

Minutes
Resort Municipality Public Meeting
Wednesday, September 1, 2021
6:30 p.m.

The Public Meeting for the major variance request for Ron and Sandra LeBlanc was held on September 1, 2021 at the North Rustico Lion's Club.

PRESENT: Mayor Matthew Jelley and Councillor George Clark Dunning. CAO – Brenda MacDonald. Administrative Assistant – Heather Hay.

ABSENT: Deputy Mayor Linda Lowther, Councillors: Lee Brammer, Chris Robinson, Kay Hryckiwi and Bill Drost.

VISITORS: Lorin Brehaut, Michel Dupuis, Mrs. Dupuis, Marianne LeBlanc, Garth MacNeill and Richard Moore.

CALL TO ORDER:

Mayor Jelley called the meeting to order at 6:31 p.m.

Mayor Jelley welcomed everyone to the meeting.

Mayor Jelley advised everyone to sign in at the front of the room for the record.

Mayor Jelley advised everyone that the meeting is being taped for office use only.

Mayor Jelley advised the public that the meeting being held tonight is to discuss a major variance request under the Zoning and Subdivision Control (Development) Bylaw for parcel # 403956 and that no other discussions will take place.

Mayor Jelley read out Section 15 of the Resort Municipality Zoning and Subdivision Control (Development) Bylaw.

- (1) Council may authorize a minor variance to a maximum of 10% from the requirements of this Bylaw provided that in the opinion of Council the general intent of the Bylaw can continue to be upheld, Council is assured that the variance being sought is merely minor in nature, and the applicant for the permit has been able to document a compelling reason why the requirements of this Bylaw cannot be precisely met.
- (2) Council may authorize a variance of more than 10% from the requirements of this Bylaw, provided that in the opinion of Council the general intent of the Bylaw continues to be upheld, neighbouring properties will not be significantly or permanently injured, and the applicant for the permit has been able to document a compelling reason why the requirements of the Bylaw cannot be precisely met.
- (3) Variance applications shall be considered against the following tests for justifying a variance:
 - (a) the Lot in question has peculiar physical conditions, including small Lot size, irregular Lot shape, or exceptional topographical conditions, which make it impractical to develop in strict conformity with Bylaw standards;

- (b) strict application of all Bylaw standards would impose undue hardship on the applicant by excluding the applicant from the same rights and privileges for reasonable Use of the applicant's Lot as enjoyed by other Persons in the same Zone;
 - (c) the variance is of the least magnitude required to enable reasonable Use of the Lot; and
 - (d) the proposed variance would not impact unduly on the enjoyment of adjacent properties, or on the essential character of the surrounding neighbourhood.
- 4) All variance applications shall be in writing and signed by the Lot Owner.
- 5) Applications for variance of more than 10% from the requirements of this Bylaw shall also require the following:
- a) the Municipality's receipt of a fee sufficient to cover the estimated cost of the advertising and mailed notices required under this Section 15, the amount of such fee to be determined by Council;
 - b) requesting and considering the recommendation of Planning Board;
 - c) providing written notice, by ordinary mail, documenting the pertinent details of the application to all Property Owners within 120m (approximately 400 feet) of the boundaries of the subject Lot;
 - d) holding a public meeting to receive comments on the proposed variance, notice of which shall be placed at least a minimum of seven clear days prior to the meeting in newspaper circulating in the area, indicating in general terms the nature of the variance application and the date, time and place of the Council meeting at which it will be considered.
 - e) Authorization for a variance shall be documented and recorded in writing.

Mayor Jelley read out the application for the Major Variance Request.

1. Name: Ronald and Sandra LeBlanc
2. Address: 20 Isidores Lane, Cavendish
3. Property Tax #: 403956-000
4. Minor Variance: none Major Variance: Decrease 25 foot setback off Trimmings Lane to 18.3 feet
5. Please provide details on how the general intent of the bylaw will continue to be upheld if a major variance is being granted for your property.

We the owners, Ron and Sandra LeBlanc, intended to meet the 25 foot setback requirement as required in the bylaw.

In this particular situation, all required setbacks on the 4 property lines were communicated to the contractor both in drawing format as well as in multiple e-mails prior to the footings and frost walls being installed in November 2020.

We were under the assumption that the footings and frost walls were then installed according to the submitted plan with the required setbacks.

Friday July 23, 2021 was the first time we visited the site since the footings and frost walls were installed and much to our surprise, the driveway did not lineup with where the garage was to be in the house design (the garage is on the west side on the ground level of the foundation shown on the revised site plan as well as the original drawing submitted with the building permit application in 2020, which was subsequently approved. The garage is not a separate structure but part of the house structure.)

Upon investigation and taking numerous measurements on the lot, the contractor pivoted the foundation on the northeast corner clockwise resulting in the southwest corner being within the setback area off Trimmins Lane.

In the updated footprint drawing, the Intended Foundation Location (dashed line) met all the required setbacks and that was what was submitted in the building permit application in 2020. The Finished Foundation Location (double solid line) shows where the contractor put the footings and frost walls.

The actual location creates a 6.7 foot intrusion into the setback area resulting in a 18.3 foot setback from Trimmins Lane. This intrusion then decreases as you head north along the west wall of the proposed home.

If the major variance is granted, the setbacks on the south, east and north side will all be met and the minimum setback on the west will be 18.3 feet at the southwest corner of the home and will increase to more than the required 25 foot setback as you approach the northwest corner of the home.

I reiterate that it had always been our intent to meet the required setbacks but the contractor did not install the footings and frost walls in the correct position.

6. Please provide details on how will neighbouring properties not be significantly or permanently injured by the variance request:

Neighbouring Properties:

West – The area to the west of our property is Trimmins Lane and this Major Variance Request will not interfere with the existing use of Trimmins Lane. The property to the west of Trimmins Lane will not be effected as they will have their setback to the east, then Trimmins Lane then our proposed reduced setback.

North – The setback to the north is maintained so there is no impact to the property there.

East – The property to the east is currently a vacate lot, however this Major Variance Request would increase the distance of our home to the property line of the two properties thus not impacting the property to the east.

South – the property to the south is Isidores Lane and the property to the south of Isidores Lanes contains a cottage. The current position of the incorrectly installed footings and frost walls slightly improves the ocean view for the cottage to the south as the southeast corner of our proposed home location is 6.7 feet further to the west, adding to the view of the south cottage property.

7. Please provide compelling reasons why the requirements of the Bylaw cannot be precisely met.

Our sincere intentions were to meet the required 25 foot setback from Trimmins Lane, as requested in our approved building permit, our septic permit, our architectural designs, but due to human error, not on our

part, but by the Contractor, BernMar Construction, who did not follow, for some reason, the two emails of September 25 and October 20, 2020, which included the building plot plan, where it was stressed the required setback on BOTH Trimmins Lane and Isidores Lane was 25 feet. Instead, he decided on his own in November 2020 to place the footings and frost wall parallel to Isidores Lane, which tilted the house on the lot, leaving only a 18.3 foot setback instead of 25 feet on Trimmins Lane, and exceeding the required set backs on the East boundary. On July 23, 2020, we went to see the construction site for the first time, all excited about our new year round home, until we noticed our driveway and garage opening did not seem to line up correctly. This was the first indication to us, that something was not measured correctly. Unfortunately, we discovered the house was tilted on the lot and not parallel to the East boundary by 15 feet and West boundary by 25 feet, as requested. BernMar Construction ignored our numerous telephone calls for days, and finally BernMar Construction told the architect that he would not finish the project. It is unknown to us, if he knew of his error at this time or not, and backed out as the last communication we had on May 10, 2021, was he was still intending to build our home; he informed us when we asked, that he had no insurance to fix this error, if it had to be corrected. Our plan is to retire in April 2022, and move back to this year round home in May 2022. This is to be our permanent home. Our employment contracts in Newfoundland finish the end of April 2022.

Currently, we have spent over \$40,000 into our dream house, and would be financially strapped, if we had to dig up the footings and frost wall and start over. This definitely would cause us financial hardship, as we are already dealing with the inflated cost of building materials due to COVID, and will be on a set retirement income. As it is, BernMar's error will make us at least 2 months behind in construction. This has also caused us some emotional stress and worry as well. Environmentally, it would be a huge waste of good materials to have to dig up and scrap the existing footings and frost walls and pour new ones as the old ones cannot be reused. We could not recycle any of the current building materials. The current house design does not support lopping off the South West corner, as it would affect the entire kitchen, the heart of any home.

I'm sure the neighbours would not really enjoy the noise of a longer construction season, by digging up the current foundation and hauling it away, and starting again.

I realize that the current foundation doesn't meet the Town's Bylaws, but it was never our intent not to follow the required setbacks I read recently that the Resort Municipality was trying to encourage permanent year round residents; I hope that by allowing this major variance, and allowing us to continue to build on what has been started; we can soon be counted as a new permanent resident.

Mayor Jelley opened the meeting to Lorin Brehaut to present on behalf of the owners.

Lorin Brehaut advised that he was not going to comment on the information that was already presented by the Mayor as he would just be duplicating what has been said.

Lorin Brehaut advised that Marianne LeBlanc is at the meeting as well and she is the daughter of Ron and Sandra LeBlanc.

Lorin Brehaut advised that his clients returned from Newfoundland in July and he met them on site and at that time it was determined that there was an issue with the location of the foundation and he advised his clients as he has a moral obligation as an architect to ensure that the municipality was aware of the issue with the foundation placement and the setback requirements.

Lorin Brehaut advised that the owners are looking for another contractor and it has been a challenge for them to find one as the construction industry is so busy.

Lorin Brehaut asked if there were any questions on the plans from the public.

Mayor Jelley advised that major variances in the area to date have only been granted to heights of structures as major variances create precedents for setbacks on properties.

Mayor Jelley advised that there were four people into the office, six phone calls were received and one written submission was provided for the meeting that will be read out for the record tonight.

Lorin Brehaut advised that he was hired by the clients to design the house around the foundation as he was not involved with the project in the beginning as his clients were anxious to get the foundation in before the Building Code came in so they designed the foundation for the structure. He advised that they have looked at multiple variations around the structure. He advised that typically an architect would be involved with the project from the start but this was not the case.

Garth MacNeill asked if BernMar Construction that installed the foundation was still in business.

Lorin Brehaut advised that the contractor was still in business and he is overworked and understaffed and the contractor decided that since he sells ICF to a number of contractors that he would no longer do construction projects and compete with other contractors.

George Clark Dunning asked at this point if any lawyers were involved with trying to resolve the issues.

Lorin Brehaut confirmed that no lawyers were involved as the property owners did not want to look at that option.

Mayor Jelley advised that the contractor installing a foundation in the wrong location is not a compelling reason for a major variance. He advised that there are many options for a property to be surveyed or to get someone to locate the pins before the foundation was installed.

Mayor Jelley read out the e-mail from Jim and Chris Andrews for the record.

“Dear Brenda,

Thank you for bringing this to our attention regarding the issue diagonally across the intersection from our cottage, as we see the owners are requesting a major variance of the foot print of their new build.

As you Brenda, are aware when we put an addition on our cottage several years ago you informed us of the rules of set back and our plans were simply not approved to go ahead. Therefore we had to redesign thru our architect to conform with the rules of the municipality. This was quite a time delay and considerable expense but we were told we must follow the rules so we did. We are very pleased with the result and thank you for your guidance.

This building has a large footprint. I hear its two storey high which is blocking our view which we used to have so with the addition of a major variance even more of my view is gone. So I strongly encourage you to not give permission for this variant. I simply say we all follow the rules.

Say No to any variance not a reduced one -none.

Jim and Chris Andrew 15 Trimmings Lane, Cavendish, PEI”

Mayor Jelley asked the public if there were any further questions.

Mayor Jelley advised the public that there are comment sheets at the back of the room and letters for or against the request can be sent in to the municipal office until September 6, 2021.

Michel Dupuis asked if he could come to the office to get further information on the request.

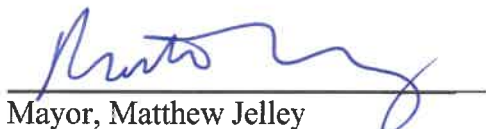
The CAO advised that he could come to the office the next day for any further information on the file and to review any of the documentation.

Mayor Jelley advised that the planning board would review the information on September 15, 2021 and then make a recommendation to the Council and the Council meets on September 20, 2021 at which time a final decision will be made.

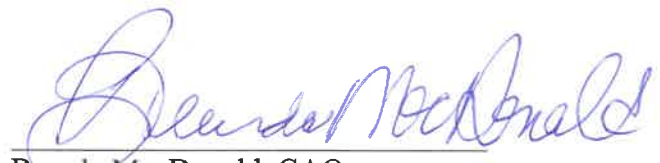
Mayor Jelley thanked everyone for coming.

ADJOURNMENT:

Mayor Jelley adjourned the meeting at 7:00 p.m.



Mayor, Matthew Jelley



Brenda MacDonald, CAO