



*Town of Plaistow*  
**ZONING BOARD OF ADJUSTMENT**  
145 Main Street - Plaistow, NH 03865

**ZONING BOARD OF ADJUSTMENT  
MEETING MINUTES  
August 29, 2019**

The meeting was called to order at 6:30 p.m.

**Roll Call:** Peter Bealo, *Chair*  
Dan Lloyd, *Vice Chair*  
John Blinn  
Jonathan Gifford, *excused*  
Gary Ingham  
Ethan Conley, *Alternate*

★ *Ethan Conley was appointed as a voting member.*

**Review/Approval of Minutes – July 25, 2019 Minutes**

★ *D. Lloyd moved, second by G. Ingham, to approve the minutes from the July 25, 2019 meeting. There was no discussion on the motion. The vote was 5-0-0 U/A.*

**PUBLIC HEARINGS:**

**#19-11: A request from Brighton Drive, Inc. for a variance from Article V, §220-34.A(3) to allow the creation of three (3) new building lots with over 110,000SF of non-contiguous upland soils. The properties are located on North Ave, Tax Map 47, Lot 3 and Tax Map 36, Lot 18, in the LDR District. The applicant is the property owner of record.**

★ *E. Conley, noting that he was an abutter to the subject property, recused himself at 6:35pm and was seated in the gallery.*

Tim Lavelle, James M. Lavelle Associates, was present for the application.

It was offered that the Staff Report noted that there had not been an agent letter received for this application. Mr. Lavelle presented one prior to the beginning of the meeting.

P. Bealo noted that there would only be four (4) voting members for this first public hearing. He explained the significance of a less than full board for voting purposes. He also noted that the applicant has the right to request a continuance to a meeting with a five (5) member board. However, if they decide to move forward at this meeting, they cannot use the lack of a five (5) member board as grounds to request a re-hearing should the application be denied.

T. Lavelle stated that they would be going forward with the application at this meeting.

T. Lavelle offered the following information in support of the variance request:

- The parcel is 45.39AC
- The proposal is for a fourteen (14) lot subdivision, with two (2) new public roadways
- There are three (3) lots that are bisected by wetlands
- There are 110,000 SF of contiguous uplands, but they are located on the other side of the wetland and there would have to be filling to reach them
- The applicant does not want to have to cross the wetlands
- There is sufficient room to build in the front of the lot
  - Lot 3-5 has 68,000 SF (1.57A) in the front
  - Lot 3-6 has 46,000 SF
  - Lot 3-7 has 43,000 SF
- Test pits have been done to show that the front part of the lot can support a septic system
- Lot 3-6 also includes a drainage easement
- The plan currently shows shared driveways to cross the wetlands to reach the upland areas in the rear, but that is not what they intend to do at this time
- Wells would be located at the back of the lot

There was discussion about the type of wetland soils that were found on the site.

There was discussion about some issues with the plan, including the incorrect spelling of the word “circle” on one of the roadway names and the legend where items have the same type of line to identify them. It was questioned why the shared driveways are still shown on the plan if the applicant no longer intends to use them.

T. Lavelle showed where the wetland buffers are located on the plan.

It was asked what the size of the building envelope at the front of the lots was proposed to be. T. Lavelle approximated that they would be more than 100’ wide.

T. Lavelle added that if the variance were to be approved, the shared driveways would be removed from the plan. He noted that the Planning Board was not in favor of the shared driveways, and when he, and his wetlands scientist, Bruce Gilday, met with the Conservation Commission (ConCom) they were not in favor of the wetlands crossings for the driveways either. He noted that he was told there would be a letter from ConCom, but he never received one.

P. Bealo questioned if that variance were to be granted and houses are built, what mechanism would be in place to let the property owners know that they cannot just cut a driveway through the wetlands to access the back uplands portion of the property.

T. Lavelle replied it would be the same mechanism for someone with a lot created in 1958 with the same circumstances. He said there could be a note added to the deed, but people don't generally read their deeds. He added that the area could have signage added that designated a "no cut buffer" but there was no way to monitor that the signs would stay in place long term.

P. Bealo noted the following:

- Lot 3-5 is short ~57,000 SF to meet the contiguous uplands requirement
- Lot 3-6 is short ~64,000 SF
- Lot 3-7 is short ~67,000 SF
- All other lots have at least the 110,000 SF of contiguous uplands as required
- All totaled the three (3) subject lots are short 188,000 SF, which is more than the size requirements of a lot

T. Lavelle agreed, noting it was all in an effort to not cross the wetlands. He added that when they went to ConCom with a first draft, they were still proposing to cross the wetlands. They changed the plan to work with ConCom's suggestions. He noted that there would be a lot more permitting involved, such as New Hampshire Department of Environmental Services (NHDES) dredge and fill, and wetlands permitting, not to mention a Conditional Use Permit (CUP) from the Planning Board, if they need to cross over the wetlands.

J. Blinn asked what their alternative plan would be if the variance is denied.

T. Lavelle responded it would be to seek the dredge and fill and wetlands crossing permits that would be necessary to access the uplands at the back of the parcels or exploring the possibility of a Planned Residential Development (PRD).

T. Lavelle responded to the criteria for the granting of a variance, noting the following for the Board:

- The variance would not be contrary to the Public Interest because the lots as proposed would accommodate a septic system and a well easily on the areas provided at the front of the lot
- The Spirit and Intent of the Ordinance would be preserved because the lots will still provide adequate spacing of dwellings and associated systems
- There is Substantial Justice in the granting of the variance because it will allow for the use of the lots without the need for wetlands disturbance, which helps the neighbors and the Town
- The Values of Surrounding Properties will not be Diminished because the proposed lots would be of equal or greater value than the surrounding properties
- Literal Enforcement of the provisions of the ordinance would result in an Unnecessary Hardship because the literal enforcement would create the need for filling wetlands to cross to the uplands to the rear of the lot

P. Bealo asked if lots could be combined, or if a PRD design would eliminate the need for a variance.

T. Lavelle explained that if re-configuring meant the loss of a lot, they would first try to obtain permits to fill the wetlands. He noted that they had looked at a PRD and it didn't work out.

P. Bealo asked if the Board had any additional questions. There were none. He asked if there was anyone in the audience with questions.

Ethan Conley, 43 Forrest Street, asked where the building envelopes would be for the subject lots. It was shown on the plan.

T. Lavelle explained that he wasn't sure if the current owner would also be the builder, or if the lots would be sold. He noted that the current owner was building 50'-60' ranches, with garages, on other sites under construction.

P. Bealo asked if there was anyone speaking in favor of the application. There was no one. He asked if there was anyone speaking in opposition to the application.

Nolan Pelletier, 24 North Ave, asked about the driveways through the wetlands as shown on the plan.

T. Lavelle offered that this would be a way to make the plan work without crossing the wetlands.

P. Bealo added that this plan would have to meet Planning Board and NHDES requirements. He added that the variance request does not speak to the driveways.

N. Pelletier offered concern that all the trees had already been cut out there, yes with permits, but there was nothing left. He added that he didn't know why they couldn't just adjust things to fit what's out there already. He also noted that they didn't seem to have any care for the neighbors.

An email from Mike Dorman, Chief Building Official was read into the record. The email noted that he did not support the variance request. He noted that the proposal was "poor planning" and expressed concern that buyers wouldn't fully understand the restrictions that would be on the property they were purchasing.

A letter from the ConCom was read for the record. The letter noted that the applicant had brought a plan to them for review and they do not support the plan that shows the shared driveways.

E. Conley offered that a PRD might provide a bigger building envelop for the lots.

There was discussion about a PRD, noting that it does not provide greater density, but does allow lots to be arranged in such a way as to maximize the density to what is allowed, while providing permanently preserved open space.

J. Blinn offered that he agreed with the comments from M. Dorman that the subject parcels would provide a limited backyard.

T. Lavelle explained that it looked small on paper and in relationship to other lots on the plan, but that there was adequate room for accessory structures, such as sheds and pools, on the subject lots.

There was a discussion about the scale of the plan and what the actual dimensions of the proposed lots would be.

There was discussion about the former daycare use of the property and how the access to it was through Haverhill, MA.

P. Bealo noted that gas line that runs through portions of the property. He noted that there is a 50' buffer on either side of the line.

T. Lavelle explained that the gas line and buffer are indicated on the plan. He also added that there is signage on site for the gas line.

P. Bealo explained the deliberations process, noting that once a public hearing was closed there could not be any additional input provided. He noted that while a decision may be reached at this meeting tonight, the applicant cannot move forward with any further action for thirty (30) days to allow for an appeal period. He noted that written notices of decision would be sent within five (5) business days and that this information was applicable to all applications before the Board at this meeting.

P. Bealo called once again for any questions, or comments, for or against the application. There were none and the public hearing was closed.

#### DELIBERATIONS:

***★ D. Lloyd moved, second by G. Ingham, to grant request from Brighton Drive, Inc. for a variance from Article V, §220-34.A(3) to allow the creation of three (3) new building lots with over 110,000SF of non-contiguous upland soils, for the property located at Tax Map 47, Lot 3.***

P. Bealo suggested that it was an interesting proposal and that something would be built on the property.

The Board reviewed the criteria for the granting of a variance with the following findings:

- The application is not Contrary to the Public Interest, it was noted that while not contrary to public interest, there was concern that it won't be obvious to buyers that the wetlands cannot be crossed to access the rear upland portion
- Trying to apply what is essentially Medium Density Residential (MDR) lot sizing to a property in the Low Density Residential (LDR) District is Contrary to the Spirit and Intent of the Ordinance
- There is no Substantial Justice in granting the variance as the Town would be getting smaller lots for the economic gain to the applicant. It was not shown why a PRD or combining lots was not a viable alternative to the plan presented
- It was not demonstrated that parcels with smaller building lots and larger areas of wetlands would not Diminish Property Values.
- The Hardship is financial to the applicant, not proven to be unique to the land. Options such as combining lots or developing the property as a PRD were discussed as potential options. However, evidence that they would not work was not provided.

P. Bealo offered that the applicant was looking for a variance that amount to nearly a half of what was required.

*There was no additional discussion on the motion. The vote was 0-4-0 and the variance is denied.*

It was noted that the application failed to meet the criteria for Spirit and Intent of the Ordinance, Substantial Justice, Diminishment of Property Values and Unnecessary Hardship as noted in the discussion.

**#19-12: A request from John Alden Palmer, Jr. Rev Trust of 2006, c/o Janice Palmer, for a variance from Article VI, §220-47.B to allow a Planned Residential Development to be accessed from a roadway right-of-way that is not currently accepted as a public street. The property is located at end of R-O-W off Elm St, Tax Map 41, Lot 83, in the MDR District. The applicant is the property owner of record.**

**#19-13: A request from John Alden Palmer, Jr. Rev Trust of 2006, c/o Janice Palmer, for a variance from Article VI, §220-47.B to allow a Planned Residential Development with less than the required 200' of frontage. The property is located at end of R-O-W off Elm St, Tax Map 41, Lot 83, in the MDR District. The applicant is the property owner of record.**

**#19-14: A request from John Alden Palmer, Jr. Rev Trust of 2006, c/o Janice Palmer, for a variance from Article VI, §220-48.D(2) to allow a Planned Residential Development with less than the required 250' well radius or no radius at all if municipal water is provided. The property is located at end of R-O-W off Elm St, Tax Map 41, Lot 83, In the MDR District. The applicant is the property owner of record.**

**★ E. Conley returned to the table at 7:25pm and is again a voting member of the Board. There are five (5) voting members.**

Charlie Zilch, SEC Associates, was present for the application.

It was noted that there was an agent letter in the file to allow SEC Associates to represent the applicant.

C. Zilch offered that much of his responses would be applicable for all three (3) variance requests and following information in support of the requests:

- The subject parcel is Tax Map 41, Lot 83; 20.02 AC in the MDR District
- The parcel has 51.74' of frontage on a right-of-way that is not yet constructed or designated as a public roadway. The right-of-way currently ends at the back of the Safety Complex
- There was a lot line adjustment (LLA) completed in 2013 that swapped ~3AC between the subject property and the Town to increase the size of the Cemetery
- In exchange Mr. Palmer was supposed to be granted a right-of-way to this property. It was never noted on the plan
- The plan was revised in 2018 to correct the issue. The 2018 also included another LLA that designated land on one side of the right-of-way to the Safety Complex and on the other side to the Cemetery
- Though the right-of-way is not yet constructed, the Town is obligated to do so
- Discussions with the Town Manager has confirmed that there are funds set aside to install the roadway

P. Bealo offered that it was the lack of action of the Town to date that causes the need for at least one of the variance requests, the requirement that the PRD have frontage on a town road.

C. Zilch continued with additional information:

- Considering the topography and the wetlands the best use for the property is a PRD arrangement
- The proposal showed four (4) buildings, with fifteen (15) two-bedroom units; three (3) buildings with four (4) units each and one (1) building with three (3) units clustered around cul-de-sacs
- The plan does not propose age-restricted housing
- There is proposed to be shared septic systems and a community well
- There will be potable water available in the future and can be run down the right-of-way

There as discussion about an on-site community well that was said would easily provide enough water for the fifteen (15) units. C. Zilch explained how the State calculates the usage how the what the Town requires for a PRD is far in exceedance of those

requirements. He noted there would not be the possibility of franchising this water system, so there was no need for the large well radius.

P. Bealo questioned if the well could be positioned so that the radius only intruded on the Cemetery.

C. Zilch responded that NHDES would not likely approve a well radius in a cemetery, but it would not cure the need for a variance. He added that he doesn't like to request a variance when there can be an option. He explained to the Board that a recent subdivision that had similar issues to this parcel (Carli's Way) they were able to accommodate the large well radius by a LLA with a willing abutter. That isn't possible with this property.

D. Lloyd questioned the location of the septic systems and asked if they could be moved to offer more room for the well radius.

C. Zilch showed the septic locations and noted that he did try to move some around, but there was no gain to the well radius. He added that the property was well drained with high quality soils.

C. Zilch noted that there would be approximately 1,100 feet of new roadway, which is below the 2,000-foot maximum.

The Board reviewed a Pictometry picture of the parcel.

P. Bealo clarified that there were three (3) different, but inter-related, variance requests

- To allow a PRD that is not on a public road
- To allow a PRD with less than 200 feet of frontage on a public road
- To allow a PRD with less than a 250-foot well radius

C. Zilch noted that much of the responses to the criteria for the granting of a variance will be repetitive for all three (3) of the requests and offered the following in support of the first two requests (frontage and public roadway):

- The proposed variance will not be contrary to the Public Interest because granting the variance will allow the owner full productive use of the property by providing an access that will be built to Town specifications and accepted as a public access. The roadway will allow for unrestricted access to Town emergency apparatus as well as all essential service vehicles. The roadway will be constructed with a detailed and comprehensive stormwater management system designed to negate environmental impacts. Granting the variances for the lack of frontage or lack of frontage on a public road would allow for plans to be put forth to address both limitations and allow of the ultimate construction of the public way as intended. All considered, there would be no negative effect to the general health, welfare and safety of the general public



- The Spirit and Intent of the Ordinance are Preserved because the intent of the ordinance is to ensure that these large tracts of land in this zone, when given consideration to the type of residential development that may be established are done in a manner that “open space, wetland areas, topographical extremes and other considerations” are preserved. The only practical residential development that can be applied to this property is a PRD. The greater intent of the ordinance is to qualify the land for the preservation of the natural features not to limit the development by the general requirements for eligibility. In this particular case, the spirit and intent of the ordinance can be met provided that the variance is granted
- There is Substantial Justice in granting the variance because this property is only limited by the current designation and state of the access to the site. Additional frontage on the public street or changing the status of the Safety Complex right-of-way to a public street at this time will not diminish or enhance the properties ability to fully support the intended development as zoned. There is substantial justice in granting the variance which allows the development to move forward so that full construction and acceptance of the roadway as intended can be realized
- The Values of Surrounding Property Values will not be Diminished because granting the variance would allow for plans to be submitted for consideration of a PRD as allowed and supported in this zone. The proposed roadway to service the development will be designed to Town specifications. Part of the approval process will require review by various State and Local agencies ensuring all considerations for safety, service, environmental and site impact will be addressed. When considering that this is intended to be a residential development within a residential district with all potential onsite and offsite impacts negates, it can be assured that there will be no diminution of surrounding property values
- Denial of the variance would result in Unnecessary Hardship if literal enforcement of the provisions of the ordinance were applied. Meaning, requiring 200’ of frontage where none exists and frontage on a public street, where it will be available upon completion, but does not currently exist seriously limits the use of the site. As dictated by the terms of the ordinance the only practical residential development that can be, or should be applied to this site is a PRD. Although the objectives and purpose of the ordinance can be demonstrated, the general requirements with respect to the frontage requirements cannot. As such, the hardship lies within the provisions of the ordinance and the timing and layout of the agreed upon access benefitting the property. In addition, it should be noted that this request is similar to the variance granted to the Carli’s Way PRD (Case #18-04 and #18-05) for David Hoyt

With reference to the third application (well radius) C. Zilch offered the following information:

- The proposed variance is not Contrary to the Public Interest because by granting the variance it will allow the applicant the full and productive use of the property fully supported by the properly sized well radius designed to meet that needs of the proposed development. Whether the project utilizes an onsite water supply or

- offsite water offered through a municipal water system, the development will be in full compliance with NHDES Water Supply standards. With that considered, these will be no negative effect to the general health, welfare and safety of the general public
- The Spirit and Intent of the Ordinance are Preserved because the intent of the ordinance is to ensure that proper area is afforded for the siting of a community well. In this particular case the water supply demands for a project of this size only require a well radius of half the requirement (or none at all with municipal water). In addition, with a 250' required well radius an unlimited amount of water may be drawn from the well should the well become a source to a large franchise. This development had no potential for expansion, meaning that the water supply for this site is limited to this development only. There will be no continuation of the roadway onto adjacent parcels in which there would be potential to "tie" to this water source. Whereas the intent of the ordinance is to ensure there is a proper area afforded to the siting of the well(s), this development does so without the oversized radius. In this particular case, the spirit and intent can be met provided that the variance is granted.
  - There is Substantial Justice in granting the variance because the property is 20AC in size, double that which is necessary to qualify for a PRD development. The area occupied by a 250' well radius is 4.5AC or about one-quarter of the total project site. When considering property line buffers, wetland setbacks and nitrate setbacks for septic systems the site lends itself to the layout proposed. If in addition, having to consider an oversized well radius along with the other siting requirements the site layout would then become restrictive and all building envelopes closer to all setbacks to maintain the same density. There is substantial justice in granting the variances which allow of the development to be designed as proposed easily meeting all setbacks and providing ample open space as required.
  - The Values of Surrounding Property Values will not be Diminished because granting the variances would allow for plan to be submitted for consideration of a PRD as allowed and supported in this zone. The proposed use of either onsite well(s) or offsite municipal water supply that would fully comply with NHDES water supply standards, allow for the proposed use. When considering that this is intended to be residential development within a residential district with all potential onsite and offsite impacts negated, it can be assured that there will be no diminution of surrounding property values.
  - Denial would result in unnecessary hardship if literal enforcement of the provisions of the ordinance were applied. Meaning, requiring an oversized well radius where it is not necessary to support the water supply needs, and for that radius to be supported on a site that provides for a better layout without the restrictive radius, the requirements should be considered unnecessary. The ordinance does not allow for the potential for lesser water demands as this proposal or the potential for offsite water. As such, the hardship lies within the provisions of the ordinance.

P. Bealo asked if there were any additional questions from the Board, there were none. He asked if there was anyone speaking in for of, or in opposition to, the applications.

Brad Shaw, 5 Cheney Lane asked if there was documentation of the land exchange between the Palmers and the Town. It was confirmed that there was in the form of a recorded plan and deeds. He asked about the public roadway.

C. Zilch explained that part of the land swap agreement with the Town was that a public roadway would be built to give access to this subject property, but it has not yet been built and accepted by the Town, which is why a variance is needed.

P. Bealo added that the land exchange provided additional land for the Town Cemetery.

B. Shaw inquired if the subject property had 200' of frontage prior to the land swap. It was noted that it did not.

B. Shaw questioned what the setback was from the proposed septic system to the wetlands.

C. Zilch responded that it was the 100' feet that is required.

B. Shaw asked if there were any proposals to connect this project to Cheney Lane.

C. Zilch replied absolutely not.

P. Bealo offered that they would have to purchase land on Cheney Lane in order to make that happen.

D. Lloyd added that they would also have to cross wetlands.

B. Shaw asked if a traditional subdivision had been considered.

C. Zilch explained that the twenty (20) acre parcel supported the fifteen-unit yield and the PRD layout preserves 50% as open space.

There as discussion regarding the location and types of wetlands that are on the property.

Tom Gearty, 3 Cheney Lane, noted that he had been in town his whole life and was concerned about the loss of the wooded buffer, noting that he could already now see the Public Safety Complex. He questioned if the addition of these units would impact his well.

C. Zilch responded that fifteen (15) units on a 20AC parcel was not a lot of water draw. He offered that State regulations base it on 300 gallons per day (gpd), but in reality, the draw is close to half of that number. He added that the property isn't over an aquifer, but is bedrock draw. He also noted that when municipal water is available they will no longer be the need for a well.

J. Blinn offered that municipal water should be available in a year or two.

G. Ingham noted that he assumed if they do use a community well it would be very deeply drilled and not affect surrounding wells.

C. Zilch offered that they meet and exceed all State and Local requirements.

P. Bealo asked if there were any additional questions from the audience or the Board. There were none and the public hearing was closed.

#### DELIBERATIONS:

**#19-12: A request from John Alden Palmer, Jr. Rev Trust of 2006, c/o Janice Palmer, for a variance from Article VI, §220-47.B to allow a Planned Residential Development to be accessed from a roadway right-of-way that is not currently accepted as a public street. The property is located at end of R-O-W off Elm St, Tax Map 41, Lot 83, in the MDR District. The applicant is the property owner of record.**

***★ D. Lloyd moved, second by E. Conley, to grant the variance from Article VI, §220-47B. as requested by Janice Palmer for Map 41, Lot 83 and allow a PRD subdivision to be accessed from a roadway that is not currently a public right-of-way.***

#### Discussion:

P. Bealo offered that the Town's actions set up the need for this variance request. He added that the Town has agreed to remedy the situation.

The Board reviewed the criteria for the granting of a variance with the following findings:

- Granting of the variance would not be contrary to the Public Interests because the Board of Selectmen have already signed off on the installation of the roadway, which is intended to be public
- The variance is not contrary to the Spirit and Intent of the Ordinance because there will be a public roadway there eventually and there is no intent to occupy until there is
- There is Substantial Justice in the granting of the variance because there is no loss at all to the general public to do so
- The roadway must be installed whether there is a project or not, so there is no Decrease in Surrounding Property Values from the granting of this variance
- There is an Unnecessary Hardship in not granting the variance, which would be the same as the Town reneging on their agreement made during the land swap.

***There was no additional discussion on the motion. The vote was 5-0-0 U/A.***

**#19-13: A request from John Alden Palmer, Jr. Rev Trust of 2006, c/o Janice Palmer, for a variance from Article VI, §220-47.B to allow a Planned Residential Development with less than the required 200' of frontage. The property is located at end of R-O-W off Elm St, Tax Map 41, Lot 83, in the MDR District. The applicant is the property owner of record.**

***★ E. Conley moved, second by D. Lloyd, to grant the variance from Article VI, §220-47B. as requested by Janice Palmer for Map 41, Lot 83 and allow a PRD subdivision with less than the required 200' of frontage on a public right-of-way.***

Discussion:

P. Bealo offered that this parcel was akin to a “pork chop” lot.

It was also noted that developing a property in a PRD fashion preserved open space which might not be the case with a standard subdivision plan.

The Board reviewed the criteria for the granting of a variance with the following findings:

- Granting of the variance would not be contrary to the Public Interests because there will still be reasonable space between the buildings and they will be away from Elm Street
- The variance is not contrary to the Spirit and Intent of the Ordinance the buildings are all blocked from view by the Safety Complex
- There is Substantial Justice in the granting of the variance because there is no loss at all to the general public to do so
- The lack of 200' of frontage on a road that runs behind the Public Safety Complex will not Diminish Surrounding Property Values
- There is an Unnecessary Hardship in not granting the variance because if the ordinance is strictly applied they would not be able to develop the property.

***There was no additional discussion on the motion. The vote was 5-0-0 U/A.***

**#19-14: A request from John Alden Palmer, Jr. Rev Trust of 2006, c/o Janice Palmer, for a variance from Article VI, §220-48.D(2) to allow a Planned Residential Development with less than the required 250' well radius or no radius at all if municipal water is provided. The property is located at end of R-O-W off Elm St, Tax Map 41, Lot 83, In the MDR District. The applicant is the property owner of record.**

***★ J. Blinn moved, second by G. Ingham, to grant the variance from Article VI, §220-48.D(2). as requested by Janice Palmer for Map 41, Lot 83 and allow a PRD subdivision to be supported with less than a 250' well radius, or no well radius at all if municipal water is provided.***

Discussion:

The Board reviewed the criteria for the granting of a variance with the following findings:

- Granting of the variance would not be contrary to the Public Interests because there is an opportunity for municipal water. It was also noted that the proposed plan does comply with State requirements and the Town's requirements are essentially four (4) times that of the State
- The variance is not contrary to the Spirit and Intent of the Ordinance because public water will make the need for a well a moot point and if a well is used they will comply with State standards
- There is Substantial Justice in the granting of the variance because to not do so would mean a loss of density to the applicant without a gain to the public
- The closest property to the well is the Cemetery, so there would not be any impact on surrounding property values
- There is an Unnecessary Hardship in not granting the variance because the large well radius would make much of the land unusable or cause the applicant to crowd more units together to maintain density

*There was no additional discussion on the motion. The vote was 5-0-0 U/A*

**#19-15: A request from SFC Engineering Partnership for a variance from Article V, Table 220-32.B.(C)(1)(a) to permit a boundary line adjustment which will result in a residential lot having 13,800SF of area, where 80,000 is the minimum required. The property is located at 15 Walton Rd, Tax Map 30, Lot 52, in the C1 District. Larry's Clam Bar, Inc. is the property owner of record.**

**#19-16: A request from SFC Engineering Partnership for a variance from Article V, Table 220-32.B(C)(1)(b) to permit a boundary line adjustment which will result in a residential lot having 92' of frontage, where 150' is the minimum required. The property is located at 15 Walton Rd, Tax Map 30, Lot 52, in the C1 District. Larry's Clam Bar, Inc. is the property owner of record.**

George Fredette, SFC Engineering Partnership, was present for the application.

It was noted that there is an agent letter in the file allow SFC Engineering Partnership to make the application for variances.

G. Fredette showed a map of the area locating certain features to identify the area in question.

G. Fredette offered a background for the application noting the following:

- The property currently known and used as 15 Walton Road was established by subdivision on 1947 by Russell Thomas

- In 1975 it was merged with land on Route 125 to create the current configuration
- The Route 125 side of the parcel was used by New Hampshire Department of Transportation (NHDOT) as a staging area during the re-construction of Route 125. That easement has since expired
- The Route 125 improvements relocated the driveway for the adjacent parcel to this subject parcel and terminated the driveway that was existing
- All properties are now owned by Larry's Clam Bar
- The purpose of the LLA would be to restore the property to what it was prior to the 1975 lot consolidation and give to Walton Road what is theirs and Route 125 what it theirs
- The resulting lot at 15 Walton Road would satisfy all NHDES requirements for septic loading for a two-bedroom home and there is no change in the septic location proposed
- There would be no change in the zoning of the property as all properties on the same side of Walton Road are currently zoned Commercial 1 (C1)
- The residential lot would be 13,800SF in size, the commercial lot would be 38,600SF

The Board reviewed a Pictometry picture of the site.

G. Fredette offered that there was an element of common sense in restoring the property to what it was pre-1975 and that while there would still be two (2) non-conforming properties, but the configuration would make more sense from a use standpoint.

It was noted that if the variance is approved the applicant will still have to go before the Planning Board to get approval of the LLA.

G. Fredette offered the following in support of the variance application for #19-15:

- The proposed variance would not be Contrary to the Public Interest because
  - This proposal will not change the physical character or appearance of the residential home and will not alter the essential character of the neighbor
  - The water well and sanitary sewage disposal systems will continue to properly service the dwelling
  - The resultant lot size of lot 52 will be legally buildable in accordance with the standards of NHDES Subsurface Systems Bureau
  - This variance will allow a reconfiguration of two lots so that the uses of the land area on Walton Road and the use of the land area on Plaistow Road will be consistent with the public perception of the areas
- The Spirit and Intent of the Ordinance will be preserved because
  - The resultant lot 52 (lot 52) and dwelling on Walton Road will be similar to the apparent and predominant uses along Walton Road
  - The resultant lot (lot 62) and commercial use on Plaistow Road will be similar to the apparent and predominant uses along Plaistow Road
  - The resultant lot (lot 62) on Plaistow Road will benefit from additional land area and will become more nearly conforming

- There is Substantial Justice in granting the variance because
  - The proposal will allow a reconfiguration of the properties so that the residential portion continues on Walton Road, and the portion on Plaistow Road is available for commercial use
  - Lot 52 will no longer be encumbered by a driveway servicing lot 62
  - Lot 62 will no longer be hindered by multiple uses
- The Values of Surrounding Properties will not be Diminished because
  - There is no change in the use in either neighborhood
- Literal enforcement of the provisions of the ordinance would result in Unnecessary Hardship because:

The special conditions of this property that distinguish it from other properties in the area are as follows:

- Lot 52 currently extends about 350' from Walton Road to Plaistow Road
- Lot 52 has frontage on both Walton Road and Plaistow Road
- An existing residential dwelling occupies the north end of lot 52
- The character of the north end of lot 52 is residential
- An existing commercial driveway occupies the south end of lot 52
- The character of the south end of lot 52 is commercial

Owing to the special conditions of the property, set forth above, the distinguish it from other properties in the area:

- No fair and substantial relationship exists between the general purposes of the ordinance and the specific application of that provision to the property because:
  - The character of each end of the parcel is different. The character of the residential neighborhood on Walton Road is incompatible with the uses on Plaistow Road, the character of the commercial neighborhood is incompatible with the uses on Walton Road.
  - Although the entire lot is within the Commercial 1 zoning district, the new lot reconfiguration allowed by the granting of the variance will provide land area for each of the uses to appropriately exist within two neighborhoods.
- The proposed use is a reasonable one because:
  - The Walton Road neighborhood will not be threatened by the intrusion of a commercial use
  - Lot 62 will become more nearly conforming
  - The driveway that services lot 62 will now be within the frontage of that lot

For #19-16:

- The proposed variance will not be Contrary to the Public Interest because
  - It will allow an existing residential home on Walton Road to continue



- The proposal will not change the physical character or appearance of the residential home and the proposal will not alter the essential character of the neighborhood
- The variance will allow for a reconfiguration of two lots so that the uses of the land area on Walton Road and the uses of the land area on Plaistow Road will be consistent with the public perception of the areas
- The frontage is similar to adjacent and nearby lots on Walton Road
- The Spirit and Intent of the Ordinance will be preserved because
  - The resultant lot (lot 52) and dwelling on Walton Road will be similar to the apparent and predominant uses along Walton Road
  - The lot was created with 92 feet of frontage in 1947, and has existed with 92 feet of frontage for 72 years
- There is Substantial Justice in granting the variance because
  - The proposal will allow a reconfiguration of the properties so that the residential portion continues on Walton Road, and the portion of Plaistow Road is available for commercial use
  - There is no available land to increase the frontage on this lot
- The Values of Surrounding Properties will not be diminished because
  - There is no change in the use in either neighborhood
- Literal enforcement of the provisions of the ordinance would result in Unnecessary Hardship because:

The special conditions of this property that distinguish it from other properties in the area are as follows:

- Lot 52 currently extends about 350' from Walton Road to Plaistow Road
- Lot 52 has frontage on both Walton Road and Plaistow Road
- An existing residential dwelling occupies the north end of lot 52
- The character of the north end of lot 52 is residential
- An existing commercial driveway occupies the south end of lot 52
- The character of the south end of lot 52 is commercial

Owing to the special conditions of the property, set forth above, the distinguish it from other properties in the area:

- No fair and substantial relationship exists between the general purposes of the ordinance and the specific application of that provision to the property because:
  - The character of each end of the parcel is different. The character of the residential neighborhood on Walton Road is incompatible with the uses on Plaistow Road, the character of the commercial neighborhood is incompatible with the uses on Walton Road.
  - Although the entire lot is within the Commercial 1 zoning district, the new lot reconfiguration allowed by the granting of the variance will provide land area for each of the uses to appropriately exist within two neighborhoods.
- The proposed use is a reasonable one because:

- The Walton Road neighborhood will not be threatened by the intrusion of a commercial use
- Lot 52 will enjoy the same frontage that it has for 72 years
- Lot 62 will become more nearly conforming
- The driveway that services lot 62 will now be within the frontage of that lot

P. Bealo asked if the Board had any additional questions, there were none. He asked if there was anyone speaking in favor of the application.

Laurie Guscora, 21 Cifre Lane raised her hand as being in favor of the application.

P. Bealo asked if there was anyone speaking in opposition.

Julie Healey, 13 Walton Road offered that her only concern was for the privacy surrounding her property. She added that she felt losing the tree line buffer would take away from the residential use of her property.

The Board noted on the Pictometry picture that the majority of the tree cover was located on the 13 Walton Road property.

G. Fredette offered that this proposed LLA does not intend any physical changes to either parcel and does protect the residential use of the 15 Walton Road property.

J. Healey expressed concerns over the potential commercial uses of the Route 125 parcel. It was noted that should there be a plan for the commercial use of the property she would be notified as an abutter and would be able to bring any concerns to the Planning Board based upon what is submitted to them.

P. Bealo asked once again if there was anyone speaking in favor of, or opposition to the application. There was no one and the public hearing was closed.

#### DELIBERATIONS:

**#19-15: A request from SFC Engineering Partnership for a variance from Article V, Table 220-32.B.(C)(1)(a) to permit a boundary line adjustment which will result in a residential lot having 13,800SF of area, where 80,000 is the minimum required. The property is located at 15 Walton Rd, Tax Map 30, Lot 52, in the C1 District. Larry's Clam Bar, Inc. is the property owner of record.**

**★ G. Ingham moved, second by J. Blinn, to grant the variance from Article V, §220-32B(C)(1)(a) as requested by SFC Engineering and permit a boundary line adjustment which will result in a residential lot having 13,800SF of area, where 80,000SF is the minimum required, for the property is located at 15 Walton Rd, Tax Map 30, Lot 52.**

#### Discussion:

The Board reviewed the criteria for the granting of a variance with the following findings:

- The variance is not contrary to the Public Interest because it creates a separation in the properties that is more in line with the perceived zoning of the property based on the current use
- The Spirit and Intent of the Ordinance are preserved because although the property at 15 Walton Road is commercially zoned is it being residentially used, and will continue to be residentially used, the same as many other properties on Walton Road
- There is Substantial Justice in the granting of the variance because there is no loss to the general public to do so
- The zoning of the parcel will not be changed so there should not be anything to Diminish the Value of the Surrounding Properties
- There are no physical changes that are proposed for the residentially-used portion of the parcel that would diminish surrounding property values
- The existing special conditions of the property would create an Unnecessary Hardship if the provisions of the ordinance were literally enforced

*There was no additional discussion on the motion. The vote as 5-0-0 U/A.*

**#19-16: A request from SFC Engineering Partnership for a variance from Article V, Table 220-32.B(C)(1)(b) to permit a boundary line adjustment which will result in a residential lot having 92' of frontage, where 150' is the minimum required. The property is located at 15 Walton Rd, Tax Map 30, Lot 52, in the C1 District. Larry's Clam Bar, Inc. is the property owner of record.**

**★ E. Conley moved, second by D. Lloyd, to grant the variance form Article V, §220-32B(C)(1)(b) as requested by SFC Engineering and permit a boundary line adjustment which will result in a residential lot having 92' of frontage, where 150' is the minimum required, for the property is located at 15 Walton Rd, Tax Map 30, Lot 52.**

Discussion:

- The variance is not contrary to the Public Interest because it is at 92' and will be staying at 92' and there is no land available to make it comply with 150'
- The Spirit and Intent of the Ordinance are preserved because there is no way to increase the size of the existing frontage or the property
- There is Substantial Justice in the granting of the variance because there is no loss to the general public to do so
- There are no physical changes proposed that would Diminish the Value of the Surrounding Properties
- There are no physical changes that are proposed from the residential use and to not allow the variance would be an Unnecessary Hardship towards correct a driveway circumstance at the other end of the existing lot

***There was no additional discussion on the motion. The vote as 5-0-0 U/A.***

J. Healey expressed concern that the Planning Board process was pre-determined and that her concerns would not be heard.

P. Bealo suggested that she participate in the process when she is notified that the application comes before the Planning Board.

There was no additional business before the Board and the meeting was adjourned at 9:40 p.m.

Respectfully Submitted:

Dee Voss  
Administrative Assistant