**ZONING BOARD OF APPEALS**

**MINUTES FOR December 2, 2021, 6:00 PM**

Continued Hearing: Richard and Donna Fratus for variance, Case 21-1026

Board Members Present: Suzanne Jafferian, Clerk Ethan Stiles, Chair Colleen Thompson
Alternate Members Present: Dave Alberti, Carolyn Decristofano
Members of the Public Present: Applicants Donna and Richard Fratus, Fratus guest (name not acquired)

NOTES:

* This meeting was conducted in-person in the Town House Deborah Sampson room. Board members and guests will be referred to by their initials in the minutes.
* ACTION ITEMS: **In bold print**

**OPENING:** CT opened the business portion of the meeting at 6:00 PM by introducing the Board members and alternates.

**GENERAL BUSINESS:** CT explained that she had a phone conversation with Town Administrator Liz Dennehy regarding the E. Thompson hearing. CT also had a conversation with E. Thompson and received an email confirming Ms. Thompson’s decision (see attached documents on pages 4 and 5). The results of those conversations are that the application has been withdrawn without prejudice. It may be resubmitted when/if the applicant has received a positive response to her project from the Plympton Conservation Commission and/or the Commonwealth of Massachusetts. If the [substantially] same application is resubmitted to the ZBA for a variance, the submission and advertising fees will be waived. We will also ask the Assessors’ office to consider waiving the fee for the abutters’ list or validate the current list.

CT explained that she had dental surgery today and is not comfortable enough to chair the hearing. CT moved that ES be elected temporary chair for tonight’s hearing. SJ seconded. Motion passed 3:0

**RICHARD AND DONNA FRATUS** - HEARING TO ACQUIRE A VARIANCE OF THE SETBACK BYLAW FOR A RETREAT LOT. At 6:08 PM, Acting Chair ET opened the Fratus hearing by asking the applicants to explain their request for the variance.

RF provided full-sized drawings and explained that they propose to build a 24’x24’ shed - 20’x20’ with 4’ overhang - (marked “garage” on drawing) this year, and in the spring or later install a 20’x40’ in-ground pool and attendant pump shed. All three structures would be within the 100’ set-back zone. They are requesting a variance to the set-back to allow the construction of these structures. They thought it would be a good idea to include all three structures on one application since the projects would be happening consecutively within one year.

ES asked why the locations were chosen and if the structures could be placed so that they would not require the variance.

RF responded that the location of the driveway, garage, septic and well, and the hilly and terraced topography, and the heavily treed areas limit the placement. DF added that (1) the pool would be used by their young children in support of medical therapy and (2) Additional medical factors require that the children be able to be in sight when using the pool, and so the location was selected to provide a line of sight from the part of the home where adults are most likely to be. RF used one of the smaller drawings to show the inhibiting factors.

CD asked the applicants if they had considered a security camera as an option to enable supervision of a pool that might be located elsewhere on the grounds; the applicants responded that this had not been considered. The possible alternative locations were not discussed in depth, but mention was made of some areas where terrain and existence of trees would likely be problematic.

CD asked for clarification of the wording on the application which refers to both “schedule of use” and “setbacks”. “Schedule of use” should not have been included. The application is solely for a variance. The applicant also confirmed that although the plans label the shed as a garage, it will not have bay-type doors. It is definitely a shed and will not be suited for use by cars. The house has a lower-level garage.

A question was raised about the location of the house. Is it non-conforming? Was a variance given for its construction? If yes, were there any conditions imposed that may affect this application?

CD explained to the applicant that the ZBA is urged by the State to uphold the bylaws of the town without allowing variances. Variances are the exception, not routinely or easily granted. It is better to find ways to adjust and compromise on the location of a structure to comply with the bylaw.

DA asked if the large shed could be moved to comply with the 100’ setback or if the shed could be reduced in size and moved slightly.

Abutter CM asked if granting a variance on one property would affect the neighboring property’s possible future variance application. The answer was given as, in theory, no. Each application/situation is looked at separately. The Board will not necessarily know what variances had been granted in the past or what structures are located on any given property. Objections or support from abutters may reveal this information and the “no detriment to the neighborhood” requirement may be invoked.

ES explained that the project must meet three criteria (related to soil and topography, hardship, and no detriment to the neighborhood) in order to be granted a variance. The answer to each of the three criteria must be unanimously voted yes by the Board.

The Board decided that the hearing should be continued in order to allow for research to be done on the possibility of the house being non-conforming. **ES will research the deed at the Registry and any documentation that may exist in the Plympton Building Department if warranted.**

CT asked if the discussion about the proposed structures could continue tonight with the decision and any conditions finalized at the Continuation. The Board agreed. ES moved that when the vote is taken, the Board vote on the variance in two separate parts: (1) the large shed and (2) the pool and pump house. SJ seconded. Motion passed 3:0

The results of the discussion were that the **applicants will adjust the plans as follows**:

* The large shed will be moved to where it will no longer need a variance OR it will be reduced in size and moved as near as possible to compliance with the 100’ setback.
* The pool and pump house will be redesigned. The applicant will provide design adjustments that may include adjusting the size of the pool, moving it closer to the house, swapping locations of the pool and pump house to move it closer to compliance, and any other idea that will help conformity. The applicants were advised that the board, in suggesting an adjusted plan, is not committing to an approval at this time, but instead will review the new plan on its merits. Additionally, the applicants were encouraged to provide more than one plan indicating their preferences to allow for flexibility in reviewing and deciding on the variance. Finally, the board noted that although it is not requiring a plan created by an engineer, any approved plan would be binding.
* The applicants will provide a letter from the children’s physician stating that the pool is needed for the health and well-being of the children and that there are medical issues requiring that supervision of the children must be possible at all times.

The hearing was not closed, but ES moved that the **hearing be continued to Thursday, December 9th at 6:00 PM.** SJ seconded. Motion passed 3:0

At 7:10 PM, ES asked for a motion to adjourn the meeting. CT moved, SJ seconded, motion passed 3:0.

**To: Plympton Zoning Board of Appeals
Date: December 2, 2021**

**RE: Edith Thompson, application for a variance, hearing scheduled for 12/2/21**

This application raised some questions for me which led to a conversation with a member of the Conservation Commission about the proposed project. Because the variance requested involves a project with a protected species (Eastern Box Turtle), Ms. Thompson will need approval from the ConCom and the Commonwealth of Massachusetts. There is more involved than just a simple issue with setbacks.  It seems that bringing this to ZBA first is putting the cart before the horse.

Wondering about the best way to proceed, I spoke with Town Administrator Liz Dennehy.  Liz said that under my authority as the Chair of the ZBA I should reach out to the applicant by phone to ask her to withdraw her application.  This would be a withdrawal without prejudice and, should she reapply for a variance for this project after her other hearings, we will waive the filing and advertisement fees.

I was able to speak with Ms. Thompson this afternoon.  I asked if she would be willing to withdraw her application under the terms outlined above.

I explained that if we open the hearing, there are two possible results.  Either we deny the application because we do not have sufficient information on which to base a decision, or we continue it to a certain date for the same reason.  If we deny her variance, she will have to wait two years before she can reapply.  A continuation could be cumbersome because we don’t know when she will appear before ConCom and the State and when - or even if - she will get their approval or denial.  It could mean a series of continuations.

Ms. Thompson agreed to withdraw her application pending approval from the ConCom and State.  I asked her to send me an email confirming that decision.  She has done so, and I have attached a printout to this document.

Colleen Thompson

Chair, Zoning Board of Appeals

**From:** Edye Thompson <edyethompson42@gmail.com>
**Sent:** Thursday, December 2, 2021 3:19:49 PM
**To:** Colleen Thompson; cthompson@plymptontown.org
**Subject:** Re: December 2 hearing

On Thu, Dec 2, 2021 at 3:00 PM Edye Thompson <edyethompson42@gmail.com> wrote:

Good afternoon Ms Thompson,

Regarding our telephone conversation of today, I am withdrawing my application without prejudice and waived of all fees for a future application on authority of the chairman of the Zoning Board of Appeals due to knowledge that the Conservation Commission has to be notified prior to a Zoning Board meeting.

Respectfully submitted,

Edith R Thompson

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