



BOARD OF APPEALS  
**TOWN OF FOXBOROUGH**  
40 SOUTH STREET  
MASSACHUSETTS  
02035

**Foxborough Zoning Board of Appeals Minutes**  
**September 20, 2018**

Members present: Members Barney Ovrut, David Brown, and Kim Mellen, Associate Member Kurt Yeghian

Chairman Ovrut opened the meeting at 7:00 p.m. in the Gala Meeting Room of the Foxboro Town Hall, 40 South Street.

**7:00 p.m. Marlene Muse-Johnstone and Kevin Johnstone request a Variance from Section 4.0, Table 4-1 of the Code of the Town of Foxborough Chapter 275 - Zoning Bylaws to allow 72 feet of frontage where 200 feet is required for the creation of a new building lot for a single family home at 106 North Street. The property is located in the R-40 Residential and Agricultural District and is not located in any restrictive overlay districts.** Applicants Marlene Muse-Johnstone and Kevin Johnstone were present with Attorney Jeff Lovely. Mr. Lovely explained that they would like to create a new single family lot at 106 North Street. He stated that they have worked with Bay Colony and began the process to subdivide the property. They met with the Planning Board and showed them a conventional subdivision plan and a hammerhead road layout. The hammerhead was to save the existing home, the Planning Board was in favor but asked that a wetland report be prepared. Biologists have found that a vernal pool exists that's certifiable. A vernal pool has a 100' no touch zone and due to setback requirements, a house in the hammerhead design could only be 14' deep. Mr. Ovrut noted that the vernal pool has not been certified. Mr. Lovely responded that it has been determined that it's a certifiable vernal pool adding that they would be open to have the vernal pool certified if this Board issues that as a condition of the variance. He feels that it's a unique situation and would have limited precedential effect. Mr. Ovrut read the minutes from the March 8, 2018 Planning Board meeting and email correspondence between Mr. Lovely and Conservation Manage Jane Pierce concerning the property.

Jim DeVellis of 4 McKenzie Lane stated that he is an abutter across the street and stated that he sees the merit in issuing the variance.

Paul Frost of 7 Vernal Avenue was present but offered no comments.

A motion to close the Public Hearing was made by Mr. Brown and seconded by Ms. Mellen. The motion carried 3-0-0.

The Board moved immediately into deliberations. Members expressed concerns that there is no linkage between the wetlands and the insufficient frontage for two lots and whether the hardship that's required for a variance was justified. It was suggested that the applicant consider alternatives to the variance request.

A motion to continue the discussion to October 18, 2018 was made by Mr. Brown and seconded by Ms. Mellen. The motion carried 3-0-0.

**GENERAL BUSINESS**

**Minutes – August 23, 2018**

The Board reviewed the minutes of August 23, 2018.

A motion to approve the minutes of August 23, 2018 was made by Mr. Yeghian and seconded by Ms. Mellen. The motion carried 4-0-0.

The meeting was adjourned at 8:00 p.m.

Respectfully Submitted,

Gabriela V. Jordan

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Signed on behalf of the Board

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Kim Mellen, Clerk