

MEETING MINUTES

FOR ZONING BOARD OF ADJUSTMENT

As Chair of the Zoning Board of Adjustment, due to the COVID-19/Coronavirus crisis and in accordance with Governor Sununu's Emergency Order #12 pursuant to Executive Order 2020-04, this Board is authorized to meet electronically. Please note that there is no physical location to observe and listen contemporaneously to the meeting, which was authorized pursuant to the Governor's Emergency Order. However, in accordance with the Emergency Order, this is to confirm that we are: We are utilizing the Microsoft Team for this electronic meeting. All members of the Board have the ability to communicate contemporaneously during this meeting through the Microsoft Team, and the public has access to contemporaneously listen and, if necessary, participate in the meeting through dialing the following phone #1-603-664-0240 and Conference ID: 381 309 159#

Call 603-664-0195 or email: mgasses@barrington.nh.gov

OR

bit.ly/BarrZB210217

Wednesday, February 17, 2021
7:00 p.m.

Please note that all votes that were taken during this meeting were done by Roll Call vote.

K. Forbes read from the Governors Order

Roll Call

Karyn Forbes, Chair	Present
Cheryl Huckins	Arrived at 7:15 pm
Raymond Desmarais, Vice Chair	Present
George Bailey	Present
Dave Whitten	Present

ACTION ITEMS CONTINUED FROM JANUARY 20, 2021

1. [239-1.1-TC-21-ZBAVar \(Owners: David & Glenda Henderson\)](#) Request by applicant for a Variance from the following Zoning Articles, Article 2.2.5 Town Center (TC), Article 16-Planned Unit Development (PUD), Article 19 Table of Uses, foot note 13 where PUD is required and Article 4.1.3 Backlot Regulations in the Town Center located off Franklin Pierce Highway. (Map 239, Lot 1.1) in the Town Center (TC). BY: David Garvey, Garvey & Company Ltd; PO Box 935; Durham, NH 03824.

D. Garvey was present on behalf of the applicant.

- The applicant was seeking relief from Article 16 – PUD Table of Uses
- Article 19-13 Table of Uses
- 4.1.3 – Back Lots

K. Forbes explained that there would be three back lots instead of 2 and to allow for residential use where a PUD was required for residential use.

K. Forbes asked if there were any questions of the Board from the applicant.

R. Desmarais commented that if they were to allow it, it was just to allow for residential use in the Town Center for that particular property.

G. Bailey expressed he had a different opinion of what was going on and felt they were changing the zoning and it was something that was put forward to the voters and he believed they were changing zoning and were overstepping.

K. Forbes asked if there was anyone to speak in favor.

No one spoke.

K. Forbes asked if there was anyone to speak against.

No one spoke.

K. Forbes closed the public testimony portion of the meeting.

G. Bailey expressed he respected R. Desmarais but he felt they were being asked to change zoning and he could not go along with it.

C. Huckins agreed.

R. Desmarais expressed that they were allowing the residential use in the Town Center and things could change over time and commercial could still come in the future. They were simply allowing a house to be used in that area.

G. Bailey expressed they were going from one house in that area to three.

K. Forbes expressed there were two requests. The first was a use variance which every time there is a use variance you are allowing something that is not allowed by right. There currently was allowed residential in this area but it had to be part of a mixed-use development with the Town Center development requirements. They were proposing to do just the residential aspect on three lots instead of two. There had been a movement a few years ago to do what was being proposed at this time and the voters had voted it down.

C. Huckins expressed that if the Board did this, they would be setting a precedent and destroying the concept of the Town Center.

K. Forbes went over the standard for a variance.

- Special conditions exist that literal enforcement of the ordinance would result in unnecessary hardship to the applicant as defined under state law.

The Henderson's response explained it was a large lot located out back with frontage on Route 9. It was part of a subdivision in 2005 & 2006. It would be hard to create any kind of commercial development on the lot. The access drive was in access of 1200 ft.

D. Whitten expressed the creation of the lot in 2005 may have already allowed for the residential use.

G. Bailey expressed they had now gone for 1 to 3 lots.

D. Whitten expressed the Special Exception had allowed for access for one lot from a side not its frontage. There was an expired wetland crossing for the same area they were proposing now.

K. Forbes explained to the Board that by its very nature a use variance was a request for relief from the ordinance.

K. Forbes expressed she felt that the lot was way out there, and the topography was difficult to build on. It would be tough for a commercial property to be there. Residential was likely the only use that would work there now. Would it not result in diminution of property values and was it contrary to the public interest. It was consistent with the properties surrounding it.

G. Bailey read from the description of the Town Center Zone.

R. Desmarais supported the request because it may lead to the type of commercial development sought in the future.

A motion was made by R. Desmarais and seconded by D. Whitten to allow for the development of this lot for residential use in the Town Center.

Roll Call

C. Huckins	nay
G. Bailey	nay
D. Whitten	aye
R. Desmarais	aye
K. Forbes	aye

The motion passed 3-2

K. Forbes moved the discussion to the three vs two lots.

D. Whitten expressed his concern was that the deeded access to the lot was not in the best interest of the existing lot as it was created. There was concern over one driveway to access three properties.

D. Garvey expressed that the Fire Chief had given him the specifications for the driveway. There was a shared driveway agreement that was recorded with the deed that specifies that all do contribute.

G. Bailey sought the driveway permit from the State that expired in 2006.

C. Huckins questioned why the Board would allow for more backlots than were allowed.

K. Forbes asked if there were conditions that existed that literal enforcement of the ordinance would be an unnecessary hardship to the applicant under the statute. The applicant was contending it was the cost of the driveway to service just three lots.

D. Garvey expressed that not only was the property off the beaten path and it would be an overt waste of resources given the size of the parcel. It was also the cost going forward for the people living out there.

K. Forbes closed the public input.

K. Forbes expressed that the applicant was saying it was the monetary cost going back and forward.

K. Forbes expressed that she did not believe that was a hardship under the standard. It was always going to be less costly the more you divided the cost.

C. Huckins expressed that if you could not afford to live out in the woods you should not live out there.

R. Desmarais expressed that he felt the quicker the property was developed the quicker it would develop into a Town Center.

A motion was made by R. Desmarais and seconded by D. Whitten to allow for three lots.

Roll Call

G. Bailey	nay
C. Huckins	nay
R. Desmarais	yay
D. Whitten	yay
K. Forbes	nay

The motion failed 2-3

ACTION ITEMS

2. **101-33-GR-21-ZBAEquWaiver (Owners: Robert & Tammara Simoneau)** Request by applicant under RSA 674:33-a considerations governing granting of a dimensional equitable waiver under Article 4, Dimensional requirements minimum Section 4.1.1 front yard setbacks where the setbacks are 20.6' on the left and 30.5' on the right from the front where 40' is required on a exiting layout of the foundation of the dwelling structure at 45 Long Shores Drive (Map 101, Lot 33) in the General Residential Zoning District. BY: Kevin McEneaney, McEneaney Survey Associates; 24 Chestnut Street; Dover, NH 03820

K. McEneaney represented the applicant. The request was to allow a concrete slab to remain 20.6 feet from the property line where 40' was required. The lot was a combination of four of the lots in the former Long Shore Drive development. Total acreage was app. 1.89 acres. Existing mobile is located at 20.6 feet and on the right side at 30.9 feet. There were significant slope issues with the lot. There were multiple building errors that took place during the building application. The hand sketch provided showed 75' from the road. When looking at the site the owner decided to move it closer to the road where it was flatter. Unfortunately, it was moved too close to the road, making it 20.5 ft. from the road.

There had been an inspection by the building official for the rebar performed, that the homeowner interpreted as they were able to move forward. The inspector had only been approving the rebar. There had been a misunderstanding. There was an approved septic system that had been installed. The original mobile home was actually closer than the mobile home that was installed now.

K. McEneaney expressed that there was an error in the interpretation of the ordinance resulting in nonconformity with the ordinance. The nonconformity did not constitute a nuisance or diminish or interfere or affect with or adversely affect present or future landowners. The cost of correcting the violation would far out way any benefit gained by compliance with the regulation. The existing layout of the subject property did not pose any negative effect on the surrounding properties.

K. Forbes asked if this was a new construction.

K. McEneaney explained it was a home newly moved to the site on a new slab.

K. Forbes asked when the slab was put in.

K. McEneaney stated November of 2020.

G. Bailey Asked what the distance on the building permit. He also asked if there had been any discussion with the building inspector on where to locate the lab.

K. McEneaney explained that on the building permit the setback had been listed as 75' from the road.

Mr. Simoneau expressed he had not spoken to anyone about the location. They had thought it was going a lot closer to the river. It couldn't and the cost would have been substantial.

G. Bailey expressed he was just trying to understand how the location was so far off from the proposed slab location.

Mr. Simoneau explained the slab had not moved from the location of the rebar the inspector had approved. The tag said okay, so he had believed it was okay in that location to pour. An amended location for the well had been made to the drawing. The septic had to be brought back from the river.

K. Forbes asked how far it was from the river. It was over 75’

K. McEneaney explained that there was a measurement to the actual river and also a location of the silt fence at the top of the bank and at sometimes the water came to that point. Sometimes it could be up to 68’ closer.

K. Forbes asked if this was the location that placed the house the furthest from the river.

K. McEneaney stated yes. He went on to stress that the rebar was the indicator of where the foundation was being placed.

K. Forbes expressed it was not the inspector’s job to certify the location of the rebar.

C. Huckins had no questions.

D. Whitten questioned how wide the right of way was on the private road.

K. McEneaney explained it was variable with from 50’ to 55’.

K. Forbes asked if there was anyone to speak in favor.

No one spoke.

K. Forbes asked if there was anyone to speak against.

No one spoke.

K. Forbes closed the public testimony portion of the meeting.

R. Desmarais expressed it was probably the best location on the site.

K. Forbes read the equitable waiver standard.

- (a) The violation was not noticed or discovered by any owner, former owner, or owner’s agent or representative, or municipal official until after the structure was substantially complete.
- (b) The violation was not an outcome of the ignorance of the law, failure to inquire,
- © That the physical or dimensional violation does not constitute a public or private nuisance.....
- (d) That to degree of past construction or investment.....

K. Forbes expressed the first question the Board usually asked was how far from the water are you. Ideally it may have been moved to 30’, but we often granted variances for similar setbacks.

D. Whitten expressed he would also be concerned about flood stage.

A motion was made by R. Desmarais and seconded by C. Huckins to grant the equitable waiver.

Roll Call

C. Huckins	aye
D. Whitten	aye
G. Bailey	aye
R. Desmarais	aye
K. Forbes	aye

The motion passed 5-0

3. 106-14-GR-21-ZBA Var (Owners: Andrew Peck & Yelena Frederick) Request by applicant for a variance from Article 4 Dimensional Requirements, 4.1.1 Minimum Standards to allow a side setback of 1.2' to replace a 2-car garage where 30' is required (Map 106, Lot 14) and Article 11.3 (1) expansion closer to the water to allow 70' where 75' was required at 50 Crossley Road in the General Residential Zoning District.

A motion was made by R. Desmarais and seconded by D. Whitten to continue the application to March 17, 2021

Roll Call

G. Bailey	aye
R. Desmarais	aye
D. Whitten	aye
C. Huckins	aye
K. Forbes	aye

The motion carried 5-0

MINUTES REVIEW AND APPROVAL

4. Approval of January 20, 2021 meeting minutes.

A motion was made by G. Bailey and seconded by D. Whitten to approve the minutes of January 20, 2021

Roll Call

G. Bailey	aye
D. Whitten	aye
C. Huckins	aye
R. Desmarais	aye
K. Forbes	aye

The motion carried 5-0

ADJOURNMENT

A motion was made by G. Bailey and seconded by C. Huckins to adjourn at 8:30 pm

Roll Call

G. Bailey	aye
C. Huckins	aye
D. Whitten	aye
R. Desmarais	aye
K. Forbes	aye

The motion carried 5-0

Respectfully submitted,

Marcia J. Gasses,
Town Planner