

**Town of Milford
Zoning Board of Adjustment
August 4, 2016
Case # 2016-17
William and Kathleen Downs
Special Exception**

Present: Kevin Johnson Chairman
Michael Thornton
Joan Dargie
Jason Plourde
Rob Costantino

Lincoln Daley, Community Development Director

Absent: Len Harten
Kathy Bauer, Board of Selectmen Representative

Secretary: Peg Ouellette

William and Kathleen Downs, for property located at 5 Harvest Drive, Milford, NH, Tax Map 39, Lot 66-9, in the Residence A District, is seeking a Special Exception per the Milford Zoning Ordinances Article V, Section 5.02.2.A.8 to allow a reduced rear yard setback of eleven and a half (11.5) feet when fifteen (15) feet is required per Section 5.02.5.B

MINUTES APPROVED ON 11/3/16

Kevin Johnson, Chairman, opened the meeting by stating that the hearings are held in accordance with the Town of Milford Zoning Ordinance and the applicable New Hampshire Statutes. He then introduced the Board. He continued by informing all of the procedures of the Board. The list of abutters was read. None present. Applicant, William Downs, was present. K. Johnson invited applicant to come forward to present case. W. Downs said he had a small boat stored behind his garage. He has lived in property since 2013, through three winters. Very tall trees, probably over 100 ft., at back edge of property. Some on his property, and more on his abutters' property. In the winter more so, but also in summer, with ice or snow storms, debris from trees comes down and damages his boat. Wanted to do something, but not sure what. He talked to the abutter about options. In discussing, the approach he decided on with the neighbors was to put a metal canopy over the top of the boat which sheds the snow and debris. He was not aware that a structure with no sides – Building Inspector, Tim, said because it was attached to the garage it was an extension of the garage and subject to building code. He wasn't aware of that because last year he wanted to build a shed and was told if it was used for storage with no facilities, and not habitated, it didn't need to go for building code. K. Johnson said, and less than 120 SF or less. Had to be 120 SF or less, as well. W. Downs wasn't aware of that previously, but was now. He said canopy was already built. His mistake. He spoke with Building Inspector who said to go through the process. It is to protect the boar. He talked with his neighbors. Options discussed with neighbors – portable fiber-type garage. Aesthetically everyone

seemed not to want that. If debris wrecked previous canopy he had for three years, it would probably tear that also. Other option was a portable metal roofed thing, but they didn't think it looked as nice as the canopy. Photos of the canopy and boat in the packet.

K. Johnson asked for questions from the Board.

R. Costantino asked if the picture was of canvas.

W. Downs said a metal roof. He knew that if things went well this evening, he would have to be subject to building code inspection. Not sure what changes will have to be made. This is first step in the process.

K. Johnson asked applicant to read application into the record.

A Special Exception, as specified in Article V, Section 5.02.2.:A.8 of the Zoning Ordinance is requested to permit:

Description of proposed use:

To construct protective canopy for boat storage. One corner of canopy (support pole) is inside of rear setback. Canopy is presently constructed. [He had just explained this]

1. The proposed use shall be similar to those permitted in the district:

Canopy for storage of boat. [He added that there were similar structures throughout the neighborhood]

2. The specific site is an appropriate location for the proposed use because:

It is behind an existing garage where I had been storing the boat since I built the house & garage. Debris falling from surrounding trees have damaged the boat in the past, canopy will protect this from happening.

3. The use as developed will not adversely affect the adjacent area because:

It will compliment the existing aesthetics of the garage. Canopy has no walls or floor, with no direct access to the garage. It is open on three sides with plenty of access around the canopy, does not adversely affect the adjacent area.

4. There will be no nuisance or serious hazard to vehicles or pedestrians:

It is not habitable, only boat storage and is away from pedestrian access.

5. Adequate appropriate facilities will be provided for the proper operation of the proposed use because:

No facilities will be provided, none needed. It's just a open canopy with dirt floor.

W. Downs stated he attached an abutter statement as part of the application.

K. Johnson said they did have it.

W. Downs said neighbors all signed it; didn't have any opposition.

K. Johnson opened hearing for public comment.

Lincoln Daley, question from staff, as to what alternatives were considered.

W. Downs said they have portable fiber structures, call them garages, that were of heavier material than tarp he had used in the past. He and abutters he talked with didn't like its appearance. He's sensitive to the way things look and didn't want to bring down property values. Other option was metal canopy like at Wal-Mart where employees take breaks. The architecture of that was not as well received in discussion with neighbors. He told them about the canopy he ended up building. He had built them before on his prior residence. He showed pictures to abutters and everybody agreed on it.

L. Daley asked if 15 ft width was dictated by size of the boat.

W. Downs said it sat about 13 ft. When he filled out the application, actual wooden structure – the overhang plus – you take it and raise it up to have slope so snow will slide off. So actual structure is about 15 x 24 ft. but the portion you are actually using is about 15 x 12 1/2 including the overhang and where water would drip off.

L. Daley asked about material on the ground.

W. Downs said it was crushed stone.

J. Plourde said applicant talked about the structure there today with canopy and poles. He will not be making any other changes?

W. Downs said not unless the building inspector says to.

R. Costantino said to bring to code. Want to make sure he was asking for enough. With canopy open on three sides, worried about snow and debris getting in there?

W. Downs said he would still put cover over it. Some of the trees are in excess of 120 ft tall. In winter when you get wet snow, and ice storms, it sticks to the trees and two days later it flies off in chunks. Even a small diameter branch covered with ice, dropping down, goes right through a frozen tarp. Metal roof should handle that.

M. Thornton asked if there was plywood under the metal.

W. Downs said not, metal roof and strapping and rafters. You screw the metal roof right to the strapping.

J. Plourde addressed question to the Chair. If applicant wanted to put a wall in the back to separate the boat from the trees, would he have to come back to ZBA?

L. Daley said if applicant didn't increase the nonconformity by putting the wall at the same level or underneath the overhang, that would be correct.

J. Plourde said as long as he didn't encroach more than 11 ½ ft?

L. Daley said that was correct.

W. Downs said supporting post was 13. One post was fine, the other was not. He didn't intend to enclose it, just wanted to protect things vertically.

K. Johnson said pictures provided gave good indication of level of protection. If we had such severe weather that it wouldn't, then his home and the neighborhood would be in trouble. The normal routine of debris falling from trees – he had trees that were 80 ft at back side of his property and they get branches falling into yard. He could understand branches from those pine trees because they die from bottom up, and the dead branches at the bottom reach a point where they fall off.

M. Thornton said he had house for his chickens and geese with a shed with roof, and they are plywood with asbestos shingles.

W. Downs said that was a lot of weight.

M. Thornton said they have taken 3 in. branches from the pines and suffered some shingle loss. That was why he asked about construction – whether he had plywood for stiffness and resistance to branch penetration.

W. Downs said with gauge of the metal, if a big branch came down it might go through but usually on shed construction - he used same type of construction on the other small shed – you don't put plywood. A lot of people put metal roofs on their houses. In that case you need sheathing. Relatively inexpensive to build and can put up quickly and last a long time.

K. Johnson asked for any further questions from the Board. There were none.

He asked the Board if they wanted to deliberate, or continue to the next meeting. Consensus was to deliberate.

K. Johnson read from Art. V of the ordinance which covers zoning districts and regulations. He read Sec. 5.02. A. 8 listing "Acceptable Uses" in Res. A. He said this canopy would normally be allowed as an accessory use. Only reason for special exception was because it was into the setback. Sec. 8 covered reduced front, side and rear setbacks, which this applicant is asking for. He read Article X, Sec. 10.02.1 which outlined the criteria to be met for a Special Exception.

K. Johnson then proceeded to deliberation. In consideration of the full agenda, rather than proceeding around the table for each individual criteria, he asked the Board members to address all five at once.

J. Plourde believed it satisfied all five criteria. Residential use with accessory use. Everything K. Johnson said he agreed with. It was in right location. Would not adversely affect adjacent area. No hazard to vehicles or pedestrians. Applicant brought in abutter list with all in favor. Showed no opposition and none heard tonight. Would look favorably on this project.

M. Thornton agreed. Proposed use – there were similar in the neighborhood. Didn't know if any of them encroached on setback. It was probably most appropriate location that doesn't show. Didn't think there would be any pedestrians back there who are not authorized to be there. Didn't quite know what to do with E, re adequate facilities.

K. Johnson said that was one where, as applicant said, the Building Inspector will make sure it meets building code. They can trust the Building Inspector to make sure adequate facilities will be provided.

M. Thornton said very good.

J. Dargie said proposed use was similar to those permitted. Location was appropriate. Won't adversely affect area. Fact that he talked with neighbors and got their suggestions was definitely the way to go. No serious hazard, and Building Inspector would make sure it met code. Felt it met all five.

R. Costantino agreed. All five criteria were met. Proposed use was similar to others in the district. Site was appropriate. It was behind, away from the street and in back end of the area. Setback encroachment was only 3 ½ ft. and was far away as it could be from the house behind it. Tree buffer between the two. It was good site. Won't adversely affect adjacent area. All neighbors had agreed to that in the signed attachment. There was no nuisance or hazard to vehicles or pedestrians because it was behind the house. It was adequate appropriate facilities, as discussed, because the Building Inspector is participating in that.

K. Johnson agreed all five criteria had been met. Except for the minimal encroached into setback, it would be a permitted use. As all Board members had covered – it was in back of property. Appropriate location. No hazard to vehicles or pedestrians and not interrupting sight line. Felt those criteria had been met.

K. Johnson asked if there were conditions to be made. None.

Vote on findings of fact:

Is the Special Exception allowed by the ordinance?

M. Thornton – yes; J. Plourde – yes; J. Dargie – yes; R. Costantino – yes; K. Johnson – yes

Are the specific conditions present under which the Special Exception may be granted?

J. Dargie – yes; R. Costantino – yes; J. Plourde – yes; M. Thornton – yes; K. Johnson – yes

M. Thornton moved to grant the special exception requested in Case #2016-17.

J. Dargie seconded.

Final Vote: A yes vote was to grant the Special Exception

M. Thornton – yes

J. Dargie - yes

J. Plourde – yes

M. Thornton – yes

K. Johnson – yes

K. Johnson informed the applicant he was unanimously granted Special Exception and reminded him of the 30-day appeal period.

Chair called for short recess before hearing next case.