

TOWN OF MENDON  
**ZONING BOARD OF APPEALS**  
20 Main Street  
Mendon, Massachusetts 01756

**MINUTES – JANUARY 5, 2023**

**Location: Town Hall Upper Meeting Room**

*Minutes taken by Dylan Lindholm*

<b>Name, Position</b>	<b>Present</b>	<b>Absent</b>
James P. Carty, Chairman	x	
Tom Merolli, Member	x	
John Vandersluis, Member	x	
John D’Amelio, alternate		x
Matthew Clark, alternate	remote	

Meeting opened by Mr. Carty at 7:00pm.

**Continued hearing for 58-60 Uxbridge Rd – Variance.**

Attorney Mariam Marquetti, counsel for the Town of Mendon, states that the ZBA is to make a finding on the proposed use of the garage based on evidence for said proposed use. Board will consider previous record and any new evidence presented today to make this finding.

Applicant Mr. Mark Benoit, and his counsel Attorney Ernest Horn, state that the applicant intends to use the garage to store his truck, boat, and tractors with a small plow for plowing the applicant’s property. Applicant confirmed that he does not use his truck, boat, tractors, plow, or other vehicles intended to be stored in this garage for business purposes.

Mr. Andy Fiske spoke on behalf of the applicant in reference to drainage considerations. He states that while there used to be water running off the property into the abutting neighbor’s lot, there have been corrections to the grading to pitch the water in a different direction, and, in addition, the proposed construction will improve runoff conditions, not worsen them. Mr. Carty notes that an abutter is still making complaints about water on their property.

Soil condition & topography was discussed. There is a ledge that does not allow the applicant to place garage in one proposed location, and wetlands by the lake does not allow the applicant to place the garage in another proposed location.

Abutter Carole Carnivale at 66 Uxbridge Rd, disagrees that the applicant’s planned garage location should be allowed due to hardship, as the applicant has already removed a significant amount of the ledge in 2021 and therefore removal of the ledge for alternative garage placement is possible. The abutter is asking for clarification about what the hardship is.

Mr. Vandersluis states that the lots of land around the lake are all too small to meet requirements of the Zoning Bylaw and, due to this, that variances are approved all the time for that area of the Town. Attorney Ernest Horn, counsel for the applicant, also states that the area of the ledge closer to the house cannot be removed as it would damage the house’s foundation.

Mr. Andy Fiske states that there is no room for a swale, but there is room for a berm.

Attorney Henry Lane, counsel for the appellants, considers that the applicant owns two parcels of land beside each other, which allows him to place the garage on the east side of the lot in question. Mr. Ernest Horn argues that this cannot be considered the east side of the property, as it is a separate lot. Mr. Henry Lane returns that these lots are merged. Mr. Vandersluis states they are separate lots, but Mr. Henry Lane disagrees, and states that the two lots the applicant owns share common ownership of multiple nonconforming lots and therefore the lots were merged upon purchase of the land.

Mr. Carty asks what the specific problems, besides water runoff, that the abutters have with this variance. Clarification of the Commonwealth of Massachusetts' determination was made. Further research on common ownership and merging lots is requested by Attorney Mariam Marquetti.

Mr. Carty asked Ms. Balian whether, if the water issue was solved, she would still have an issue with the variance being granted. Ms. Balian stated that she has a problem with a garage the size of a commercial garage or a garage that holds 6 vehicles. The Board asked for confirmation whether she had a problem with a 3-vehicle garage. Ms. Balian returned to the judge's ruling, but the Mr. Vandersluis stated that the judge did not look at up-to-date Zoning Bylaws.

Mr. Tom Merolli made a motion for continuance; motion was not seconded.

It was discussed whether merged lots may be subdivided again in the future.

Attorney Mariam Marquetti raised the next statutory element, the public good.

Attorney Henry Lane asked regarding soil tests and requests a Title 5 soil test. Attorney Ernest Horn states the composition of soil is listed on the plans. Attorney Henry Lane raised a complaint that he did not receive plans. The Board explained that they currently do not have administrative assistance.

Mr. Tom Merolli asked if this variance is a detriment to the public good. Attorney Henry Lane states that it is a detriment based on the Zoning Bylaw and requests clarification on the hardship.

Mr. Tom Merolli made a motion for continuance; motion was not seconded.

Statutory elements, in general, were discussed. Attorney Mariam Marquetti raised the next statutory element, the public good.

Attorney Ernest Horn stated that the police chief and the fire chief gave written statements said there are no sight distance issues, fire apparatus maneuvering, or other safety issues. Attorney Henry Lane argues that public safety and public detriment are not the same thing, and that the setback variance is the public detriment.

Mr. Tom Merolli made a motion for continuance; motion seconded by Mr. Vandersluis. All in favor; motion passed unanimously. A continuance date was set for January 26<sup>th</sup>, 2023.

Abutter Ms. Balian asked whether all members of the Board had read the judge's ruling and urged them to read it if they haven't. As Tom Merolli was just recently appointed, he had not yet read the judge's ruling.

Mr. Tom Merolli made a motion to adjourn; motion seconded by Mr. Vandersluis All in favor; motion passed unanimously.

*Minutes approved by unanimous vote on January 25, 2023.*