

Board Of Appeals
September 14, 2023

Board Members

Stephen McLean
David Coleman
Roland C LePage
James Kent

Public in attendance:

Colin Powers
Lisa Moore
Linda Corbin
Butch Sanborn
Janice Burge
Arthur Burge
Stan Hackett, CEO
Bill Gilpatrick

Variance:

Stephen McLean: Welcome to the Limerick Board of Appeals hearing tonight for a variance on September 14th. Okay I'll speak up. David Coleman: Want me to read that? Mr. McLean: You want to read that off? Mr. Coleman: The Limerick Zoning Board of Appeals will review an application for a building lot setback variance for Linda Corbin at 10 Mowbray Way at tax map 16 lot 3. The board will hold a sitewalk at 10 Mowbray Way at 6PM on September 14. The Public Hearing will then commence thereafter at 7PM at the Media Room of the Limerick Municipal Building at 55 Washington Street. Steve McLean, Chair of Limerick Zoning Board of Appeals. Mr. McLean: Alright with that you want to summarize the appeal. Mr. Coleman: Well we can go ahead with the hearing and have Linda speak to her avocation. Mr. McLean: Linda, you want to go to the podium. Give us an explanation. Linda Corbin: Hi my name is Linda Corbin and I own the property at 9 Mowbray Way and also the new lot has been given the number 10 Mowbray Way. This started out where we were just going to put another structure there because I had another tenant that I needed to find another place for and so I met with Stan the Code Enforcement Officer, we went there we measured everything out he said yep I believe it's going to fit in here fine. I hired Chris St. Savior to cut all the trees down, I have already gotten the septic design and we started the project. We got all the trees down our trucks hauled all the brush out and the stumps and did all the digging and we hauled gravel in. I had ordered the trusses back then, which they're sitting over on Cram Road waiting for a decision. I have \$20,000 worth of floor and roof trusses. So my intention was to put in a 24X40. I am willing to cut back the footprint, I can make it a little bit smaller just use less of the trusses and as far as I'm concerned I do know I have a right to have an accessory dwelling on that property and I believe if Stan comes up to talk that he will definitely agree that I do have a right to have an accessory dwelling there doesn't have to be a house it can be a garage. I'm actually looking at putting a trailer there if I have to do it, that's what I'll do but I'd like to proceed. Financially I've

got about 40,000 in the project already. We had it all set up, we were going to do a double septic so the septic would go into one that was \$1150 with Ken Gardner I already have that which is also in the Code Enforcement Office part of the application process. So what happened is we were moving forward with the project we hauled in all the gravel and got it ready. Of course the hole is much bigger than the structures going to be because you need to be able to get around to all sides of the foundation. So what happened is before we started with the footing I had it all hired, they were going to start that weekend putting the footing in and having Carroll Materials come and pour the cement. I contacted Stan and I said look I just want to make sure everything is in order, the permit had said a 10 foot setback in the rear, 10 on each side and 26 in the front but I own all the way to the water. The right of way is on my land so that's part of my land, therefore the front setback I had plenty of room because I had 240 feet to the water. So I called Stan and we met there on a Friday morning and that's when I learned the back setback was incorrect. If I could go back and redo this I would do it differently but unfortunately I was where I was and I invested \$40,000 and my structure was going to be very nice. I've been building for 23 years and I try to do things by the book and I also make things look nice. I met there with Stan, I think it was on a Friday morning and we were getting ready to leave to go to our property up in Winthrop and that's when I learned the setback was at 12 and not 20. I said well I didn't know what to do so we looked at pulling the house forward 8 feet which would put it to the rocks. The right of way would still be there but I think it would make it difficult. I think aesthetically it wouldn't look as good if it was setback a little bit. The other thing is I might have to move the rocks that might be ledge, I would have to cut down more trees which has been a problem with the neighbors even though they are my trees and I have a right to cut them. That's been a huge problem with some of the neighbors. So I'd have to cut more trees down, I'd have to move the rocks and I would have to pull the house forward 8 feet. I'm hoping I don't have to do that and I don't know if you have any questions. Mr. McLean: You have anything Dave? Mr. Coleman: Not from me. Mr. McLean: Bud? You all set? Clifton Finch: Yeah I'm all set. Mr. McLean: Have Stan? Mr. Coleman: Yeah Stan. Mr. McLean: Stan can you go up and give us a low down. Stan Hackett, CEO: Linda was pretty accurate with what she said so I'm not sure what more I could add to it but she did submit the revised subsurface system which will allow the accessory dwelling. The original permit said that it said it was going to be an accessory dwelling above the garage it's sense been changed to a 24X40 accessory dwelling and I don't know why the original copy is not in here but it's not. So when she was going to do the pour on Saturday we went out on Friday morning to make sure the setbacks were correct and that's when we discovered she did not meet the rear setback. That's the point I advised her that she had to go to the Appeals Board and it isn't a Selectboard issue where there is a letter of No Action Taken. At this point if the foundation had been poured it would have been the Selectboard instead of the Appeals Board. Ms. Corbin: I just wanted to point out one thing that the permit does say that the setback is 10 feet in the back. *The rest of what she said could not be heard clearly.* Mr. Hackett: And her plot plan also indicates a 10 foot setback. Mr. McLean: Stan on this one here that we got the building permit from 7/10, it says setback 0, side setback 0, rear 0. Mr. Hackett: That is a clerical error before they get printed those setbacks have to be put in there and even the second copy does not have the setbacks on it either. Mr. McLean: One of the building permits says 16 front, 10 side, 10 rear, that's the one with the garage over the apartment. Mr. Hackett: Yep, that was the original. Mr. McLean: That's the old one? Mr. Hackett:

That's the original. Mr. McLean: Do you have a current one that says the setbacks? Do you have a different one than the one we have? The one that we were given says nothing for setbacks. Mr. Hackett: The one that I have says nothing for setbacks either and this one's revised where she had removed the garage and again there's another error, it should be stamped revised and the original should be in here. Ms. Corbin: Can I point out that I had put everything on hold at that point so I had not received that revised permit. The only one I had was the original. Mr. McLean: Bud do you have any questions for Stan? Mr. Finch: I do not at this time no. Mr. McLean: Sonny? Roland LePage: No. I guess I don't know how it came about with the 10 foot versus the 20 foot. The rear setback in Limerick has been 20 feet for as long as I can remember. Butch Sanborn: That was what was on the permit. *Linda Corbin made a comment that could not be heard clearly.* Mr. LePage: With as many permits and so forth as you people have had through the years you didn't think something was a little fishy. *Linda Corbin made a comment that could not be heard clearly.* Mr. McLean: Nothing else for Stan? Mr. Coleman: I'm fine with Stan. Mr. McLean: Go up to the podium. Mr. Sanborn: The setback I understand where you guys are coming from. You got that position but you know what if it's 2 inches or 20 feet the same house is going to be sitting there, they're going to be looking at it. We're on our property, we're not on his property. So you're going to be looking at the same house if we move it 20 feet or 2 inches from our line the same thing is going to be there. Mr. McLean: Okay. Anybody else from the public would like to address? Okay. Just state your name when you get up there. Arthur Burge: My name's Arthur Burge I own 12 Mowbray, I'm sorry, Watson Hill Road and what gets me is that she called me on June 6 asking to buy my land because she knew she needed the setback. I told her I'm not selling that because it's my retirement. When I'm ready to retire I want to build a nice house up there because it's a beautiful piece of land and that was the last I heard. A couple weeks after that I had found everything taken down and everything dug up and I said okay they're putting in a septic but then I realized they're putting in a house. Not that I want to stop her from putting in a house but 20 feet or 2 inches I'm looking at a 40 foot by 20 foot wall right in my backyard. I know it's her land but the variance, the setback is not there no matter what she does. I know I have a million things to say. I had something to give you guys but I don't think I need to there's a right and there's a wrong. Hopefully it goes my way. Thank you. Ms. Corbin: Can I rebut? Mr. McLean: We got to hear the rest. Colin Powers: My name is Colin Powers, me and Lisa Moore reside at 9 Mowbray we have no objections to the original construction plan. It's going to be revised to what we are talking about setbacks it's going to just cause more of a headache than anything, I believe for everyone. Especially since we are living there and some of the neighbors. So the original construction plan we have 0 objections if that makes any difference. So that's it. Mr. McLean: Anybody else? Did you want to have Linda talk or did you want to read that? Mr. Coleman: Did you want to talk Linda? I have a letter from your neighbor that I'll read but if you want to go first that's fine. Ms. Corbin: Okay I just wanted to rebut something he said because he is obviously trying to get into my brain as to what I was thinking. I did call him. I also spoke with Lynn who is on the other side of me and asked her if I could buy just to make more room for the house, more room around the house is what my intention was. If I had known that the setback was incorrect we would be in a different place today but I'm \$40,000 into this, there is going to be an accessory dwelling whether we have to move it forward we have 200 feet to the water. I own the land I own the right of way and I have a right to have an accessory dwelling there, I'm sure Stan

can verify that and I will do whatever I have to. I'm hoping this is because financially this is the easiest thing to do, aesthetically it will look the best and it's not going to disrupt other parts of the property, the rocks, the trees, and the right of way. So this is the easiest way out and I wasn't going to file for an appeal. I was just going to pull the house forward and I really don't want to do that, I think it's going to create new problems. So I'm asking the board to please grant this. Thank you. Mr. Coleman: Under correspondence regarding this particular variance the neighbor Shawn Buckless at 11 Mowbray Way sent a letter to Stan Hackett to the attention of the Appeals Board, it says dear Mr. Hackett after meeting with you and Mrs. Corbin several times I wish to file a formal objection to the building project being constructed by Mrs. Linda Corbin at 9 Mowbray Way, Limerick, Maine. As you know I own a home at 11 Mowbray Way right next door and this project is infringing and obstructing my 20 foot deeded right of way to my property and this deeded right of way is the only road access to my home. The dig site for the project is also causing erosion of my land and into the, I'm not quite sure what that says, Mr. McLean: Large hole. Mr. Coleman: Large hole dug for the building. Please keep me posted to the recently issued Stop Work order that was posted on the site and any and all future Town of Limerick actions on this project. We'll file that with the application. Is there any more public? *Linda Corbin made a comment that could not be clearly heard.* Mr. Coleman: Sure. Mr. McLean: There's another letter too right? Mr. Coleman: I don't have it, that's what I was saying. Ms. Corbin: I met with Shawn Buckless several times and I didn't realize that he was objecting to this because I basically told him that yes if I pulled that forward it would disrupt a lot of things, the right of way which I will absolutely put back it is on my land, I don't think it matters if it's here or here. If you look at the deed the right of way says he has a right of way it doesn't say where it is or what degree it is or whatever. There's no stakes showing where it is, the other thing is he has two other accesses to his property. He has a right of way right to Emery Corner Road, he also owns all the way to Watson Hill Road, right up over the hill behind his house. I'm hoping that Stan can come up and verify what I'm saying. I've seen one of them but I haven't seen the other one but I think Stan probably has some information on that. Mr. Coleman: As everybody understood at the sitewalk where that is as well. Mr. McLean: Do you have that other letter? Mr. Coleman: I have it on my phone I think. Mr. Hackett: As everyone knows I've taken Joanne Andrews road book and I've been redoing all the road inventory and trying to determine when they were established, how they were established. That establishes the type of easement or right of way. If the right of way was developed through a subdivision it has to go through the Planning Board in order to change it or anything to do with any properties within that subdivision and generally if a right of way is created in the subdivision it belongs to the subdivision, unless it was assigned to an individual for maintenance and responsibilities. Allair Drive is one of them; the original owner still owns the road but not the subdivision. I have not pulled the files for Mowbray subdivision which was J.P Carroll. I do know there is a right of way Mowbray goes to Emery Corner Road as well as I learned tonight also goes in the other direction as well and Buckless does own the property from the waterfront to Watson Hill Road but the right of way is in question or not really, not relevant to the variance. To change a right of way is really not as simple, we have to determine how they were established first. Mr. McLean: Any questions for Stan on the right of way? Mr. LePage: What's that? Mr. McLean: Any questions for Stan on the right of way? Mr. LePage: I don't think so. I think he pretty well stated it really can't be changed at this point in time without going through the Planning Board you said Stan? Mr. Hackett: If it

was done through J.P.'s subdivision then it would have to go back to the Planning Board to revise. Mowbray also has an existing easement with the water district and CMP. So all of those factors would have to be brought to the Planning Board and those people would have to represent themselves, in their interests. It's not as simple as just picking it up and moving it. Mr. McLean: So the water line runs right straight from Emery Corner Road all the way across Mowbray into the next set of houses. Mr. Hackett: Yep and from my observation if you look at the Gilpatrick place on Emery Corner Road what they were using for their driveway part of that is the right of way. It goes right straight through and you can stand there and look right straight through. Mr. McLean: Bud anything? Mr. Finch: No sir. Mr. Coleman: And I have the additional letter from Mr. Hackett on September 11, previous one was August 1. Mr. Hackett, it has come to my attention that there is a hearing scheduled for this Thursday (9/14) regarding the above referenced project. I'm currently back in Florida and will be unable to make this meeting but plan to have a representative in attendance. I don't know if that has happened. Once again I would like to express my objections to the size of the building infringing on my 20 foot right of way at my property 11 Mowbray Way. There are large boulders blocking my right of way to the extent that we've been unable to back my boat trailers as I always have and done in the past. I'm also very concerned about emergency vehicle access to my property now especially with the winter months with one small house providing two of three unrelated rental units hosting four to six automobiles and visiting guests where the cars park and winter snows will be plowed and melting. As stated in previous correspondence my property continues to be undermined by the large dig site intruding on my boundary lines and providing hazardous walking and driving conditions. I don't understand how such a large additional one to two family house could have been approved to move forward on such a small parcel of land measuring less than 35 feet wide and 60 feet long. There are two water lines and CMP right of ways within a few feet of this proposed and apparently approved building. It is my sincere hope that the Town of Limerick will reconsider the size and scope of the building project. Otherwise it will necessitate for me and other abutters to take further legal action against all parties involved. Kindly acknowledge receipt of this correspondence by responding to this email. Should you have any questions or need further clarification on any of the above please let me know. Sincerely Shawn Buckless. Mr. McLean: Can you get us another copy of that and I know you sent it? Alesha was supposed to send it to everybody. Yeah just so we'll have it for the file. Mr. Coleman: I believe that's the extent of the correspondence. Mr. McLean: Yeah. Mr. Coleman: At least that's what I have. Mr. McLean: Do you want to go down through the core? Mr. Coleman: I was going to say if anybody has anything to say we will be concluding the Public Hearing portion and moving into our regular meeting. If you have anything you would like to say, I'd have you step up at this time. We can wait for Stan to come back. Mr. McLean: Yeah he'll be right back. Mr. Coleman: So yeah this is the Public Hearing portion so if you have anything you want to say now's the time to say it. Once we have our meeting if at that point anybody wants to say anything the entire board would have to agree to hear that. You sent the man of the hour out. Mr. McLean: I know he's making copies. Well just so we have a copy just with everything else and that will be fine. I'll give it another second. As long as his printers working. Linda, Stan said and you said that you were going to do something with the size are you making it less? Ms. Corbin: Looking at reducing it. Mr. McLean: Okay. Ms. Corbin: I still need the back setback because of the issues with the right of way, the trees, the rocks, etc. The back is going to stay the same if it's approved. Mr. McLean: Can you

go to the mic? Courtney Davis: It makes it harder to do the minutes. Mr. McLean: Can you go up to the mic and repeat that? So what will the size of it be now? Ms. Corbin: So I want to go back to the original permit and it would be 24X24 with just a small unit upstairs and it would be one bedroom and not two. Stan and I have talked about it but we haven't actually acted on that at this time because I said let's get through the appeals first, the appeal. The other thing I wanted to say was the boulders are there because we don't want someone to drive into the hole, they're going to be gone and the other thing is that footprint is going to be way way smaller than it is because you can't put a foundation in unless you can get around all sides of it. So the other reason I'm asking for the appeal is because of the hardship it is going to create by pulling the house forward which I don't want to do. Anything else Steve? Mr. McLean: No but we're going to go off of what we have here, not the new one. Mr. Coleman: Yep. Ms. Corbin: Just the size will be reduced to make it fit better. Mr. McLean: Right but we have to go off of this 24X40. Ms. Corbin: Right. Mr. McLean: Just accessory dwelling. Mr. McLean: Do you think he's coming back or do you think he left? Mr. Coleman: I was going to say we could try our hand at answering the question I suppose. Now's the time. Ms. Corbin: The other thing that hasn't been mentioned he's talking in his letters about the snow and all that. Since we've owned the house Butch is the one that plows and we don't charge him to do that, Butch has always taken care of his driveway, our driveway all the way in. I don't know why he's bringing that up too. Mr. McLean: Ah thanks. Yeah I'll pass them down. Butch go ahead. Bill Gilpatrick: Butch Gilpatrick I have a question for Stan, how wide is that driveway off Emery Corner Road? Mr. Hackett: I'd say about 20 feet. Mr. Gilpatrick: And my other question is that's considered lakefront property does that mean any cottage on the lake could build a second dwelling on it? Mr. Hackett: So for an accessory dwelling of 99.9% of the lots in Limerick will support by ordinance an accessory dwelling. The State of Maine has also passed last year a law for tiny homes that we can't refuse them so any dwelling under 400 square feet we have to allow. It kind of conflicts with our ordinance but the ordinance is if it conflicts with a state law the state law supersedes. The other thing is up until the governor delayed the LD2003 we can't refuse the building of extra buildings but it has been delayed until July 1 of next year which will allow two accessory dwellings to be allowed an additional two on anywhere that is public water and sewer. If it's anywhere else it's allowed one they're allowed two. Then there's the other stipulation of affordable housing but that's another. Ms. Corbin: And that's on a buildable lot. Mr. Hackett: On a buildable lot you are allowed another dwelling. Mr. McLean: If you meet the setbacks. Mr. Coleman: If there's no other public comment then, David **motioned** that we close the Public Hearing. Steve **second. All were in favor.** Mr. Coleman: So we're summarizing the appeal, the appeal for the board tonight is for building lot setback variance for Linda Corbin at 10 Mowbray Way at tax map 16 lot 3 and they are looking to request a setback of, don't want to say it and be wrong, 12 feet. Mr. LePage: I was going to say we've been throwing so many numbers around. It's hard to tell. Mr. Coleman: Determining a quorum we have four of the five members in place. Does anyone have any Conflicts of Interest or bias to claim? Mr. LePage: No. Mr. Coleman: Hearing none we'll move to timeliness of appeal. We received this application on August 15. I know she was served a Stop Work Order on the 15. Mr. McLean: Right. Mr. Coleman: And we received this on the 28. Steve **motioned** that Dave got the application and was in time. David **second. All were in favor.** Mr. Coleman: Under jurisdiction, the Limerick Zoning Board of Appeals, the Limerick Zoning Ordinance Article X paragraph E section 1A we have the right to hear variance appeals. Steve

motioned we've met that. Sonny **second. All were in favor.** Mr. Coleman: Does the applicant have the right to an appeal under standing? Steve **motioned** that the applicant has the right. Sonny **second. All were in favor.** Mr. Coleman: Completed application, is there anything that anybody feels is missing from the application or needs to be added? Mr. McLean: I think I've had clarity into the two that are out there. We're voting on the one that was sent with it. Mr. Coleman: The one that was sent with the application. Mr. McLean: You may be doing something different. Mr. Coleman: In other words we are going with the original, the one with the 10 foot setback. Steve **motioned** that the application's complete. Sonny **second. All were in favor.** Mr. McLean: And the fee was paid. Mr. Coleman: And the fee was paid. So we've had our Hearing of Citizens and rebuttal statements and we've read correspondence that we've received. So now we move onto Findings of Facts. So under variances, variances may be permitted only under the following conditions; variances are obtainable only for height, minimum lot size, structure size, setbacks, and open space requirements. B, that an application for a variance will be filed directly with the Appeals Board in accordance with the procedures below. C, that a variance appeal the applicant shall submit a sketch, concise written statement of what the variance is being requested, and we have that. D, variances cannot under any circumstances be obtainable of any establishments of any other use as prohibited and E the board shall not grant variances unless it finds that the following criteria are met. Number 1 that the land in question cannot yield a reasonable return unless a variance is granted. Does the board have a finding on these requirements? Mr. McLean: Bud do you have anything on A? Mr. Finch: No not at this time. Mr. McLean: Sonny? Mr. Coleman: Make a motion to discuss it. Mr. McLean: We need a motion. The land in question cannot yield a reasonable return unless a variance is granted. So there's already one house on the land. Mr. Coleman: I mean for the purposes of discussion. David **motioned** that the land in question cannot yield a reasonable rate of return unless a variance is granted, is that. Steve **second.** Mr. Coleman: I feel like there is a reasonable return, I mean it is an existing lot already and most of the lots in that area are all the same. I don't think in denying. Mr. LePage: And if you don't put the variance through there is still going to be a reasonable return. Mr. Coleman: Right. Mr. McLean: Right, there's still a house there. Bud? Mr. Finch: No I agree. There's a dwelling there already. Mr. Coleman: So the question on the floor is that the land in question cannot yield a reasonable rate of return unless a variance is granted. **All were opposed.** Number 2 a need for a variance is due to the unique circumstances of the property and not the general conditions of the neighborhood. Steve **motioned** that that one's met. David **second.** Mr. McLean: Any discussion on that one? Sonny? Mr. Finch: I couldn't hear what he said. Mr. Coleman: It has been moved and second that the condition is met. Mr. McLean: On B. Mr. Coleman: On E2. I mean I don't think there's any unique circumstances, well I mean I think there are unique circumstances on the lot you have the easements for the power and the water and the right of way. I don't know if it's insurmountable, I'm sure it's a big job but to have that all resurveyed. Mr. McLean: I don't think you can move the water pipe bud. Mr. Coleman: Yeah. Mr. LePage: They're impossible to move that right of way. Mr. McLean: Right but that's not the need of the variance. Mr. LePage: What now? Mr. McLean: I said the need for the variance is not because of the water line and that. That's just part of the thing. **Steve was in favor, and David, Sonny, and Clifton were opposed.** Mr. McLean: Go to the third one. Mr. Coleman: That the granting of the variance will not alter the essential character of the locality. Sonny **motioned** that it wouldn't change much.

Steve **second. All were in favor.** Mr. McLean: Now we're at four now. Mr. Coleman: And that the hardship is not the result of action taken by the applicant or a prior owner. David **motioned** that the condition is met, that the hardship is not the result of action taken by the applicant or owner. Sonny **second.** Mr. Coleman: I think we're here because an error was made and the issue of the permit and it's unfortunate that the applicant got so far along in the project before the mistake was discovered but I don't think that was a result of their negligence. **All were in favor.** Mr. Coleman: The board shall limit any variances granted as strictly as possible in order to preserve the terms of the ordinance as much as possible, and it may impose such conditions to a variance as it deems necessary to this end. Mr. LePage: Can you read that again? Mr. Coleman: The board shall limit any variances granted as strictly as possible in order to preserve the terms of the ordinance as much as possible, and it may impose such conditions to a variance as it deems necessary to this end. Based on our findings the board should make a decision on whether or not to grant the variance based on the information received by the applicant. Mr. McLean: So it didn't meet A. Mr. Coleman: No. It didn't meet two out of the four. Mr. McLean: Right. David **motioned** that the board deny the variance based on not being able to meet all four criteria for the undue hardship. *Linda Corbin asked a question that could not be heard clearly.* Mr. McLean: No not now. **All were in favor.** Mr. Coleman: So we will detail those findings and send them out. Mr. McLean: The appeal was denied.

David **motioned** to adjourn. Sonny **second. All were in favor.**