

**Town of Leicester
Zoning Board of Appeals**

Minutes of October 28, 2015

Members present: David Orth, Vice Chair; Vaughn Hathaway; Paul Schold

Alternate members: Mary Moore; Richard Johnston, Acting Clerk

Hearing on the petition of Michael & Katelyn Mercer of 47 Salminen Drive, Leicester, Ma. to amend a variance granted by the ZBA on July 9, 2014 to allow setback relief that would account for the eave overhang & footings.

Meeting called to order at 8:00PM

Mr. Schold recused himself from this hearing due to a conflict of interest

Mr. Orth explained with Mr. Schold recusing himself, it leaves the Board with 4 voting members, which will require a unanimous vote on the decision.

He gave the applicant the option of continuing the meeting until a 5th member could be present or to proceed with tonight's meeting.

Mr. Michael Mercer, Applicant, wanted to proceed with tonight's meeting.

Instructions were given on the hearing procedures

Mr. Johnston read the Notice, Application, a letter on the Finding of Facts from Graz Engineering into the record.

Submitted into evidence: Registered Plot Plan, return receipts from the Certified Mailing to abutters, email correspondence from the Town of Spencer's Assessor's Office indicating there were no abutters to be notified

Correspondence received and read into the record by Mr. Orth; Site Consideration from the Building Inspector, memo from the Board of Health stating no objection.

Mr. Orth opened the meeting to the applicant to present their petition.

Mr. Brian MacEwen of Graz Engineering presented the application.

The Mercers' requested a variance back in 2014 relative to putting up a new house and demolishing the old structure. The existing structure building walls sat 1.7-feet off the northerly property line, where the property line between the Mercers and the Dolans is located. The Mercers' followed the existing foundation footprint that stayed similar to where the existing structure was, but was not any closer to the existing property line. In that regard, the Board granted the variance and the Mercers' moved forward with the development of the home.

The house was constructed this past spring. The As-Built plans were submitted to the Building Inspector for inspection and everything was approved to be in conformance with the variance. Subsequently, construction of the building structure itself on the foundation, to his understanding, was why Dolans' filed a complaint with the Building inspector indicating the roof's eaves and overhang were encroaching into the setback in violation of the 2014 Variance.

After discussing the issue with the Building Inspector, they felt the best avenue to take was to come back before the Board for another variance on decreasing setbacks on all of the property lines and to take into account the eaves and overhangs that were not taken into account when the original variance was filed.

The plans were submitted as foundation plans and looking at the Bylaw in retrospect now given this complaint, there are a couple of sections regarding the side yard setbacks. Highlighted were the parts he felt were pertinent to the issue and may make it ambiguous as to whether or not the soffits and eaves are part of the issue.

In particular, the side yard setback definition fully indicates that the distance measurement for side yard setback is from the property line to the nearest wall. It doesn't say anything about eaves or overhangs.

“Definitions: Building: A combination of any materials, whether portable or fixed, **having a roof,** to form a structure for the shelter of persons, animals or property.”

“Yard, Side: A space, unoccupied, except by an accessory structure or accessory use as herein permitted, extending for the full length of the building **between the nearest building wall and the side lot line.**”

What they feel is the building that they have on the ground now, inclusive of these eaves and footings are still no more nonconforming than the existing structure, which was 1.7-feet off the property line. They went with the building footprint that was approved by the Board in 2014 and had asked for 5-feet, which is more conservative than the 1.7-feet.

At this time, they are looking for a variance to be granted allowing for the eaves & overhangs.

Mr. MacEwen continued. Graz Engineering is working for a private homeowner here and if this was for a developer, he would have pushed the envelope further on the proposed foundation in 2014, given the fact that they had an offset of 1.5 to 1.7-feet to the property line and would have tried putting in a larger foundation on the lot. What they came up with was a footprint they felt was reasonable to what was already there. The reason the structure is located on that side of the lot was to allow some parking on the site, as there had always been with the existing building. They don't feel this will be creating anything worse for the neighborhood than what was already there. It seems to be more of semantics relative to the roof eaves.

Mr. Orth asked if the eaves came out about a foot. Mr. MacEwen said 1.1-foot as indicated on the variance plan as submitted.

Mr. Orth asked if they knew how far the eaves came out on the previous building.

Mr. MacEwen said only by pictures, not by scale. Right now, the eaves are roughly 4-feet off the property line.

Mr. Hathaway thanked Mr. MacEwen for pointing out the inconsistencies within the Town Bylaws. The Town has always worked with plans based on the overhang being included. He found it interesting the description for side yard setback is measured to the nearest wall.

Mr. MacEwen said he was not part of the 2014 hearing and didn't know how discussion went or whether at that time, the eaves were included. This current issue was only brought to their attention within the last month.

Mr. Hathaway said he doubted anything was mentioned at that time because of the Bylaws being inconsistent in that respect.

He didn't see the overhang having an impact nor did he see the overhang being a detriment to the neighborhood, as far as encroaching into the side yard. He was not uncomfortable with the fact that the eaves encroach further than the walls.

Mr. Orth asked if the structure was complete. Mr. MacEwen said the outside exterior of the structure is complete.

Ms. Moore said the 5.1 was approved. Mr. MacEwen said yes, the 5.1 was what the variance was written up by.

Mr. MacEwen submitted to the Board, copies of the As Built foundation plans that were submitted to the Building Inspector and as shown on the northern side line, the 5.14 is what they actually measured to the closet portion of the foundation to the property line.

Mr. Hathaway noted the application mentioning something about the deck footings.

Mr. MacEwen said the deck was shown on the original variance plan and the Building Inspector indicated the deck footings were inconclusive to the side yard setbacks. So they updated the variance plan showing all improvements and the numbers that will satisfy the yard setback requirements. They made sure that the rear yard setback that was adequate to granting the variance, would be adequate to cover the footings as well.

Mr. Hathaway said the footings went approximately 2-inches further; Mr. MacEwen agreed.

Mr. Hathaway said discussion tonight will be regarding just the footings, not the deck itself.

Mr. MacEwen said the deck and the footings. The deck can't extend beyond the outside, but the footings ended up, based on the architectural plans, extending beyond the limits of the deck.

Mr. Hathaway said what the Board is hearing is related to the increase distance of the footings being closer to the side yard setbacks, as opposed to the deck itself.

He asked if the deck was now being included and wasn't included on the original plan.

Mr. MacEwen said the deck has always been part of the original plan. They just wanted to make sure that all parts of the structure were sitting correctly, subject to the approved variance.

Mr. Hathaway said the footings were based on what was previously approved;

Mr. MacEwen agreed.

Mr. MacEwen continued. They also requested for a change in the front yard setbacks, and included all setbacks on the plan, due to the overhang in some areas. They wanted to make sure that all projections from the structure wall on the property are all noted properly on the plan.

Ms. Moore asked if the deck was included on the original variance; Mr. MacEwen said yes. Ms. Moore asked if the only thing that was changed was the footings; Mr. MacEwen agreed. Ms. Moore asked if the size of the deck was approved based on the original plan. Mr. MacEwen said yes.

Mr. Hathaway noted structurally, the front stoop was the only thing not on the plan.

Mr. MacEwen said the stoop was not on the previous plan.

Mr. Orth confirmed that the deck was on the plan, but the front stoop or overhang was not.

Mr. MacEwen said the front stairs or roof overhang was not depicted on the variance plan submitted in 2014.

Mr. Hathaway noted he was less uncomfortable with the stoop because it's not a big deviation from the original plan.

He also didn't have any problems with the footings being a couple of inches closer.

Mr. MacEwen said based on his conversation with the Building Inspector, given that the Mercer's own both sides of the road, he would not consider the stoop overhang and the steps to be any type of encroachment to the front yard setbacks.

Mr. Orth asked for any further comments or questions from the Board; hearing none, opened discussion to the public.

Mr. Joe Boynton, Attorney for Mark & Marie Dolan of 49 Salminen Drive said shown on the plan filed with the Town Clerk dated July, 2013, the proposed deck being 20-feet back from the side line. He assumed that was the plan the ZBA voted on in 2014 and granted the 20-foot relief from the side yard setbacks for the deck.

Tonight, the Board was being asked to grant 26 feet for the deck. He explained the Dolans' having a lot of problems with the construction of this house and not wanting anything that will encroach closer to their property. Their concern was with the water that will come off the roof and run onto their property.

Mr. Boynton further explained there's been an extensive removal of fill on that side of the property and so much so that the erosion control used, sits 10 to 15-feet over onto the Dolan property, which means much of their land has been taken away. The plan shows that on the Dolan land, the trees & vegetation that was there, was removed from their land by the Mercer's contractor.

The Dolans' were concerned with losing that side of their property to erosion because of the removal of all the trees along that side.

They felt the Board had not been presented with any facts that showed they have met the requirements of soil conditions, topography or shape of the lot that caused the deck to be moved further into the setback area. They felt the applicants created his/her own hardship and that this would cause further property damage to the Dolans if the Board were to grant this.

Mr. Orth said as far as erosion concerns, he understood that gutters would be installed on that side of the house, so there shouldn't be an issue. That was part of the plan as stated earlier.

Mr. Boynton said it was mentioned, but they did not see that as part of the plan. He questioned if there were any requirements for gutters for an erosion control.

Mr. Hathaway asked for clarification. If the Board doesn't grant this, then someone will have to cut the roof back on that side where the Board already granted relief on the setback to the sidewall. The work was done in accordance to what the Board already approved. He didn't understand what the Dolans were hoping to get from this.

Mr. Boynton said as far as the roof goes, the runoff would be 20% worse than what the Board already granted.

Mr. Hathaway said he understood the complaint; he was trying to understand what the solution would be. Was the proposed solution having someone cut the roof back or to take the whole building down?

Mr. Boynton said that would be determined by the Building Inspector.

Mr. Hathaway asked if the Dolans' had a suggestion that would allow things to stay or was this just a complaint.

Mr. Orth asked what the Dolans' were asking for.

Mr. Boynton said they don't want the deck any closer to their property.

Mr. Orth said the deck is not on the Dolan's side from his understanding.

Mr. Boynton said the tubes are being moved 16-feet closer to the line.

Ms. Marie Dolan, 49 Salminen Drive said they have been trying to come to an agreement with the Mercer's. They ended up having their land resurveyed and the second time the surveyor came, they were told the Mercers were closer than 5-feet on the foundation. The Mercer's show 5.1-feet and it's actually less than 5-feet, but she wasn't disputing that.

She presented pictures showing the lot in question. She explained that the house was built lower than where it originally sat, in order to have a walk-out basement. Her land runs straight up to that spot and when they came to cut the vegetation, they cut straight down. They asked her if

they could take the rocks away from the driveway so they would make it level and she said no. That would have pushed the water right into her driveway and right into their garage.

She had to leave for a little while and when she got back, all their land was taken away and her pictures show that.

She had gotten an estimate of \$15,000 to put back the stonewall and put back the fill they took away. That stonewall is a handshake from her property line to that deck and that is why she wants that deck put back to where it was. She does not want to stand on her land and be that close to reach out and shake hands. She felt that impacts the value of her land.

It wasn't so much an issue with the foundation being close, but once they took their land away and all the trees they cut down, they became concerned enough that they were here and discussing this problem.

If the solution is to change the pitch of the roof, then they should change the pitch of the roof.

Mr. Hathaway said he's not a builder and was trying to understand, because regardless how the roof is pitched, there would still be an overhang. Ms. Dolan disagreed.

Mr. Boynton said looking at the plan; he didn't see any provisions that regulates for a gutter system, nor does the plan show the water from the roof being directed underground and away from the Dolan's house.

He felt it would be appropriate for the Board to hold the position that a stormwater management system be put in place.

Mr. MacEwen clarified the issues of concern and reviewed the plan that was submitted to the Board in June 2014 which shows the building envelope.

That envelope was the envelope that was inclusive of the building foundation structure along with the deck. Comparing the footprint of the deck and the foundation of the variance plan, it falls within that grade and a 30 x 40 box was put on the ground because the definitive architectural plans had not been finalized. They knew the footprint they needed to work in and that was based on the foundation and deck footprint. That should clarify one issue relative to the deck being closer to the property line than it was before. The box shown on the variance plan of July 2014 is the same envelope that is encompassed by the deck shown on the variance plan that is currently before the Board now.

Mr. Hathaway clarified the plan being reviewed was for the house and the deck.

Mr. MacEwen agreed the house and deck were all included in that box.

He continued, clarifying the second issue; the Mercers' were required to file with the Conservation Commission because they were within 100-feet of a resource area. Plans were presented to the Commission and an Order of Conditions was approved under a Notice of Intent Application. The Notice of Intent included roof drainage, infiltration for the structure with gutters on both sides of the eaves and downspouts to an underground infiltration system.

Mr. Hathaway asked to confirm the plan the Board was seeing tonight is consistent, except for the footings and overhang, to what was already approved. Mr. MacEwen agreed.

Mr. Matthew Schold, Contractor for the Mercers', said they wouldn't be here tonight had they not known that the soffits were not included as part of the structure. In a lot of the Towns, they do not include the soffits or overhangs because they are considered part of the structure. If they had known that the overhang was considered part of the structure, they would have had the setbacks initially at 4-feet and not 5-feet.

Mr. Hathaway said the concerns he was hearing were not being about the overhang, it seems the concerns were more with the vegetation being removed from the Dolan's property.

He suggested that maybe the property owners should try and work it out.

Mr. Orth said he understood from the Dolan's perspective, the concern was with the water runoff. It seems having it directed into a filtration system, which it looks like that will happen, addresses that issue. The Dolan's other concern was with land being removed from their property. He asked if someone could address that.

Mr. Schold noted the trees that were taken down and stumped were removed over a year ago.

Ms. Dolan presented pictures showing the location of the property line and where the trees once stood. All the trees were removed right up to their property line.

Mr. Orth said he understood that the foundation was put in the same footprint as the previous house.

Ms. Dolan showed pictures of her property line and explained that the Mr. Schold did ask her about removing the piles of rocks as well to grade the land out.

Mr. Schold explained that after they received approval to take the trees down, he wanted to grade out the front of the house to make it look nice. He offered to shape and grade out the area to make it look better and Ms. Dolan said no, she didn't want that. Now it's become an issue.

The Building Inspector came out and did an inspection of the property and agreed that there was no way, unless water can go up hill that the water runoff from the Mercer's property will flow onto the Dolan's property. There was a swale on that side of the house that goes back towards the lake and runs onto Mercer's property. Unless water can run uphill, it's impossible for water to enter onto the Dolan's property and the Building Inspector told them that.

He noted that the Dolan's don't even live at this house, they rent it out.

Mr. Orth asked if the grading had been restored. Ms. Dolan said no and she felt it should have.

Mr. Schold noted the grading was done over 4 months ago.

Mr. Michael Mercer, 47 Salminen Drive, said before they started building, they marked out the property line and then offered to the Dolan's on taking down some trees. It didn't matter to him, personally, one way or the other, but the opportunity presented itself. He made the offer and the Dolan's accepted. Once the foundation was put in, he offered to do some grading along the two properties that would have benefited both of them and the Dolans said no.

Since that time, the Dolans started becoming aggressive towards them about doing things inappropriately.

The claim that they graded the lot after she said no was not true. Everything that was done, was done up until that point, there was nothing removed from the ground at all. He was baffled by that claim because it's just not true. All through this process they have been trying to be neighborly.

If they could have done things differently and moved things around on the property, they would have, but they don't have that luxury at this point. All they want to do is complete their house and live in a structure that his great-grandfather initially built, and use the lot in a way his great-grandfather intended it to be used over 100-years ago.

Mr. MacEwen said that property line was marked and in place prior to the start of any construction on this site. The surveyor's pipe was there before any work was started and is still there today.

Ms. Dolan showed a picture of the pipe and pointed out where a tree once stood. She explained that when a tree is removed; it disrupts the ground and if a tree is removed beside the pipe; it disrupts the pipe.

Mr. Orth asked if the pipe was put in by her surveyor.

Ms. Dolan said it's a pipe that's been there for 30 years or more.

She showed pictures of the property that she wanted restored. She further explained that the Mercers' wanted to fix the grading there because they have a water problem and she told them they couldn't take any of her land and after she left that day, they took her land away.

Mr. Schold explained there has not been any yard work or any work done on that side of the lot in over a year.

Mr. Johnston said his take on this was that the Mercer's were before the Board trying to correct the overhang and footing issues, and that is what discussion should be focused on. The trees, the land being taken away, the concern with water runoff is a civil issue and is not a Zoning Board issue.

Mr. Dolan asked what protected the landowners. She thought there was a law that regulated disturbing the pitch of the land and directing runoff onto abutting properties. The Mercer's changed the pitch of the land and took her land away, and now caused more erosion, making a steep hill.

Mr. Hathaway felt whichever way the Board voted on this, it would end up coming back before the Board again. He suggested again to the Dolans' and Mercers' on working it out on their own, because he agreed with Mr. Johnston on the land and tree concern being more of a civil matter than a Zoning Board matter.

His concern was having this repeatedly back before the Board, so he wanted to make sure that if the Board were to make a decision tonight, that everything is covered, for example, the overhang on the garage across the street. Mr. Schold agreed and said they will make sure everything is done in accordance with the approved plan.

Mr. Schold noted it states in the building code that runoff is required to flow away from the house and not flow onto the neighboring properties. The Building Inspector told them he would not sign a Certificate of Occupancy if they didn't meet that requirement.

Mr. Boynton asked to review a copy of the 2014 plan.

Mr. Orth said it appears the 2014 plan did include the deck as it stands. The original foundation, being in such close quarters, was 4, 5 or 6 feet and the new structure cannot further encroach upon the property. If it does not further encroach, the Board generally approves the application, but each case is individual and the Board does not go by precedent.

When foundations are that close, generally the Board requires that it can't be further encroaching from what the previous structure was. He felt that was the case here. The previous building may have had some sort of relief, so it would seem that the existing eave would not be significantly further encroaching. The Mercers' plan on putting up gutters and a water filtration system, as requested, to prevent further water runoff onto the Dolan property. That can also be added into the variance as a condition.

As for the issue with the trees and the grading, it cannot be addressed at this meeting because it's not part of the variance or a Zoning Board issue.

He felt changing the pitch of the roof, at this point, was not an option without reconstruction of the entire house and in his opinion that would cause a financial hardship.

Mr. Boynton said the Dolans' had said runoff from the Mercer's house changed by 90 degrees and in their situation it's made things entirely different. With respect to the erosion, the Mercer's land is a lot lower than it was before. The area at the Dolan's property line, where it sits higher, is now subject to additional water runoff down the hill and could take away the lateral support of the Dolan land.

Mr. Orth asked what would cause the erosion. Mr. Boynton said the roof runoff.

Mr. Orth noted that it was already established there would be gutters and therefore, there would be no runoff from the roof that would cause erosion.

Mr. Boynton said they hope there will be gutters and an infiltration system for the roof.

Mr. Orth noted that had been already established and was shown on the plan.

Mr. Boynton said he didn't see it on any plan.

Mr. Orth said the applicant noted they would do that and the Board can also add that as a condition to the variance.

Mr. Hathaway spoke on the conditions for the granting of a variance.

Mr. Orth said a variance was already granted on this and this variance was for some minor clarifications that area needed, as far as the footings go, even though it was part of the original approval. The footprint included the deck and the issue with the footing is just cleaning it up and won't change the plan significantly.

Mr. Johnston wanted to point out that Mercer's lot is almost entirely within 100-feet of the lake, which means it comes under the purview of the Conservation Commission. All these erosion issues being discussed should be addressed by the Conservation Commission, and not by the Zoning Board of Appeals.

Mr. MacEwen said they were here to clean up the previous variance and at the time of the previous variance, they did present the finding for hardship. They presented facts on the shape of the lot, the existing building location, and the topography of the lot having a year-round dwelling and the rocks having an impact on the resource area. Their intention was to keep the footprint as close as possible to the original building footprint.

Relative to the hardship, they wanted to state on record that they did establish hardship with the original variance and understood that they cannot create their own hardship, as Attorney Boynton stated.

He also wanted to state for the record that the Mercers' did go through Conservation and was approved through Conservation for the house and septic system that has been placed on the other side of the road.

Mr. Hathaway asked if the Board was to approve this, adding the condition regarding the gutters and drainage, be sufficient to address the Dolan's concerns, as far as what is before the Zoning Board tonight.

Mr. Boynton said with respect to the roof itself, if the Board was to grant the variance, he felt his clients would want the Board to at least put in a specific condition that the water from the impervious surfaces be collected and infiltrated into the ground and away from the Dolan property.

Mr. Orth questioned if the infiltration into the ground was a Conservation issue.

Mr. Johnston said 100% because it's a stormwater issue.

Mr. Hathaway felt the Board had the authority to include that as a condition to the variance.

Mr. Orth agreed, and said putting gutters on the house, will encroach closer by another couple of inches.

Mr. MacEwen said gutters aren't counted in.

Mr. Boynton said the issue isn't with the water coming off of the land; it's with the water coming off the roof. Mr. Orth said that has to do with stormwater and that's a Conservation issue.

Ms. Moore said the measurements should go by what Mr. MacEwen highlighted "between the nearest building wall and the side lot line", as stated in the Town's Bylaw. She wouldn't have considered the eaves either; she would consider the side wall, the wall. She wasn't sure why the Board is even hearing this if they already were approved for a variance in 2014.

Mr. Hathaway questioned whether the Board should continue the hearing to allow both parties to work it out and then come back with a compromise that would allow the Board to make a decision that both parties can agree to.

Mr. Orth said anything to do with the runoff and erosion is a Conservation issue. Gutters need to be put up so that the water does not enter onto the abutting properties, but as far as what happens to the water after the gutters are installed, would be a Conservation issue.

Mr. MacEwen said the Dolan's attorney mentioned he was unable to adequately assess what was on the 2014 plan versus what was presented to the Board tonight. Mr. MacEwen suggested, adding a condition that a new plan be submitted showing the old footprint on top of the new footprint, so it will all be shown on one plan.

Mr. Bill Mattie, 1087 Stafford Street, Mattie Realty – Michael Mercer is his nephew who bought the 47 Salminen Drive property from his wife and his brother-in-law, who is Michael's father. Over a year ago, the Dolans' contacted his wife on a number of occasions about this property, inquiring on wanting to buy it, which at that time, was not for sale.

When they decided to put the property on the market, they gave the Dolans' a figure and they agreed to it. A couple of weeks later, the Dolans' decided they didn't want to pay the price. So, at that point, his nephew said he wanted to buy the property because it had been in the family forever. Over the last seven months, Mr. Dolan has gone to the Police Department putting a No Trespass on his nephew. Mr. Dolan went to Conservation and they told him it was a civil matter and now they are here before the Zoning Board.

He felt the Dolans' won't stop coming up with the complaints and asked for the Board to make a decision tonight and grant the variance, so to at least put one issue to rest, because the Dolans' will come back again with new complaint.

Mr. Hathaway said even if the Board were to grant this variance, it wouldn't put all the issues to rest.

Mr. Mattie said it would put this issue to rest, if there are other issues; they will deal with it then. Ms. Dolan said her husband never offered to buy that property.

Mr. Orth asked if this was pertinent to the variance. Ms. Dolan said no; Mr. Orth asked for discussion to stay on the variance issue, because the meeting was not being held for settling neighbor disputes.

Mr. Dolan noted the Board allowing Mr. Mattie to speak; therefore the Board should allow his wife to speak.

Ms. Dolan explained that her husband never offered to buy the property; it was her who made the offer.

Mr. Hathaway asked if the Board wanted to continue the hearing to give the attorney time to make sure the footprint of the structure was the same.

Mr. Orth felt that the footprint of the structure had been established through the original variance and that it is the same footprint shown in this variance. The only difference is that the new application includes the front porch, which was also established, does not affect anyone, other than the petitioner. He asked if the footings were shown as being outside of the existing footprint.

Mr. Hathaway said looking at the plan, the structure is within the footprint, but the overhang goes out approximately 3-inches.

Mr. Orth said the deck has been placed within the same footprint as the original deck. As far as water runoff issues and concerns, that is a Conservation issue and not a Zoning issue.

If someone were to appeal whatever decision is made tonight, the appeal can only be made for the variance and not for the erosion issues.

Mr. Orth asked Mr. Boynton if he felt that was an accurate statement.

Mr. Boynton said he did not think that the erosion issue was strictly a Conservation issue, because the Conservation Commission is charged with enforcing the wetland protection act. That does not mean other Boards cannot deal with erosion.

Mr. Orth said if the Board was to add a stipulation of gutters into the variance that would prevent the water runoff from the roof onto anyone's property, would that satisfy the runoff concern.

Mr. Boynton wasn't sure, because they didn't know if the gutters would control the erosion from the snow melt off the roof, or where the downspout would be placed.

Mr. Schold said water runoff had already been addressed through Conservation, but if the Board wanted to add a specific condition, he felt it should read; the water runoff be discharged in accordance to the specific plan approved through the Conservation Commission.

Mr. Orth asked if that condition would be sufficient to the Dolans' to not appeal the decision.

Mr. Boynton said he didn't know if the Dolans' would appeal.

Mr. Orth asked that by adding the condition, if that would address the issue of runoff.

Mr. Boynton said it would be addressing the issue, but he would need to further discuss with his clients regarding an appeal.

Mr. Dolan questioned if the Mercers' could guarantee that the snow melt from the roof would not affect their property.

Mr. Orth noted there will be snow on the ground as well. Mr. Dolan said runoff from the roof would be like a river flowing through the property.

Mr. Orth said no one can predict what will happen with snow.

Mr. Orth asked for any further discussion regarding the variance; hearing none, asked for a motion.

MOTION: Ms. Moore moved to grant the petition of Michael & Katelyn Mercer of 47 Salminen Drive, Leicester, Ma. to allow setback relief that would account for the eave overhang & footings with a condition that gutters along the roof line be installed and the runoff from the roof be directed into a drywell

SECONDED: Mr. Johnston – Discussion: None - VOTE: All in Favor

FINDING OF FACTS

Mary Moore voted in favor because she felt this met the conditions for the granting of a Variance. That desirable relief can be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Bylaw.

Vaughn Hathaway voted in favor because he felt the small difference from the previous plan would not be detrimental to the public good & he felt a literal enforcement of the Bylaw would cause financial hardship to the applicant.

David Orth voted in favor because he felt it met the requirements under Chapter 40A, Section 10 Variances and the Town of Leicester Zoning Bylaw. Relief can be granted without substantial detriment to neighborhood & without derogating from the intent or purpose of the Bylaw.

Richard Johnston voted in favor because he felt a literal enforcement of the Bylaw would cause substantial hardship to the applicant. He also noted that this was a civil matter that should have never come before the ZBA.

Instructions were given on appeal process and the filing of this Decision with the Registry of Deeds.

MOTION: Mr. Johnston moved to close the hearing.

SECONDED: Mr. Hathaway – Discussion: None - VOTE: All in Favor

Meeting adjourned at 9:45PM

Respectfully submitted:

Barbara Knox

Barbara Knox