointed out that they should not consider building a larger garage than was recorded on the lister cards. Gig Zboray provided the lister card. The lister card is not clear on the size of the garage and Mr. Corse questioned if we knew if the garage was actually there. It was determined that it was, based on the original survey. Dave Dumaine and Troy Felisko again point out #1.6 of the Waste Water permit indicated the house, no garage is mentioned, and that there are to be no additional changes to this permit. Mr. Boyd pointed out again that the square footage on the original permit, 620, and new permit, 829 differ and wants clarification as to what is the proposed footprint of the garage.

Mr. Felisko began a discussion on moving the house to the original footprint and questioned what it would take. Marshall Dix indicated that the Waste Water permit does not have the house on the same footprint as original house. Mr. Dupras indicated that the Waste Water permit will be amended if this board grants the waiver for house and garage. Mr. Boyd pointed out that there are mistakes on all the permits, it's a great piece of land to have on the tax rolls, we should not require him to move the house, more research is required and Mr. Singer should not be allowed to replace the garage as it's been over a year since permitting. Mr. Dupras said that they are trying to work on all permits because the house was on the wrong footprint.

Discussion of notification of decision. Although the ZBA has 45 days to make this decision; Mr. Dumaine indicated that within 14 days Mr. Singer will likely receive a letter of decision. There was discussion of deferring the meeting, however Mr. Dumaine pointed out that the board has enough information to make a decision. Mr. Cooper acknowledged mistakes being made regarding this project from the beginning.

8:00 Dana Dix made a motion to adjourn the public hearing and enter into deliberations with Gig Zboray, Zoning Administrator, seconded by Craig Aekus, all in favor.

8:00 Deliberation of Zoning Board began with Gig Zboray present

Deliberation: Discussion by Dana Dix about 1 year or 2 years to rebuild, Gig Zboray says zoning is not clear; a non-conforming structure can be rebuilt within one year but if a Zoning Permit has been issued it allows 2 years to complete a project. Further discussion on the demolition of the garage in 2018 and that the demolition permit came after the actual demolition. Discussion on the clarity of the footprint/foundation size of the garage. It was noted by Troy Felisko that this was previously a camp. Phil Edelstein noted there is no building now so it's non-conforming and the applicant should have known to get permits as a designer. Gig Zboray noted that there were complaints from residents that the piers the house was to sit on were not on the same footprint, and she contacted the property manager. When the house structure was delivered to the site, she then referred the property to Shorelands and Wetlands for state review and the property recently received those permits. Further discussion on the foundation/footprint size and Mr. Dumaine noted that the setback to road and shore for the house is more than it was, the side setbacks conform. Mr. Tefft and Mr. Felisko want clarification that the house is conforming, Mr. Dumaine indicated it is.

Discussion back to garage by Marshall Dix who has concern that the permit is for 2 years, also that there is no garage now and it's to be bigger size. Mr. Felisko says we must stipulate a 620 ft. foundation if we approve. Discussion again by Mr. Dumaine and Mr. Felisko that it is not indicated in the Waste Water permit #1.6.

8:20 Dana Dix made a motion to approve the permit with the stipulation that the garage foundation can be no larger than 620 square feet (as indicated in the original permit application #W-38-17), seconded by Craig Aekus. Phil Edelstein, Lyman Tefft, Dana Dix, and Craig Aekus in favor. Troy Felisko, Marshall Dix, and Dave Dumaine opposed. Motion passed.

Other Business

The ZBA is still in need of a Clerk. Terrie only filled in for this hearing but does not have the time for this job. No ZBA members wanted the position. Gig will post the position.

8:30 Dana made a motion to adjourn, 2nd by Skip. Meeting Adjourned.

Respectfully submitted, ~*Terrie Dumaine*, Acting ZBA Clerk