

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: 718535288#

OR

Call 603-664-0330 or email: jhuckins@barrington.nh.gov

OR

bit.ly/BarrZB201021

Wednesday, January 21, 2021
7:00 p.m.

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

K. Forbes read the Governors Order

Roll Call

Karyn Forbes, Chair

Cheryl Huckins

Raymond Desmarais, Vice Chair

George Bailey

Dave Whitten

All Present

ACTION ITEMS

1. 211-3-GR-21-ZBAVar (Owners: Stacy & Kristopher Libby) Request by applicant for a Variance under Article 4, Section 4.1.1, Table 2 Dimensional requirements minimum front setbacks to 23.1', (2 frontages) where 40' is required at 193 Brooks Road (Map 211, Lot 3) in the General Residential (GR)

The applicants Stacy and Christopher Libby presented their application explaining they were trying to build a detached garage next to the house where they currently did not have one on the property. Their lot was substandard in size and oddly shaped. The property had been surveyed. They were trying to meet as many setbacks as possible. They were hoping to get closer to the back edge adjacent to the old right of way.

Kristopher Libby explained the criteria.

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 non-conforming residential lot has room for the purposed garage. This proposed garage would be consistent with the existing development on this small parcel and not cause any hard or depreciation to the neighborhood. The structure would improve the lot.

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

This proposed new garage would allow the structure to keep the property owners property maintenance equipment and vehicles out of the weather and maintain a clean looking property. It would allow the owners to get the vehicles off the dirt road.

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

The proposed new garage will fit nicely on the lot, increase the value of the property, and enhance the visual appeal of the property.

4. Granting the variance would do substantial justice.

Would enhance the visual look of the lot, to be consistent with the original build out of the lot and increase the tax base of the property.

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

The proposed new garage would make the property a more valuable and desirable lot.

R. Desmarais asked what the right of way in the back was.

C. Libby explained it was Town property that connected a piece of property that was behind this lot. It was currently not used for anything and there were trees growing through it.

Stacy Libby explained it was forested and hard to describe based on the plan.

M. Gasses expressed that she believed it was an old Class VI road.

G. Bailey expressed that if it was just an overgrown road, he was okay with that.

G. Bailey asked if they were going to build a one-story garage or 1½ or two.

S. Libby explained it was a three-bay garage with a loft.

G. Bailey asked how much storage space they would have in the attic.

K. Libby expressed likely an 18 sq. ft. area. 18'x18' dependent on how the trusses laid out.

R. Desmarais asked M. Gasses to clarify why the 40' setback on the right-of-way.

M. Gasses explained the lot was considered to have frontage on two roads, which often happens with corner lots.

C. Huckins had no questions.

D. Whitten expressed that he did not believe the road continued through to Town Farm Road due to wetlands.

D. Whitten asked why there appeared to be a bump out on their property.

S. Libby expressed that the surveyor did not know.

K. Forbes asked if there was anyone from the public to speak in favor of the application.

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

No one spoke.

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

G. Bailey expressed that several had used the lofts as fun spots, such as TV rooms, which was a concern of his.

R. Desmarais expressed that if the bump out was not there, they would almost meet the setback and it was a right of way that was not being used.

C. Huckins had no problem and expressed she was not going to play fortune teller on what they were going to do with the storage space above it in the future.

K. Forbes expressed it was an odd shaped lot with two roads on either side. The building envelope was very small. It would be impossible to place a garage on this lot and meet the standard. If the owner did something against the regulations it would be up to Code Enforcement to enforce.

G. Bailey asked if the road reverted if unused for 20 years.

K. Forbes explained the public never loses their right to pass and repass and anyone who has property down the other way could always use it.

A motion was made by R. Desmarais and seconded by C. Huckins to approve the variance.

Roll Call

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

The motion carried unanimously.

2. 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.

R. Desmarais expressed he had a relationship with Mr. Garvey about 10 years ago. He expressed he could act impartially.

D. Whitten expressed he had a relationship with D. Vincent.

K. Forbes expressed it would need to be a financial interest and she did not believe there was a conflict.

Dave Garvey explained that it was a large parcel close to the Town Center and the Christmas Dove and the Credit Union land. The parcel was not quite 30 acres. It had frontage on Route 9 on the westside of the lot it was almost 100% wet. The ZBA had granted a Special Exception case ZB 06/605 in 2006 which allowed for a 40-foot right-of-way to access the backland behind the original house and barn. The access would be through the right-of-way. The parcel was rather square out back and topographically was challenging. The lot was fairly rectangular to square and fairly level where you enter from the edge of right of way and immediately began to climb. The

climbing continued for 60% of the parcel. The slopes were between 10% and 25 %. There was a plateau that went back toward the Lemos property and that would be the area where the future single-family homes would be located. The survey suggested possible locating a lot down toward the Christmas Dove Property.

The application was to service 3 lots instead of one as allowed by the original subdivision. The zoning required commercial on the first floor. Mr. Garvey expressed that when the Master Plan and Town Center plan was done, he was sure no one had looked at the topography of the land. He expressed that it would be nearly impossible to do any kind of commercial development on the property and it was so far off the road. Commercial property needed to have visibility, traffic, and frontage. Mr. Garvey believed the plateau could easily receive the three lots proposed.

Mr. Garvey believed that the applicant was trying to work with the ordinance other than they were trying to have single family homes where residential was required to be on the second floor. They were seeking a variance to have the single-family dwellings, utilize the back-lot regulations, which would allow for two, that would make it more difficult on the individuals trying to build the homes.

1) Special conditions exist that literal enforcement of the ordinance will result in unnecessary hardship for the applicant.

He expressed that when you look at the criteria that literal enforcement of the ordinance would result in unnecessary hardship, it was topography and location. The wetland on the front. The fact it was so far off the backside was another characteristic that prevented commercial business.

2) Granting the variance would be consistent with the ordinance.

Ordinance was created to have harmony in the surroundings for the residents of the community. The Town had wanted to have the Town Center and the commercial but in the process the site specific was not looked at close enough. There was no way you could be consistent with the ordinance. The site had been granted the right-of-way and easement previously, along with the Special Exception. Mr. Garvey expressed it would be beneficial to have three homes on thirty acres for the Town.

If the site was reserved for one home, it created a hardship of the land itself as well as the property owner. The granting of the variance would be consistent with the ordinance.

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

The surrounding properties were Christmas Dove, Dr. Lemos, and Dave Paolini purchased the backland from the Christmas Dove as a planned project, which was basically flat and dry land. He believed the topography would not allow the proposed project to connect. The size and acreage if the proposed lots would be a benefit. The land would become useful where currently it was not.

4) Granting the variance would do substantial justice.

The zoning is an impediment to the landowner being able to do anything with their land that makes economic sense.

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

The public interest was greenspace, tax revenue, social capital coming to the community, and the three homes on thirty acres created a pretty good asset to the community overall and created positive impact overall. It would not be contrary to the public interest.

K. Forbes expressed you could put a planned unit development on the parcel which usually required a mix of commercial and residential. You could get more units in a planned unit development than what was being proposed, which was three.

D. Garvey expressed no, given the topography. Trying to get a road in you would exceed the slope limits for getting a road in there for access to the developable area. He did not believe you could get the septic capacity.

D. Whitten expressed there appeared to be a lot of wetland impact.

D. Garvey expressed that there was not that much wetland impact, less than 230 sq. ft.

D. Garvey expressed the wetland crossings would need to be approved. They would also need Planning Board approval.

K. Forbes asked what variances they were asking for.

M. Gasses expressed that the backlot had been approved, but they needed to use the right of way for access.

K. Forbes asked to see the prior approval.

G. Bailey asked if there was a sunset on the prior ZBZ approval.

M. Gasses expressed that the Special Exception went with the land and did not expire because the Special Exception predated state law.

G. Bailey expressed the Special Exception was for one lot and now they were asking to go from one to three. He was concerned with possible maintenance issues with the shared responsibility.

K. Forbes read the 2006 approval for one lot.

C. Huckins believed the PUD ordinance was approved in 2011.

K. Forbes asked if it would be possible to get up there for a site walk.

D. Garvey expressed there was a road.

C. Huckins asked if the access to get out there was where the right of way would be.

M. Gasses expressed that she would be remiss if she did not bring up that two or three years ago the Planning Board had proposed zoning amendments that would have changed a portion of Town Center to Village to allowed for a mix of single family, multifamily and mixed use and the voters did not approve it.

K. Forbes asked if this lot would have been part of that amendment.

M. Gasses expressed it was not and she could not remember if that was intentional, so it would have remained Town Center even if the amendment had passed.

K. Forbes expressed that one of her concerns was allowing a use that was not permitted under the ordinance.

C. Huckins expressed her concern was the extra backlot where currently we allow one.

D. Garvey expressed it would cost a substantial amount of money for a driveway to get there, likely 50\$ a foot.

G. Bailey asked D. Garvey if he would need to build the road to the standard that would allow it to carry a bus.

D. Garvey expressed that it was a driveway and they did not need to build it to a road standard.

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

No one spoke.

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

No one spoke.

K. Forbes expressed they would pause the public testimony portion and the Board would discuss it.

R. Desmarais expressed he would like to continue this so they could see the topography etc. because they would be making a change to the Town.

D. Whitten expressed he wanted to make sure the abutters were okay with the additional lot.

G. Bailey expressed that he was concerned with going to three lots.

K. Forbes asked M. Gassed how much more was Town Center.

M. Gasses expressed Town Center went all the way to the Lemos property.

K. Forbes wanted to see a copy of the zoning map, because she did not want to do spot zoning.

C. Huckins expressed the Planning Board had not chosen to give up on the Town Center. We had tried to rezone part of it to Village and the voters said no and questioned whether they should go against the voters wished and change it on our own.

K. Forbes expressed it was also whether it met the standard to. Was it consistent with the ordinance.

The Board scheduled a site walk for Saturday January 23, at 9 am on site, Map 239 Lot 1.1 Parking would be on the HRCU property.

K. Forbes opened the public portion to allow D. Garvey to speak.

D. Garvey expressed he had permission to park on the HRCU property.

K. Forbes expressed she wanted a better understanding of where the zoning was located on the maps.

K. Forbes expressed this was a use variance not a distance variance.

A motion was made by R. Desmarais and seconded by C. Huckins to hold a site walk on January 23, 2021 at 9 am. And continue the application to February 17, 2021.

Roll Call

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

The motion passed 5-0

A motion was made by R. Desmarais to approve the minutes of November 18, 2020 and seconded by C. Huckins

Roll Call

C. Huckins	aye
G. Baily	aye
R. Desmarais	aye
D. Whitten	aye
K. Forbes	Abstain

The motion carried 4-0-1

K. Forbes Abstained

ADJOURNMENT

A motion was made by R. Desmarais and seconded by G. Bailey to adjourn at 8:00 p.m.

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

The Motion carried 5-0

Respectfully submitted,

Marcia J. Gasses
Town Planner