

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: 797 973 791#

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

(Approved May 19, 2021)

Wednesday, April 21, 2021

7:00 p.m.

R. Desmarais read the Governors Order

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

Roll Call Vote

Members Present

Raymond Desmarais, Vice Chair

Dave Whitten

George Bailey

Cheryl Huckins

Members Absent

Karyn Forbes, Chair

ACTION ITEMS CONTINUED FROM March 17, 2021

1. **106-14-GR-21-ZBAVar (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.

Andrew Peck was present and explained the application. The applicant was seeking a 1.2 side setback where 30' was required and 11.3(1) To expand 5' closer to the water. The proposed garage would replace an existing structure to the home. It was small and would like to make it a two-car garage. The applicant read from the justification.

1. The discharge sewer line is in front of the garage. The electrical service line as well. Due to the small lot size, we cannot move the location of the septic or electrical service.
2. Due to our small lot size, we cannot move further from our property line or change location.
3. Improving this old structure will help property values in the area.
4. It will allow us to protect our vehicles from the elements.
5. Will not be contrary to the public interest.

D. Whitten asked what was showing sticking up.

A. Peck explained it was for future conduit.

R. Desmarais expressed it was right on the property line.

A. Peck expressed they could move it maybe a foot more.

R. Desmarais asked if could move it away from the water.

A. Peck expressed that he could only go 5' because of the septic. The septic field was right up against the side.

R. Desmarais asked how much bigger the garage would be made.

A. Peck expressed 5' on either side.

G. Bailey questioned what they were using the exiting building for.

A. Peck explained storage.

R. Desmarais asked if anyone in favor.

No one spoke.

R. Desmarais anyone against.

No one spoke.

G. Bailey expressed under article 2 they were not allowed to make the lot more nonconforming and wanted the Board to take that under consideration in their deliberation.

C. Huckins expressed that a 2-car garage was not an unusual request.

A motion was made by C. Huckins to approve the Variance request.

D. Bailey expressed it would not work for him based on the expansion of nonconforming use.

D. Whitten expressed his concern was the distance in feet closer to the water.

R. Desmarais expressed the location of the septic.

G. Bailey expressed allowing the expansion of the garage would still make it more nonconforming increasing its more nonconformity to the property line.

The motion was seconded by D. Whitten.

Roll Call

G. Bailey nay

D. Whitten aye

R. Desmarais aye

C. Huckins aye

The motion passed 3-1

ACTION ITEMS

2. [228-6-GR-21-EquWaiver \(Owners: Adam Pearson & Heather Thomas Pearson\)](#) Request by applicant under RSA 674:33-

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a consideration governing granting of a dimensional equitable waiver under Article 4, Dimensional requirements minimum Section 4.1.1 front yard setbacks where the setbacks 29.3' from retaining wall and 32.4' from the front where 40' is required due to the Foundation certification survey that the garage as constructed so far is in the front setback at 299 Stagecoach Road (Map 228, Lot 6) in the General Residential Zoning District.

Adam Pearson was present. He explained that he was in the process of constructing the building described in the application. According to the survey for the foundation certification he had constructed the building to close to the front lot line. The building sat askew to close to the property line in one corner. He was looking for an equitable waiver.

R. Desmarais expressed that the foundation certification was first supposed to be done.

J. Huckins expressed where there was a delay with surveyors, he had begun construction and then stopped when he found out there was an issue, which was why he was before the Board.

M. Gasses read the requirements under 674:33-a

R. Desmarais expressed in this instance it was by a good faith measurement.

D. Whitten asked what was there before.

J. Huckins explained the retaining wall was constructed to hold back the fill for the retaining wall. If he added a little fill the wall would not be a violation. The retaining wall was built at the time of the building.

D. Desmarais expressed the issue was the stonewall that they used as a measurement.

G. Bailey expressed the owner had taken their own risk and not followed the zoning policy and gotten a foundation certification prior to construction.

C. Huckins asked how you would certify the foundation without constructing it.

R. Desmarais explained you would survey the location first. You almost needed the surveyor there twice.

J. Huckins explained that most times the owner knows where the property line is and would give themselves extra space. In this instance the owner the property thought the stonewall was the property line and if it had been he would have had a few extra feet. He believed it was that good faith error.

C. Huckins believed the stonewall assumption where it had happened on their property before.

R. Desmarais asked anyone to speak in favor.
No one spoke.

Anyone to speak against.
No one spoke.

R. Desmarais closed the public session.

D. Whitten expressed it was a good faith mistake.

R. Desmarais expressed he understood G. Baileys concern, but he could see the good faith effort.

C. Huckins expressed that there would be no benefit to ripping it down and moving it.

G. Bailey expressed that if everyone skipped the certification there would be a lot of people coming before the Board.

D. Whitten questioned whether the feeling was to make them dig up the retaining wall and building. It was to the road and not to someone's property who was having a problem with it. Where was the benefit to making him do that.

C. Huckins expressed it was not unreasonable to believe the stonewall was the property line.

D. Whitten expressed there was a pin at the corner of the stonewall that had a swing arm and a mistake may have been made by a surveyor.

A motion was made by D. Whitten and seconded by C. Huckins to grant the equitable waiver.

Roll Call

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

Motion passed 3-1

251-64-GR/SDAO-17-ZBAExt2 (Owners: Steven & Pamela Lenzi TRS REV TR) On March 11, 2021 received a variance, for an extension that would expire on April 27, 2021 they would like an extension. SEE CASE BELOW:

251-64-GR/SDAO-17-ZBA (Owners: Steven F. & Pamela M. Lenzi Revocable Trust) Request by applicant for a variance from Article 10 Wireless Communications 10.4 (3) and 10.4 (5) Dimensional Requirements to construct a 150' tall wireless communications facility that will be surrounded by a fence that will be located 60' from wetlands located on Bumford Road (Map 251, Lot 64) in the General Residential (GR) Daniel D. Klasnick, Duval & Klasnick, LLC; P.O. Box 254; Boxford, MA 01921

Earl Dunal represented the applicant for Duval & Klasnick LLC, this was the second extension for the application for a 150' mono-pole due to merger between Sprint and T-Mobile and COVID.

The applicant was requesting a two-year extension to April 27, 2023.

R. Desmarais asked if anyone was there to speak in opposition.
No one spoke.

R. Desmarais asked if anyone was here to speak in favor.
No one spoke.

D. Desmarais closed public testimony.

A motion was made by G. Bailey and seconded by D. Whitten to approve the extension to April 27, 2023.

Roll Call

G. Bailey
D. Whitten
C. Huckins
R. Desmarais

The motion carried 4-0.

- 238-45-TC-21-Var (owner: Madeline Lockhardt, TR)** Request by applicant for a variance from Article 3.1.6 Site Plan Review Regulations to allow the temporary drive-in movie theater to continue until the end of the calendar year, 2021 located at 586 Calef Highway, Suite #1 (Map 238, Lot 45) in the Town Center Zoning District.

Anthony Diberto explained their request. The applicant was seeking to continue utilizing the drive-in through 2021 as they had been doing during this past year during the covid pandemic. The applicant provided updated photos.

D. Whitten as if they projected right to the storage containers.

A. Diberto explained they did.

R. Desmarais asked if there were any noise issues.

D. Whitten asked if they were projected through the phone.

A. Diberto expressed he was not aware of any complaints.

J. Huckins stated he had received no complaints as the Zoning Administrator sense it operated.

J. Huckins explained that the Select Board had waived the enforcement of Site Plan regulations to allow for the outdoor seating, which would expire at the beginning of June. The applicant planned to come forward with a full application in the future but wanted to have the ability until the end of the year to continue. The ZBA would have to give that relief where the Select Board did not.

G. Bailey expressed that he was a the Select Board and it did not reflect on his comments. Bailey questioned whether the drive-in and theater would operate at the same time.

A. Diberto stated yes.

G. Bailey questioned where the applicants were expected to park that were going into the building and whether it would conflict.

A. Diberto expressed they did not anticipate an issue based on last year and they had coordinated with Quest Martial Arts and Spring Garden. There was enough parking in the front outside the fencing.

G. Bailey expressed that the lot had been kept clean. He questioned whether patrons would be expected to go inside the building to utilize the facilities or would facilities be provided.

A. Diberto explained that in 2020 they had Porto-potties but as the pandemic went on things loosened up and patrons used the inside facilities, and the plan was to use the inside facilities in 2021.

G. Bailey expressed that the Spring Garden was happy that the theater was there.

D. Whitten question why they needed the outdoor theater if they were opening the indoor theater.

A. Diberto expressed they were still required to operate inside the treater at 50% capacity. They had also installed new seating. They had gone from 600 people to 298. Then that was cut in half. People were also still not comfortable. There had been a lot of demand to do it for special events etc.

C. Huckins expressed it was a great family activity and good for the local businesses.

R. Desmarais asked if anyone was in favor.
No one spoke.

R. Desmarais asked if anyone was opposed.
No one spoke.

Public testimony was closed.

A motion was made by D. Whitten and seconded C. Huckins to grant the Variance to the end of the year.

Roll Call

D. Whitten	aye
C. Huckins	aye
D. Bailey	abstain
D. Desmarais	aye

Motion carries 3-0

5. **250-76.1-RC-21-Var (Owners: Jeremy Hiltz, Tr)** Request by applicant for a variance from Article 4 Dimensional Requirements: Section 4.1.1 Minimum Standards/Article 3 Permitted Uses Section 3.3.5 (3)(a) to allow a 300' setback from Keefe Road (Map 250, Lot 76.1) to Route 125 where 500' from Route 125 is required in the Regional Commercial Zoning District. BY: Scott Frankiewicz, NH Land Consultants; 683C First NH Turnpike; Northwood, NH 03261.

The applicant was represented by Scott Frankiewicz who explained the parcel had been subdivided in 2003 when the setback to Route 125 was 300' for residential development. The requirement was now 500'. They were requesting a Variance to allow for a residential structure. The access was off Keefe Road off Beauty Hill Road.

S. Frankiewicz read from the standard on the application.

1. Under the current Zoning Ordinance this parcel is only allowed to be developed as a commercial use within 500' of Route 125. This ordinance was revised in March 2005 to 500'. A setback of 300' to the 300' to the centerline of the road corridor (Route 125) was in place when the parcel was created from a subdivision in 2003. The special conditions of this parcel are that no frontage on, or visibility from, the road corridor (125), its only has frontage on Keefe Road, which is only accessible from Beauty Hill. In addition, there is insufficient buildable area, outside the 500' setback to the roadway corridor to build a residential use structure due to setbacks on the parcel.
2. Granting the variance would allow the lot to be developed as it was allowed in 2003 when the setback to 125 was 300'.
3. Granting the variance will not result in diminution of surrounding properties. If allowed to be developed as residential use, the end value would be consistent, and similar, to surrounding residential properties, therefore not resulting in diminution of surrounding property values.
4. Granting the variance would allow the parcel to be developed as a residential use as it was allowed when the lot was created in 2003 and will be similar to the surrounding properties. The lot is not viable as a commercial use as it is not immediately adjacent, or visible to the roadway corridor or as frontage on the roadway corridor. In addition, many of the abutting, and surrounding, properties are residential uses.
5. The public interest would not be impacted by building a residential use structure on this lot. It is not viable as a commercial use as it is not immediately adjacent, or visible, or viable, to the roadway corridor or have direct frontage on the roadway corridor. Any development, commercial or residential, is not clearly viable or accessible from the roadway corridor which would be vital to any commercial venture that could be placed on this parcel.

D. Whitten identified a of support from Edward and Michelle Kohlhase had been submitted.

D. Whitten asked whether Keefe Road was a Class V road.

M. Gasses and J. Huckins identified it as Class VI.

J. Huckins explained that the lot had been approved by the Planning Board as part of a subdivision, including the access.

R. Desmarais asked if there was anyone to speak in favor.

No one spoke.

R. Desmarais asked if there was anyone to speak in opposition.

No one spoke.

R. Desmarais expressed he did not have a problem with the request, the lot was subdivided, and the rules changed in between.

C. Huckins expressed there was no frontage on the commercial access.

A motion was made by C. Huckins and seconded by D. Whitten to approve the variance.

Roll Call

D. Whitten aye

C. Huckins aye

G. Baily aye

R. Desmarais aye

The motion carried 4-0

- 6. 126-12.1/12.2-GR-21-3Var (Owners: Stephen & Joy Porter)** Request by applicant for variances from Article 4 Dimensional Requirements: Section 4.1.1 Minimum Standards to allow a 5' setback on right side and a 19.02' setback on the right side where 30' is required. Also, a variance under Article 5 Section 5.1.1 (2) and 5.1.1 (3) to allow the well on a different lot (Map 126, Lots 12.1 & 12.2) on Jillette Road in the General Residential Zoning District. BY: Matthew J. Peterson, Keach Nordstrom Associates; 10 Commerce Park North, Suite 3B; Bedford, NH 03110.

The applicant was represented by Matt Peterson of Keach Nordstrom Associates. M. Peterson gave some history of the parcel which had been owned by the family since the 20's. There had been two unassigned parcels on the property that had been merged involuntarily. The applicant had gone through the process with the surveyor to separate the lots under NH law. The deed sketches had been provided. The lot was 126-12.1 and 126-12.2.

The applicants wanted to construct a log cabin on the site 24' x 26'. The lot was only 7,000 square feet. A lot line adjustment would make the lot more nonconforming. M. Peterson presented the photo exhibits.

Criteria presented by applicant.

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 applicant is seeking relief from the required setbacks. As stated in the project narrative, these properties exist as non-conforming lots. When combined they would be 14,976 SF, which is about 18 percent of the required lot size in the General Residential District. If this variance is approved the applicant will merge the two existing lots that connect Jillette Road to North River Lake. If those lots are merged, the total area is still small, 14,976 SF. The lot shape also creates special conditions. The lot width is 50 feet meaning that the required 30' side setbacks overlap each other from either side. The lot width also effects a necessary 75' well radius around a new well and such the applicant would like to construct a well on the abutting property, also owned by the applicant and share a well on both properties. Therefore, if the Zoning Ordinance were strictly followed this lot would be unbuildable and yield an unnecessary hardship to the applicant.
2. *Granting the variance would be consistent with the spirit of the Ordinance;* The applicant believes the reason for the setback requirements is to curb overcrowding of streets and waterways as well as have adequate space between abutting properties. This

project's proposed building is 82 feet from North River Lake and 171 feet away from Jillette Road with natural woodland buffers between each. The reduction in side setbacks will also not produce overcrowding.

3. *Granting the variance will not result in diminution of surrounding property values;* This proposed single family house and well which is the same as most of the surrounding properties. Construction of a single-family home is in keeping with surrounding building and uses. Based on this application and the surrounding properties the applicant believes this variance would not diminish the surrounding properties.
4. *Granting the variance would do substantial justice.* The subject property is a unique in shape. If the Zoning Ordinance were literally followed the parcel would be vacant. The opportunity lost by the applicant should the Zoning Board of Adjustment decide not to grant the requested dimensional variance, far outweighs any gain that would be realized by the public as result of the same direction. The setback reduction in this case does and placement of the well do not produce any unwanted overcrowding. There is also no negative impact to the surrounding properties, but instead will create a residential house similar to any properties along North River Lake.
5. *Granting the variance would not be contrary to the public interest.* This project would in no way be contrary to the public interest. The public would like to see their town grow through thoughtful planning and in a way that does not put a burden on existing systems through the town. This parcel would use on-site septic and off site well as to not put any strain on the existing town systems. This project does not propose a new curb cut, and therefore would not cause interference with existing traffic along Jillette Road.

R. Desmarais questioned why the building was not centered on the property.

M. Peterson expressed there were utilities in the way, and he tried to work around. He had set the house back further than the neighboring home. The owner had wanted to buffer the neighbor. The access to the lot is proposed to be from the adjoining lot.

R. Desmarais expressed they would need a special exception to access the lot from a side not it's frontage.

J. Huckins explained they explained that if the driveway was shifted over so part was on each lot he would not have to do that, it would be considered a shared driveway.

M. Peterson expressed he would work with staff to achieve that.

G. Bailey asked to confirm the size of the house which was 24 x 26. If the house was centered that would leave 11' on each side of the house.

G. Bailey questioned why they were not proposing a well on the site.

M. Peterson expressed the well radius and they wanted to tie in the adjacent home which did not have well water.

C. Huckins asked whether the home would be year-round or a camp.

J. Huckins explained that he could not issue a permit for a building that did not meet the building codes.

J. Huckins clarified that the ZBA had to determine the placement of the house.

R. Desmarais asked if there was anyone to speak in favor.

Joy Potter explained they had spoken with Dave Frase about the possibly of purchasing some property to add to the lot, but he was not interested. The plan was for this portion to be for her daughter for now and eventually all would go to their children.

Joy expressed that she did not have an objection of the house being close to the left property line because that was where it best fit.

R. Desmarais asked if there was anyone there to speak in opposition.
No one spoke.

R. Desmarais closed the public portion of the meeting.

J. Huckins explained that the Board had to address having the well off the property. It was part of the application.

M. Peterson expressed that if it was a big deal the well could be placed on site with waivers from the state.

R. Desmarais expressed he would prefer seeing the house centered on the lot and making it as conforming as possible. He did not have a big issue with the well either way.

C. Huckins expressed 11' would be better than 5'.

R. Desmarais explained the applicant would need to go back to the Board with a plan that reflected their comments and decide what they wanted to do with the well.

A motion was made by G. Bailey and seconded by C. Huckins to continue the application to the May 19, 2021 meeting.

Roll Call

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

The motion carried 4-0

MINUTES REVIEW AND APPROVAL

7. Approval of March 17, 2021 meeting minutes.

A motion was made D. Whitten and seconded by C. Huckins to approve the minutes.

Roll Call:

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

The motion carried 4-0

ADJOURNMENT

A motion was made by D. Whitten and seconded by C. Huckins to adjourn.

The motion carried 4-0.

The next meeting will be on May 19, 2021 at 7:00 p.m. electronic meeting, no meeting place.

Respectfully,

Marcia Gasses

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