



Meeting Minutes
Zoning Board of Adjustment (ZBA)
(Approved September 20, 2023)
July 19, 2023, at 7:00 P.M.

1. CALL TO ORDER

Meeting was called to order by Tracy Hardekopf at 7:01 PM.

2. PLEDGE OF ALLEGIANCE

3. ROLL CALL

Members Present: Tracy Hardekopf, Paul Thibodeau, Cheryl Huckins, Alexandra Simocko

Staff Present: Town Planner: Vanessa Price, Zoning Administrator: John Huckins

4. ACTION ITEMS: CONTINUED FROM June 21, 2023

- A. **111-6-GR-23-Var (Owners: P & P Real Estate Management)** Request by applicant for a variance from Article 4, Section 4.1.1 Table 2 to allow side setbacks of 12.16' and 11.49' where 30' is required and front setback of 35.76' where 40' is required on Flower Drive (Map 111, Lot 6) in the General Residential Zoning District.

T. Hardekopf read the application description. The applicant/owner was not present at the meeting.

V.Price stated the Land Use office didn't received notification from the owner they were not going to be present or withdraw their application.

J. Huckins stated that the realtor of the property called his office, not the owner, to state they may be able to build a smaller house. He told her that the owner would have to call to cancel if they were going to cancel, and we never heard another word from him. John stated he wasn't sure if they're planning on not going forward with this or not.

P. Thibodeau asked where does the case file stand; as this is currently in front of us to be heard, with nobody to represent it.

J. Huckins answered the owner couldn't make the last one and suggested that this board could say that you're going to close it with non-prejudice. That way, if they ever want to come forward, another application they could because you didn't judge the application.

A motion was made by T. Hardekopf and seconded by P. Thibodeau to close the case without prejudice. They should have to refile with all fees should they choose to bring something forward again. The motion passed unanimously.

Vote: 4/0

Roll Call:

A. Simocko-Yay

C. Huckins-Yay

P. Thibodeau-Yay

T. Hardekopf-Yay

5. ACTION ITEMS:

- A. **112-09-GR/HCO-23-Var (Owners: Jason & Angella Dyer)** Request by applicant for a variance from Article 4, Section 4.1.1 Table 2 to allow a residential home to be constructed with the front setback being 15' where 40's required and back setback of 16' and side setback of 23' where 30' is required on Franklin Pierce Highway (aka Route 9) and Washington Street (aka Route 202) on a .23 acre lot in the General Residential (GR) and Highway Commercial Overlay (HC) Zoning District. BY: Bruce L. Pohopek, 42 Flagg Road; Rochester, NH 03839.

T. Hardekopf read the application description. She stated to the applicant, Mr. Pohopek, that the zoning board of adjustment has four seated members of this ZBA. There are three that would be voted for or against the variance. Are you willing to accept four Members, or would you like to continue to a later date?

Mr. Pohopek stated he would like to proceed with his case.

The applicant introduced himself as Bruce Dahlbeck, and with him tonight is Jason Dyer, the property owner. Mr. Pohopek stated he is the representative to the survey work and the site development work for the project, as well as he was the same applicant for the property previously before the ZBA. He continued with the project description stating the property and the structure is located on the optimum location of this preexisting nonconforming lot of record. It's their intention to improve the visual appeal the value of the property of this pre-existing nonconforming lot.

Mr. Pohopek read the justification for a variance into the record.

PART IV – If this is a JUSTIFICATION FOR VARIANCE

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. THE EXISTING VACANT NON-CONFORMING LOT OF RECORD OF 0.40 ACRES CAN NOT COMPLY WITH THE PRESENT ZONING REQUIREMENTS.
- ☐ 2. Granting the variance would be consistent with the spirit of the Ordinance. THE RESIDENTIAL DEVELOPMENT OF THIS LOT WOULD IMPROVE THE PROPERTIES VISUAL LOOK CONSISTENT WITH THE NEIGHBORHOOD AND INCREASE THE TOWN TAX BASE.
- ☐ 3. Granting the variance will not result in diminution of surrounding property values. THE PROPOSED NEW HOUSE WOULD INCREASE THE VALUE OF THE NEIGHBORHOOD AND CONSISTENT WITH THE RESIDENTIAL USE.
- ☐ 4. Granting of the variance would do substantial justice. THE RESIDENTIAL DEVELOPMENT OF THE PROPERTY WOULD ENHANCE THE VALUE OF THE LOT AND INCREASE THE TOWN TAX BASE.
- ☐ 5. Granting of the variance would not be contrary to the public interest. GRANTING THIS VARIANCE WOULD BE A FINACIAL INCREASE TO THE TOWN AND CONSISTANT WITH THE NEIGHBORHOOD.

Mr. Pohopek discussed number one of the justifications for a variance, and historical information about the lot. He stated that back in 2006, Ted Veale, had bought that property and came to the ZBA and he represented the owner at that meeting and received approval for a structure, septic system and well on that property.

J. Huckins stated ZBA timeline changed where they were good for two years. The only way you could make the old cases the only good for two more years, it was the town had to hold the hearing to make that happen. The town didn't. All the ones that were approved before that are vested for life; it runs with the land just like they used to. He continued to state, with that said, though, the house that was getting a variance on before, was an Octagon house. However, unless you're going to build an Octagon house, that variance is no good anymore.

T. Hardekopf stated to the applicant, to finish the justifications for the variance. Additionally, she stated It's going to be important for the applicant to tell the board what the approved setbacks were at that time, but for right now, let's have you finish the justification.

Mr. Pohopek continued reading number two through five of the justification for a variance.

T. Hardekopf addressed to applicant to share with the board the prior approved zoning board variance and what the setbacks were, and those that were approved.

Mr. Pohopek stated that setbacks were 40 front, 30 side back on on a 24 foot front 15.3 foot back and the other two sides met setbacks, as does our current plan before the board. He stated he wanted to go over the specifics of the current plan. They are asking for 15-foot set back from the front sideline in a 16 foot set back from the side from the rear side line, and stated he realizes the other two sides meet the requirements for the 30 foot.

P. Thibodeau asked the applicant about meeting the requirement of the wetland, as the plan shows 23 feet from the wetland.

J. Huckins explained the wetland restrictions. It's 75 if it's a prime wetland, but this is a jurisdictional wetland which is 50 feet. He further stated originally that lot was exempt from wetland buffers because it was created before 1988. It was also exempt when the last variance came through before too, but it's not exempt now because of that zoning change from two years ago. The applicant can ask relief from the ZBA for the wetland buffer.

C. Huckins asked about the wetlands.

J. Huckins explained that DES approves disturbance of wetlands. DES doesn't have any buffer requirements, and DES did approve the septic design because of the distance he was able to keep it away from the wetlands by going to the other side.

T. Hardekopf addressed staff to inquire if there is any other historic information that needs to be shared from the land use office.

V. Price, stated that John Huckins had already covered it., not from our office done already covered it.

C. Huckins asked about the discrepancy of lot size from the tax map and the survey, and the neighbor.

Mr. Pohopek answered that .23 acres was was taken off the on the old tax maps. He explained there was a whole survey map with just scaled in approximated at that point from from actual boundary survey, it's 0.4 acres.

A. Simocko asked the applicant that looking at the plans provided, is it possible to construct a dwelling on this non-conforming property and to abide by the setback requirements?

Mr. Pohopek answered that the the design, this layout, this layout is for a 28 by 26 footprint of the house and a 14 by 16, a 14 by 28 footprint of a garage and that equates to about 1,468 Square feet.

T. Hardekopf opened public comment.

T. Hardekopf closed public comment.

J. Huckins stated for the record that did he also ask for the waiver for the 9.4 that 50 foot to the wetland?

V. Price answered no.

P. Thibodeau agreed he didn't see it.

J. Huckins asked the board if they wanted to address it here or have it go to the Planning Board for 9.6 relief. He stated that the applicant didn't specifically ask it here. However then the ZBA would be telling sending them to the planning board next to address the wetland buffer. J. Huckins emphasized he wanted to make sure that it's clear tonight what that decision is.

J. Huckins answered that he corrected that the section is 9.5(1) to ask for relief from the regulations for the wetland buffer.

T. Hardekopf asked P. Thibodeau if he wanted to amend the motion to reflect the correct section of the zoning ordinance.

P. Thibodeau stated he wanted to amend the motion to include the 9.5(1) relief.

A motion was made by P. Thibodeau and seconded by A. Simocko to grant the variance application. This is based on the size of the lot that it's too small to do anything else, modest foundation on there and the one car garage being on a slab. With the 50-foot set back, to include that we we add the waiver for the wetlands set back and 9.5(1) from the wetland for the garage as well. Special conditions exist such that literal enforcement of the ordinance will result in unnecessary

hardship to the applicant as defined under application law, because state facts that support this conclusion and granting the variance would be consistent with the spirit of the ordinance, not contrary to the public interest, because of the stated fact because of the stated facts from the applicant provided to the board. Granting the variance will result it does not result in diminution of and it would complement the neighborhood and granting of the variance would do substantial justice because of the lot is too small and it's grandfathered. The motion passed unanimously.

Vote: 4/0

Roll Call:

A. Simocko-Yay

C. Huckins-Yay

P. Thibodeau-Yay

T. Hardekopf-Yay

B. [263-10-Lot105-RC-Var \(Owners: Lee Oak Cooperative, Inc\)](#) Request by applicant for a variance from Article 4, Section 4.2.3 to allow for an additional lot inside the mobile home park, Lot 105, on Ambleside Drive (Map 263, Lot 105) in the Regional Commercial Zoning District.

T. Hardekopf read the application description.

Richard Nigio is the applicant on behalf of Lee Oak Cooperative.

T. Hardekopf addressed the applicant if he was willing to have the case heard by four seated ZBA members versus five of which three would need to approve or deny as a majority?

Mr. Nigio replied yes to proceed.

T. Hardekopf asked the applicant to read the five criteria.

Mr. Nigio read the justification for a variance into the record.

PART IV – If this is a JUSTIFICATION FOR VARIANCE

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.
To deny the variance will leave lot 105 vacant and prevent future development.
- ☐ 2. Granting the variance would be consistent with the spirit of the Ordinance.
We are a legally existing park. The addition of one home on a site ready to go is consistent with the already existing homes.
- ☐ 3. Granting the variance will not result in diminution of surrounding property values.
Developing lot 105 will have a positive impact on values.
- ☐ 4. Granting of the variance would do substantial justice.
Lot 105 is ready to go. Granting the variance will allow us to complete the work started by the previous owner.
- ☐ 5. Granting of the variance would not be contrary to the public interest.
It would allow for a low to moderate income family to realize home ownership.

T. Hardekopf asked Mr. Nigio what his role with the Lee Oak Cooperative.

Mr. Nigio stated he a past president of the Lee Oak Cooperative, and the current president of the board asked to start the ball rolling with the approval of LOT 105 and he volunteered to do the service to them. He has provided a letter of authorization.

P. Thibodeau asked the applicant of the water supply project on the property?

Mr. Nigio answered that the water supply project is a new well was built and connecting the wells to each individual unit with curb stops, and are combining the existing well with the proposed well. The project is online up and running and now and have to finish the connections to the individual units. He anticipates that perhaps another year to complete. This would be laying out the new main lines and the connection with curb stops.

C. Huckins asked Mr. Nigio when this mobile Home Park initially went in, what was the agreement with the town? Did they limit the number? Is there anything preventing you from putting another lot on there?

J. Huckins answered for the Town. This was done pre-zoning, pre-planning board or anything else. It was legally existing mobile home pack and right now by our zoning the density there is higher than what would be allowed today and that's the reason why they're here. J. Huckins stated he had conversation with the town's attorney, and they were developed and used legally existing because they were there before zoning. Even though it was set up to be a lot, it doesn't get that

grandfathering because it wasn't used as a dwelling, even though the lot was set up to be in the park. The lot was set up, but it didn't get vested with the use.

T. Hardekopf asked Mr. Nigio if this was the only lot in the park that has been set up and was previously considered for this.

Mr. Nigio answered that there wasn't any previous consideration.

A motion was made by T. Hardekopf and seconded by C. Huckins to grant the variance application. Special conditions exist that literal enforcement of the ordinance would result in unnecessary hardship to the applicant. Lee Cooperative, as defined under applicable law since they have a ready to develop lot with water and sewer and utilities and would like to be able to utilize it; will be consistent with the spirit of the ordinance and not contrary to public interest; will not result in diminution of surrounding property values. Having a new property within the park will continue to boost the values of the surrounding properties; would do substantial justice for the owners and for the public at large, allowing for an additional entry level home for moderate to low-income family unit. The motion passed unanimously.

Vote: 4/0

Roll Call:

A. Simocko-Yay

C. Huckins-Yay

P. Thibodeau-Yay

T. Hardekopf-Yay

6. REVIEW AND APPROVAL OF MINUTES

A. Review and approve minutes of the June 21, 2023, meeting.

A motion was made by A. Simocko and seconded by C. Huckins to approve the minutes of the June 21, 2023, meeting, as amended to lines 63, 93, 171, 197, 205, 245. The motion passed unanimously.

Vote: 4/0

Roll Call:

A. Simocko-Yay

C. Huckins-Yay

P. Thibodeau-Yay

T. Hardekopf-Yay

7. OTHER BUSINESS THAT MAY PROPERLY COME BEFORE THE BOARD

8. ADJOURN

A. Adjourn the Zoning Board of Adjustment (ZBA) Meeting. Next ZBA meeting date is August 16, 2023, at 7:00 P.M.

**** Please note that all votes that are taken during this meeting shall be done by Roll Call vote. ****

Visitor Orientation to the Zoning Board of Adjustment Meeting

Welcome to this evening's Zoning Board of Adjustment meeting.
Copies of agendas and a sign-in sheet are available for visitors.

Meeting Access

In-Person

Town Hall (New ¼ mile from Old Town Hall)
Main Meeting Room
4 Signature Drive Barrington, NH 03825

Remote Meeting Participation

Video: barrington.nh.gov/zbmeeting
Call in via computer [+1 603-664-0240, 514518321#](tel:+16036640240)

Meeting Materials

Additional details regarding each agenda item and all supporting documentation can be found online at <https://www.barrington.nh.gov/zoning-board-adjustment>. Please contact the Land Use department with any questions via phone at (603) 664-5798 or email at planning@barrington.nh.gov. Files on the applications and items, above, including the full text of any proposed ordinances, regulations, or other initiatives are available for inspection in the Land Use Department Office, Monday through Thursday from 8:00 a.m. to 3:00 p.m.

Special Accommodations

The Town of Barrington requires 48 hours' notice if the meeting must be modified for your participation or if special communication aides are needed. Please submit requests to the Land Use Department office via phone at (603) 664-5798 or email at planning@barrington.nh.gov.