



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

**MINUTES – JANUARY 26, 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 Jr., Chairman	x	
Tom Merolli, Member	x	
John Vandersluis, Member	x	
Matthew Clark, alternate	x	
John D'Amelio, alternate	x	
Dylan Lindholm, Jr. Town Planner	x	
Mariem Marquetti, Town Counsel	x	

Meeting opened by Mr. Carty at 6:00pm.

**Minutes Acceptance:** Motion by Mr. Vandersluis to accept minutes from January 5, 2023 meeting. Motion seconded by Mr. Merolli. Unanimous vote.

**Set Date for Hastings LLC Hearings:** Motion by Mr. Merolli to set date for February 16, 2023 at 6:00pm. Mr. Vandersluis recused himself from the vote. Motion seconded by alternate, Mr. D'Amelio. So voted by Mr. Merolli & Mr. Carty.

A member of the public raised their hand to ask who is on the board. Board members, alternate members, and ZBA administrator introduced themselves.

Attorney for the Town of Mendon, Attorney Mariem Marquetti, arrived and was asked by Mr Merolli whether the alternates could be privy to the legal opinion sent to the Board. Attorney Marquetti affirmed this, and the legal opinion was forwarded to the alternates.

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

A revised plan was presented by the applicant's engineer, adding a berm to the end of the driveway to address runoff into the Balian property. The berm is planned to run to the end of the pavers; the pavers are also permeable, designed to absorb water. Mr. Carty stated that the intention of the berm would be to prevent water from the driveway to run into the Balian property, but that it cannot stop water runoff from Route 16.

Ms. Balian, 64 Uxbridge Rd. abutter, stated that the pavers on the plan do not extend as far down as the pavers on the property. Applicant's attorney Ernest Horn stated that the pavers were put in after the plan was made. Ms. Balian requested that the berm continue down to the end of the pavers.

Mr. D'Amelio asked which way the gradient pitches from the fence. The applicant's engineer stated that it is a steep pitch away from the fence.

Applicant Mr. Mark Benoit agreed that the berm should go to the end of the pavers. Mr. Carty requested a revised plan showing the berm extending to the end of the pavers.

Attorney Horn brought up the issue of merging lots. Attorney Horn stated that in the last meeting, Attorney for the appellants, Attorney Henry Lane, stated that non-conforming lots owned by the same party would automatically merge into one conforming lot. Mr. Horn argued that specific features would prohibit this merging, and explained that because Lot 58 has a dwelling on it, it cannot merge into lot 60. Mr. Horn references that Mendon does not allow cluster zoning and only one dwelling on each lot is allowed except in the case of duplexes, which would be one connected building.

Attorney Marquetti states to the board that the legal analysis may need to be revised based on the statement by Attorney Horn. Attorney Marquetti asked when these lots came into common ownership by Mr. Benoit. Lot 60 was purchased in January 2014, and Lots 54 and 58 were purchased in June 2019. Mr. Clark states that 54 and 58 were in common ownership by the Grady's prior to the current ownership. Lots 54 and 58 are therefore considered one pre-existing nonconforming lot, now known as Lot 58. Lot 60, however, is not merged with 54 and/or 58.

Mr. Clark asked whether a lot line is being moved as part of this plan. The engineer affirms that there is a lot line moving between Lots 60 and 58. Discussion was had whether this had to go to the Planning Board before or after ZBA approval and whether this could occur between two nonconforming lots making one of the two lots further nonconforming.

Mr. Lawney Tineo, 60 North Ave, raised his hand to state that when he needed to agree on lines with a neighbor he had to come to both ZBA and Planning Board, and that both lots stayed nonconforming.

Attorney Horn reviewed why placement of the structure has to be where it is planned, that a professional engineer has addressed water issues with plans for a berm, that conservation issues prohibit placement of the structure near the lake, and that Lots 54 and 58 have merged, before ownership by Mr. Benoit, into Lot 58 [ZBA Admin has elected to use "Lot 54/58" to indicate this lot in these minutes, due to the complex nature of the merging lots discussion in this hearing]. Regarding the statutory element of "public good," Attorney Horn additionally referenced the presentation of written reviews from the Police Chief, indicating no sight distance issues or public safety issues, and from the Fire Chief, indicating no Fire Department access issues or other public safety issues.

Attorney Henry Lane argued that all three lots were merged by common ownership, despite the structures built upon those lots, and stated that one would not be able to build new buildings on this merged lot. Attorney Lane referenced that Attorney Horn previously stated that the garage could not be built on Lot 54/58, but Attorney Lane argues that the plan shows the garage partially on Lot 54.

Mr. Carty pointed to the lot line being moved on the plans. Attorney Horn added that this increases evidence for the hardship, that this lot line movement, taking land from another lot in order to build this garage, reduces the value of Lot 54/58. Attorney Lane argues that you cannot reduce the size of a nonconforming lot without a variance.

The Board states that the applicant is here for a variance. Attorney Lane argues that the variance was for a side and front setback, not for reducing size of a nonconforming lot or build on a nonconforming lot. Attorney Lane also argued that the applicant needs a Special Permit from the Planning Board.

Attorney Lane states that the variance that was originally granted did not include language expressly permitting the lot line variance. Mr. Vandersluis referenced the original application from Mr. Benoit, which included a request for the lot line variance.

Attorney Marquetti stated that the 54/58 merge occurred after the 1961 Mendon Zoning Bylaw, but before the purchase of the land by the current owner, Mr. Benoit.

Mr. Carty read the variance request from the original application. Attorney Lane said the variance granted does not include that language. Mr. D'Amelio stated that by granting the variance, the requests in the variance application were granted. Mr. Carty also confirmed that by approving the variance, the application and its contents were approved, and the decision does not necessarily itemize every word of the application. Attorney Lane read from the original decision, which grants side and front setback variances, and states that it does not include granting the lot line movement.

Attorney Lane asks why the applicant can't carve out more space from 54/58 to move the garage there. Attorney Horn states it would substantially impact the value of the land, which Mr. Benoit purchased to rent or sell.

Mr. D'Amelio explained the purpose of the ZBA. The room discussed whether barns could be built based on the Zoning Bylaw. Mr. Merolli reiterated the purpose of this hearing: to explicitly state the hardship, explicitly state the use of the garage, and states that the Board should go through the statutory elements for a variance regularly, for every request that goes before the Board.

Attorney Lane asked why the garage could not be placed where the shed is (on Lot 54). Attorney Horn states that this is part of Lot 54/58, and the applicant is asking to put it on Lot 60. Attorney Lane argued that it isn't a hardship that the applicant doesn't want to do put the garage on Lot 54/58 instead of Lot 60.

Mr. Carty asked Attorney Marquetti if we have answered all questions that the judge asked the Board to answer. Attorney Marquetti states that the Board has answered all questions asked by the judge.

Attorney Lane said that the setback issue is a derogation of the bylaw and hurts the public good. Attorney Marquetti states the variance has been sought for the setback, so it would not be a derogation of the bylaw.

Attorney Lane asked what the hardship is, why the applicant cannot put the garage where the shed is on Lot 54/58. Attorney Horn states it is a different lot, and the variance is for Lot 60. It would also cause Lot 54/58 to be less conforming. Attorney Lane argued that it would make Lot 60 more conforming.

Attorney Lane says that Mendon's voters want all new buildings to be 50 feet from the street. Mr. Merolli argues that Attorney Lane is saying that all variances hurt the public good. Mr. Merolli asked how this specific example hurts the public good. Attorney Lane states that it is because the building is a "monstrosity."

Mr. Carty explained that the purpose of the ZBA was to decide whether a building could deviate from the bylaw. Attorney Horn stated that the voters of Mendon empowered the ZBA to make those decisions. Attorney Lane argued that it was "the statute" that empowered the ZBA to make those decisions.

Attorney Lane states that 5 or 10 feet is not a substantial derogation, but 80% is substantial and too much derogation from the bylaw to grant a valid variance. Attorney Lane asked to hear the reason for hardship again.

Attorney Lane stated that he wanted to see the legal analysis from Attorney Marquetti. Attorney Marquetti stated that this legal opinion, which was mentioned earlier in the meeting, is attorney-client privileged information, and is not for presentation at the hearing.

A member of the public, identified as “TL” on the Microsoft Teams online meeting platform, had their comments read aloud, as they were unable to unmute and speak verbally due to a technical difficulty on their computer/mobile device. TL asked if all Mendon residents wanted their neighbors building a few feet from property lines and brought up pollutant issues in the lake which are still developing. Mr. Carty thanked TL for their comments and stated that the ZBA is attempting to stick with the court’s request to go over the statutory elements needed to grant a variance.

Mr. Andy Fiske, 101 Blackstone St., spoke on behalf of Mr. Benoit as to the reason he can’t build the garage where the shed is. Mr. Fiske states that in 2019, Mr. Benoit bought abutting property as investment to fix up and sell. If Mr. Benoit puts a barn/garage on this abutting property, he doesn’t have use of it as an investment property.

Mr. Merolli summarized his interpretation of Attorney Lane’s argument, stating that Attorney Lane suggests to move the lot line even more, which would substantially deviating from the Bylaws by making Lot 54/58 more nonconforming. Mr. Merolli asked Attorney Lane how that does not hurt the public good, based on Attorney Lane’s argument. Attorney Lane argued that lot lines are not visible from the road, but what can be seen is a building 40 feet closer to the street than it is supposed to be.

Height was discussed. Mr. Merolli said that height is not part of the decision for a variance.

Mr. D’Amelio recalled a recent development in Town, which showed that the Town could not exert additional restrictions on an applicant, harsher than the International Building Code/International Residential Code, and the Commonwealth of Massachusetts’ regulations. Mr. D’Amelio stated that the restrictions requested by Attorney Lane’s letter, to restrict the size of the garage by stipulation, may not be legal.

Attorney Lane argued that a Special Permit from the Planning Board is needed for a three-car garage. Mr. D’Amelio noted there are two doors on the garage, so it is not a three-car garage. Mr. Merolli noted that the judge’s statements were regarding Site Plan Review/Special Permit for commercial use, but that in the last meeting, it was determined that this was a residential garage, not a commercial garage. Page 23 of the Mendon Zoning Bylaw was referenced, showing the use code for garages.

Mr. Lawney Tineo, 60 North Ave, stated that this garage is for residential use. Even though the property is in the general business district, this is not a mixed use. It is a residential garage on a residential property.

Attorney Lane argued that a new house cannot be built in the general business zone, according to Judge Vhays and the Mendon Zoning Bylaw, and stated that an accessory building for an existing house in the general business zone needs a Special Permit from the Planning Board.

Kathy Hackenson, 25 Washington St/56 Uxbridge Rd., stated that her daughter and her family are building a new home on Uxbridge Rd, and would like the area to stay residential even though it is on

Route 16, to enjoy a residential neighborhood with a view of the lake. Ms. Hackenson also stated that the applicant has been granted a variance for demolishing a small house and putting up a larger house, was granted a variance for a detached shed where the applicant stores a car, that the applicant already has attached garages on both ends of his house. Ms. Hackenson also states that the permeable pavers will not soak up all of the water runoff and states that the new garage must be for business use based on the amount of car storage already on the property.

Carole Carnovale, 66 Uxbridge Rd., handed out a diagram as an example of what could fit in this garage and listed some common names of large and small automobiles which could all fit within the footprint of the garage. Attorney Horn argued that support structures within the garage would not allow for the number of vehicles shown on the diagram.

A member of the public stood and requested to hear a summary of the hardship. Mr. Carty stated the hardship has been explained. Attorney Horn reiterated that the hardship includes soil; ledge that does not allow for the building to be built closer to the house, as it may damage the foundation of the house; shape of the property; and a conservation buffer zone at the back of the property.

Joyce Gilmore, 23 Hastings St, posited that the applicant created his own hardship by building the house bigger than he should have based on the size of the Lot. Attorney Horn reiterated the hardship and stated that the primary residence has a 1400 sq. ft. footprint. Mr. Carty reiterated that today's goal was to answer the specific questions of the court.

Jane, 40 Millville St., stated that people know what the bylaws are, ignore them, and buy property with a desire to change it anyway. Mr. Merolli asked whether the soil conditions and topography were unique to this lot, as opposed to the other lots around the lake. Attorney Horn reiterated the conservation hardship and the ledge issue, and states that there is no ledge on the beach side of the lake. Attorney Lane states that the claim is disingenuous and that the ledge is not a hardship. Attorney Horn stated that Attorney Lane has been disrespectful and reiterated that the ledge is in the front yard and by the house, but that building further from the house mitigates the risk of damaging the foundation. Attorney Horn continued by arguing against Attorney Lane's claim that the Board was appointed by the State's statutory authority, but by the elected officials on the Select Board.

Carole Carnovale, 66 Uxbridge Rd., read from the judge's decision regarding allowing the appellants to bring up any issue besides the statutory elements needed to grant the variance.

Kathy Hackenson, 56 Uxbridge Rd., asked whether this variance would allow the applicant to move a pre-existing detached garage near the sidewalk and move it to the other lot. Mr. Carty states that it is part of the variance application. Ms. Hackenson states that if the lots are not combined, whether this would this need a separate variance hearing. Mr. D'Amelio says that there may need to be two variance applications. Mr. Vandersluis stated that his opinion is that moving the shed to the other lot may not be granted as part of the decision.

Ms. Carnovale asked how many variances can be granted for one lot. Mr. Vandersluis stated that there is no limit to the number of variances that can be granted for one lot.

A member of the public asked whether the Board takes into consideration the number of variances granted for one lot. Mr. Carty stated that each application is treated individually. Mr. Merolli stated that he would take it into consideration.

Ms. Balian reiterated that it is a non-conforming lot and that the neighbors didn't complain about the other two variances on the lot, and stated that if the garage was "of reasonable size," that there wouldn't have been five meetings about it. Ms. Balian also stated that Mr. Vandersluis said "it's a big ask" in the first meeting and that there was a concern about the widening of the road. Ms. Balian also recalled the bylaw of what percentage of the lot can be built upon and states it is close to two thirds of the property now. Ms. Balian stated that this is an undersized property with oversized buildings on it.

Mr. Vandersluis stated that the original application asked for a larger garage and that the applicant agreed to reduce the size by 6 feet and move it back. Ms. Balian stated that it was also requested that the applicant rotate the garage and it was not rotated in future plans.

Mr. Merolli requested a summary of the answers to the court's questions prior to any motion.

1. The soil conditions, shape, or topography of the land or structures must be unique and particular to the lot. Due to the ledge on the property as well as the conservation buffer zone, that this constitutes unique conditions.
2. There is substantial hardship, financial or otherwise on the petitioner based on the lot size and the unique conditions presented in the first point, it is unable to be built anywhere else that would not be a financial hardship.
3. This is not substantially detrimental to the public good based on the fact that it does not substantially derogate from the bylaws.
4. Does not substantially derogate from the intent or purpose of the bylaws.

Mr. Merolli made a motion to approve the variance on the contingency that it goes to a site plan review and special permit with the planning board, and that the shed cannot be moved to the other lot without a separate variance. The property line is granted as shown in the plans, and extending the berm all the way down to the end of the pavers.

Mr. Vandersluis seconded the motion. Vote passed unanimously by the Board.

Mr. Merolli made a motion to close the meeting. Mr. Vandersluis seconded the motion. Vote passed unanimously by the Board.

*Minutes unanimously accepted on April 20, 2023.*