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**Meeting Minutes**  
**Zoning Board of Adjustment (ZBA)**  
**September 21, 2022, at 7:00 P.M.**

**1. CALL TO ORDER**

T. Hardekopf called the meeting to order at 7:00 p.m.

**2. PLEDGE OF ALLEGIANCE**

**3. ROLL CALL**

T. Hardekopf appointed Andre Laprade as a full member.

**Members Present:** Tracy Hardekopf, George Bailey, Cheryl Huckins, Andre Laprade, Paul Thibodeau

**Staff Present:** Town Planner: Vanessa Price, Zoning Administrator: John Huckins, Town Attorney Laura Spector-Morgan

**4. PUBLIC HEARING: ACTION ITEM CONTINUED FROM August 17, 2022**

- A. [121-30-GR-22-Var \(Owner: Richard Townsend\)](#) Request by applicant for a variance from Article 4, Section 4.1.1 Table 2 to allow setbacks from two road frontages 18.7' and 27.3' from Hall Road and 27.3' and 21.8' from Rosemary Lane where 40' is required and 23.2' from the side where 30' is required on a .24-acre lot in the General Residential Zoning District.

T. Hardekopf gave a brief description of the application and explained that the applicant has asked for the case to be continued. T. Hardekopf explained to the Board that this application has been continued 7 times.

*A motion was made by P. Thibodeau and seconded by C. Huckins to continue the application to October 19, 2022.*

*Vote 4/1*

Roll Call:

Andre Laprade-Aye  
Paul Thibodeau-Aye  
Cheryl Huckins-Aye  
George Bailey-Nay  
Tracy Hardekopf-Aye

T. Hardekopf explained to the Board at the October 19, 2022, meeting if the variance was not presented in its entirety because bylaws are changing as of October 16, 2022, what to do with the case at that time.

**5. PUBLIC HEARING: ACTION ITEMS:**

- A. [234-25.1-V-22-Var \(Owner: TSB Construction, LLC\)](#) Request by applicant for a variance from Article 4, Section 4.1.1 Table 2 Dimensional Standards to allow frontage of 150' (+/-) where 200 feet is required on a 9.44-acre lot for a 3-lot subdivision off Franklin Pierce Highway (aka: Route 9) in the Village District. BY: Christopher Berry, Berry Surveying & Engineering; 335 Second Crown Point Road; Barrington, NH 03825.

T. Hardekopf gave a brief description of the application.

P. Thibodeau recused himself from the case.

T. Hardekopf explained to the applicant that with one Board member recusing himself that leaves 4 members so you would need three of the four to vote in favor.

Ken Berry represented the applicant TSB Construction; LLC and they were ok with the four Board members. Ken explained to the Board that he was a licensed land surveyor and a professional engineer in State of New Hampshire. Ken explained that he was there representing their operations manager Christopher Berry who prepared the documents that was presented to the Board. Ken explained to the Board that they are before the for a variance for relief from Article 4.1.1 Minimum Standards, Table 2 Dimensional Standards in the Village District to allow a building lot to contain frontage of less than 200', while contained in a back lot subdivision. Ken explained to the Board that the backlots are being proposed by right and that would leave 150' of frontage for the reduced frontage. Ken explained to the Board the location of the parcel and explained that this was part of a manage subdivision with this piece remaining on Route 9 (aka Franklin Pierce Highway). Ken explained to the Board that the applicant was also asking for a Special Exception that was part of this application.

**SEE BELOW:**

**Specific Variance Request & Criteria for Approval:**

- 1.) *"Special conditions exist such that literal enforcement of the Ordinance will result in unnecessary hardship to the applicant as defined under applicable law."*
  - a. The special condition of this parcel is that it lacks a total of 250 linear feet of frontage along Franklin Pierce Highway, but otherwise meets the criteria for a back lot subdivision. The parcel is large as compared to others in the immediate area and contains the least amount of frontage of all immediately abutting parcels as well as others in the area. The denial of the variance creates an unnecessary hardship to the applicant whereas if it were not for the granting of the variance the applicant could develop the site in a manner congruent with all abutting lots while keeping the abutting concerns for larger development in mind. The proposal is a reasonable use under the zoning ordinance whereas the site could be developed in a more intense manner with the same road configuration and building placement. To reduce the impact on the land, which is steep, reduce stormwater concerns, traffic concerns, and building massing concerns for the most abutting structure and land owner, the applicant has chosen to build out three lots with two single family homes and one proposed duplex. This reduced use requires a subdivision, with one lot having less than the required 200 feet of frontage, which is a reasonable request when considering the alternative style development would not require any more or less frontage than that which is proposed for this subdivision.

- 2.) *"Granting the variance would be consistent with the spirit of the Ordinance"*
- a. The spirit of the ordinance is to allow for reasonable development which has spacing that is controlled through the use of frontage requirements. Frontage is a land use control that creates uniformity and also limits driveway curb cuts to a reasonable number within the rural character of the community. In this case, the subdivision, but for the variance, achieves this spirit, whereas it proposes a reduction in density which is spread out on the site, while keeping one driveway and curb cut.
- 3.) *"Granting the variance will not result in diminution of surrounding property values"*
- a. The proposed project contemplates a use that is otherwise permitted in the underlying zone and is in keeping with all surrounding uses. The applicant is proposing this keeping in mind the concerns of the abutting land owners during prior Design Review Hearings with the Planning Board, and would submit that this style development does nothing to diminish property values and is superior to a development of larger density that is otherwise permitted.
- 4.) *"Granting the variance would do substantial justice."*
- a. The variance would do substantial justice in that it allows for an orderly, low intensity development to take place on a larger parcel of land that has been provided input by the Planning Board and surrounding property owners. The litmus test is usually touted as the gain to the applicant outweighs the loss the community and ordinance, however in this case the gain to the applicant is inline with the abutting concerns and thus substantial justice is achieved.



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Variance Request TSB Construction LLC  
14H Route 9, Franklin Pierce Highway, Barrington, NH

August 31, 2022

- 5.) *"Granting the variance would not be contrary to the public interest."*
- a. The public interest, as stated section 1.8 of the ordinance is to provide for development that is in harmony with the current vision and objectives of the master plan. The request for variance is an innovative land use request that allows for the applicant to develop the site within the confines of the larger vision but also through the lens of the abutting land owners. Though larger density is allowed in the underlying zone and currently needed on a larger scale, the applicant is providing a smaller scale project in keeping with other objectives and allowances in the underlying zone while considering the needs of the immediate abutting land owners. Public interest is met in this particular case.

T. Hardekopf opens public comment for support of the variance.

T. Hardekopf closed public comment for support of the variance.

T. Hardekopf open public comment for any opposition to the variance.

Susan Freedom resident of homeowner Thomas Kent of 757 Franklin Pierce Highway. Susan explained that their manager concern was cutting across the post road to access Franklin Pierce Highway (aka Route 9). Susan asked if they would still have access to their property via that road or would the road be cut off.

Ken explained that there was a strip of land that was listed on the subdivision plan as possibly having rights by others they have not determined who would have rights and who does not have rights to have access to that strip of land. Ken explained that the driveway that was being proposed across there to his knowledge and belief allow continued access if somebody has access off that post road to use it.

Susan explained that she would like to see considerations for the distance and fence between the two properties. Susan expressed that it seems very close to their property with 50' where they are now.

Lisa Smith from 761 Franklin Pierce Highway explained that this would be directly behind her house as well and her concern was with the steepness where they are considering building. Lisa explained that she was concerned about the potential runoff erosion coming down to her property.

Gerald Pinzari from 746 Franklin Pierce Highway explained that he was directly across the street from the project. Gerald explained that they were before the Planning Board a few years ago and withdrew their design review after hearing from the abutters because of the drainage and runoff issue from Oak Hill. Gerald explained that if you are on Franklin Pierce Highway (aka Route 9) during or after a storm the flooding that goes on in that area on both sides of Franklin Pierce Highway (aka Route 9). Gerald explains that it floods the bottom of Oak Hill Road and in the winter it freezes constantly. Gerald explained that the road crew was out there quite often and put a bunch of sand down and the Chapel of Nativity floods and they are always trying to regrade. Gerald explained that NHDOT also comes out and tries to ditch out after every storm or during the storm. Gerald explained that the flood by Kent's property goes to a culvert that crosses under Franklin Pierce Highway (aka Route 9) on to his property all the runoff from Oak Hill floods under the barn in the corner on Cate Road on to his property then on to Cate Road ditch. Gerald explained that then runs to a culvert that was on Cate Road to the pond. Gerald asked if the applicant has a plan showing the locations of the structures and the driveways.

T. Hardekopf explained that the variance before the Board was in reference to the driveway and the location of those would not be required for the purpose of this meeting.

John Huckins explained that would be addressed at the Planning Board level.

Gerald explained that he was worried about what this would do to his property value by this project. Gerald explained that he would like to see building elevation plans along with drainage plans showing ditches and culverts. Gerald explained all the concerns that he had about building homes and pave driveways as he felt it would dimmish the area quite a bit. Gerald explained they have a setback of 40' but he believed that the setback was 50' on Franklin Pierce Highway (aka Route 9). Gerald explained that shared driveway he was concerned about the issues of who would take care of it and for the safety. Gerald asked if NHDOT has approved the curb cut?

T. Hardekopf explained that this would be at the Planning Board level they are here for the variance.

T. Hardekopf closed public comment for any opposition to the variance.

G. Bailey explained that he doesn't like the 25' off the 200'.

C. Huckins reduced the frontage to make the shared driveway and one curb cut compared to three.

*A motion was made by C. Huckins and seconded by A. Laprade to grant the variance to TSB Construction, LLC.  
for the 150 (+/-) road frontage.*

Attorney Laura Spector-Morgan explained to the Board that there was a new law recently adopted that the Board make findings of facts in connection with any motion. Attorney Spector-Morgan explained that it was required for both motions to approve and motions to deny more important for motions that are denied because if you don't do it to deny it's an automatic rematch.

C. Huckins read the following findings of facts:

1. Three Lot Subdivision would be more desirable than the Townhouses
2. One shared driveway for three lots was a much safer situation.
3. No change in the neighborhood its residential and its going to remain residential
4. Well done plan
5. 150 (+/-) was reasonable especially with the front lot used to create the shared driveway

G. Bailey explained the reason he said they are losing 25' was they are all volunteers, and they have the Zoning Ordinances that were voted on by the neighbors. G. Bailey explained that he still stands by the fact that 25' decrease was not acceptable.

A. Laprade supports the reason C. Huckins stated and felt that this could be a more intense situation as far as more buildings and traffic. A. Laprade expressed that not for the Board but in the future, there were a lot of concerns brought up.

Roll Call:

Andre Laprade-Aye  
Cheryl Huckins-Aye  
George Bailey-Nay  
Tracy Hardekopf-Aye

B. [234-25.1-V-22-SpecEx \(Owner: TSB Construction, LLC\)](#) Request by applicant for a Special Exception from Article 4, Section 4.1.2 to allow a driveway not on the proposed frontage for a 3-lot subdivision on 9.44-acre lot (Map 234, Lot 25.1) off Franklin Pierce Highway (aka: Route 9) in the Village District. BY: Christopher Berry, Berry Surveying & Engineering; 335 Second Crown Point Road; Barrington, NH 03825.

T. Hardekopf gave a brief description of the application.

Ken Berry from Berry Surveying & Engineering explained that on the half of TSB Construction, LLC they are applying for a Special Exception to Article 4, Section 4.1.2 to prevent three subdivision lots to be created with a shared driveway entrance and easement on the neck on the two proposed backlots. Ken explained that the Special Exception was for three lots to share one driveway not located on the front proposed Lot 25.1. Ken explained that by requesting the variance by reducing the frontage on that parcel that would move the frontage or move the driveway access for all three lots into the 50' strip of land creating one curb cut for the three proposed lots. Ken explained that there would be some documents for the shared driveways and explained that they are coming more common especially where you have highway access that was controlled by NHDOT.

T. Hardekopf open public comment for any new opposition to the Special Exception.

T. Hardekopf closed public comment for any new opposition to the Special Exception.

Ken Berry read the following:

SEE BELOW:

**PART V – If this is a JUSTIFICATION FOR SPECIAL EXCEPTION**

Please provide evidence that the requested Special Exemption complies by addressing the issues below.

1. No detriment to property values in the vicinity of the proposed development will result on account of: the location or scale of buildings, structures, parking areas, or other access ways; the emission of odors, smoke, gas, dust, noise, glare, heat, vibration, or other pollutants; or unsightly outdoor storage of equipment, vehicles, or other materials.

NO REDUCTION IN PROPERTY VALUES WILL BE SEEN AS A RESULT OF A SHARED DRIVEWAY TO ACCESS THE THREE LOTS.

2. No hazard will be caused to the public or adjacent property on account of potential fire, explosion, or release of toxic materials.

NO FURTHER RISK OF FIRE, EXPLOSION OR RELEASE OF TOXIC MATERIALS WILL OCCURE AS A RESULT OF THIS SHARED DRIVEWAY.

3. No creation of a traffic safety hazard or substantial traffic congestion will result in the vicinity of the proposed development.

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\_\_\_\_\_ There is no change in traffic in the area based on this request when compared to allowing additional units on a shared road or driveway in a larger setting. This project reduces units and therefore reduces traffic in the area. \_\_\_\_\_

4. No excessive demand on municipal services and facilities, including, but not limited to waste disposal, police and fire protection, and schools.

NO ADDITIONAL DEMAND WILL BE PLACED ON THE TOWN AS A RESULT OF THIS SHARED DRIVEWAY.

5. The proposed use will not result in the degradation of existing surface and groundwater quality standards, nor will it have adverse effects on the natural functions of wetlands on the site that would result in the loss of significant habitat or flood control protection.

THE SHARED ACCESS WILL NOT HAVE AN DEGRADATION ON EXISTING SURFACE -OR GROUND WATER QUALITY STANDARDS AND WILL HAVE NO ADVERSE AFFECTS -ON NATURAL RESOURCES.

G. Bailey asked about item five the Board talked about degrading of the existing surface and groundwater quality. G. Bailey explained that on the prior discussions it was noted that survey had not been completed yet. G. Bailey asked the chair how you react to this request without this being done.

Attorney Spector-Morgan explained that because you are limited to the issue of their driveway, so they are having a shared driveway result in the degradant of existing surfacing groundwater quality. Attorney Spector-Morgan explained that the fact of the shared driveway would not be the design of the driveway.

John Huckins explained that they can put in two driveways, but they are only going to put in one driveway was going to be less detrimental than two driveways.

G. Bailey questioned on item five they stated in his statement that it would have no detrimental effect on roadways.

DRAFT

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THE SHARED ACCESS WILL NOT HAVE AN DEGRADATION ON EXISTING SURFACE -OR GROUND WATER QUALITY STANDARDS AND WILL HAVE NO ADVERSE AFFECTS ON NATURAL RESOURCES.

C. Huckins read the following finding of facts:

1. Single driveway was much preferable than multiple driveways
2. Concerns about drainage and the subdivision would be addressed by the Planning Board
3. Special Exception was only for the single driveway

*A motion was made by C. Huckins and seconded by G. Bailey to grant the Special Exception for TSB Construction, LLC.*

Roll Call:

Andre Laprade-Aye

Cheryl Huckins-Aye

George Bailey-Nay

Tracy Hardekopf-Aye

P. Thibodeau returned to the Board.

C. **118-4-GR-22-Var (Owner: Joseph Wilson)** Request by applicant for a variance from Article 11, Section 11.2 (2) District Defined to allow the setback of 53.7' from the water where 75' is required (Map 118, Lot 4) at 79 Phinney Way to add an addition in the General Residential Zoning District.

T. Hardekopf gave a brief description of the application.

Joe Wilson owner of 79 Phinney Way explained that he was before the Board for a variance proposing from Article 11, Section 11.2 (2) to allow a setback of 53.7' from the water where 75' was required. Joe explained that he purchased the house, and this was the only place the addition could go. Joe explained to the Board the whole house was within the 75' of the water.

Joe read the criteria for the record:

The Zoning Board of Adjustment may not authorize a zoning ordinance variation unless ALL of the following criteria are met. Please provide evidence that the requested Variance complies by addressing the issues below.

1. Special conditions exist such that literal enforcement of the Ordinance will result in unnecessary hardship to the applicant as defined under applicable law.

PROP FOR ADDIT TO EXIST DWELL., EXIST DWELLING MOSTLY W/IN 75' SETBACK  
PROP ADDIT LOCATED IN LEAST IMPACTING AREA (NO SEPTIC/DRIVE)  
± IS 53.7' FROM LAKE MEETING NADES SETBACK

2. Granting the variance would be consistent with the spirit of the Ordinance.

PROP ADDIT MEETS NADES 50' SETBACK, PROPOSAL INCLUDES  
EROSION CONTROL & ROOF DRAIN INFILTRATION TRENCH  
APPROVED SHORELAND PERMIT

3. Granting the variance will not result in diminution of surrounding property values.

EXPANSION OF SINGLE FAMILY RESIDENTIAL IN AREA  
OF SINGLE FAMILY RESIDENTIAL - NO INCREASE BEDROOMS

4. Granting of the variance would do substantial justice.

ONLY ONE 3 BEDROOM HOME ON 11.85 ACRES W/ OVER 360'  
LAKE FRONTAGE (2 SEGMENTS) CONSIDERATION GIVEN TO ENSURE  
NO IMPACT LAKE (SEE SHORELAND PLAN)

5. Granting of the variance would not be contrary to the public interest.

ALLOWS FOR FULL PRODUCTIVE USE OF DWELLING WHILE  
MAINTAINING 53.7' TO LAKE - EROSION & STORMWATER MEASURES  
TO BE PROVIDED TO ENSURE NO IMPACT TO WATER QUALITY

#### PART V - If this is a JUSTIFICATION FOR SPECIAL EXCEPTION

Please provide evidence that the requested Special Exception complies by addressing the issues below.

G. Bailey explained that C. Huckins and he were discussed the location of the house to see if there was any other area that the addition could be recommended to be used.

P. Thibodeau explained that he sees the setbacks of 35' and his stone wall the boundary. P. Thibodeau explained that was a wetland there was there a waiver for the wetland?

John Huckins explained that was under innovative land use so they would need a 9.6 Permit that the Planning Board would need to grant because they give the waiver to the wetland buffer.

T. Hardekopf open public comment for any new opposition to the Variance.

T. Hardekopf closed public comment for opposition to the Variance.

T. Hardekopf read the finding of facts:

1. There's 11.85 acres on the property
2. The addition would not devalue the property on either side.
3. This was in the spirit of the ordinance
4. Within 71.97%
5. The expansion of a single-family home in a single residential area.

*A motion was made by T. Hardekopf and seconded by P. Thibodeau to grant the variance from Article 11, Section 11.2 (2) for 53.7' from Swain Lake. The motion carried unanimously.*

Roll Call:

Andre Laprade-Aye

Cheryl Huckins-Aye

George Bailey-Nay

Tracy Hardekopf-Aye

P. Thibodeau-Aye

## **6. REVIEW AND APPROVAL OF MINUTES**

A. Review and approve minutes of the August 17, 2022, meeting.

*A motion was made by G. Bailey and seconded by T. Hardekopf to approve the minutes as written. The motion carried unanimously.*

## **7. OTHER BUSINESS THAT MAY PROPERLY COME BEFORE THE BOARD**

### **8. ADJOURN**

*A motion was made by T. Hardekopf and seconded by P. Thibodeau to adjourn the meeting at 8:05 p.m. The motion carried unanimously.*

A. Adjourn the Zoning Board of Adjustment (ZBA) Meeting. Next ZBA meeting date is October 19, 2022, at 7:00 P.M.