



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

**ZONING BOARD OF ADJUSTMENT
MEETING MINUTES
October 26, 2023**

The meeting was called to order at 6:35 pm

Roll Call: Peter Bealo, *Chair*
Jim Unger, *Vice Chair*
Jonathan Gifford
Michael Murray
Jim O'Brien, *excused*
Patrick Kiley, *Alternate Member*

Also Present: Dee Voss, *Zoning Official, Administrative Assistant*

★ *P. Kiley was appointed as a voting member for this meeting.*

P. Bealo explained the process the Board uses for hearing and deciding (deliberating) on each application. He noted that all motions are made in the affirmative “to grant” format, but that was not indicative as to how any member might vote on a particular application, including the maker of the motion, or the second. P. Bealo added that notices of decision will be sent within five (5) business days, but that no permits will be issued for thirty (30) days to allow for any appeals (requests for re-hearing) as per the NH RSAs

Minutes of September 28, 2023

P. Bealo asked J. Gifford if he had read the minutes from the last meeting, particularly noting the 14 Spinney Av matter, which was continued from the last meeting. Mr. Gifford confirmed that he had.

★ *M. Murray moved, second by J. Unger, to approve the minutes from the September 28, 2023, meeting. There was no discussion on the motion.*

Roll Call Vote: P. Bealo – yes; J. Unger – yes; M. Murray – yes; P. Kiley – yes; J. Gifford – yes.
The vote was 5-0-0 U/A.

PUBLIC HEARINGS:

Continued from 08/31/2023 and 9/28/2023

#23-12: A request from Barbara J. Bryer for a variance from Article III, §220-17.6 to allow the temporary use of a camper as living space, which is not permitted by zoning, for purpose

of healing a broken back peacefully. The property is located at 14 Spinney Av, Tax Map 38, Lot 15, in the MDR Zoning District. The applicant is the property owner of record.

Barbara Ryan, applicant's daughter; and Attorney for Ms. Bryer, Melissa Burleigh, Burleigh Law, Kingston, NH were present for the application.

D. Voss noted that there was a letter from Ms. Bryer authorizing Ms. Ryan to represent her. Ms. Ryan authorized Attorney Burleigh to speak at the meeting.

M. Burleigh submitted a document titled "*Plaintiff's Assented-To Proposed Order*" signed by Superior Court Judge Andrew R. Schulman which establishes a timeline for the property owner to build the Accessory Dwelling Unit (ADU) that is intended to negate the need for the use of the camper that is the subject of this application. She noted areas where the property owner had already complied with the order, such as the removal of some of the junk and a storage container. She also noted that a building permit application had been submitted for a new shed, adding that a tractor and lawnmower had yet to be moved into the shed. Attorney Burleigh explained that the new septic, necessary for the ADU, had been installed and the disturbed area hydroseeded and that all around the camper had been cleared. She noted that the order required that the building permit application for the ADU needed to be submitted by December 1, 2023, taking in to account the property owner's finance, and that there were consequences in the order for non-compliance. She added that they were before the Board to request the use of the camper until the ADU could be built.

P. Bealo asked how long the camper had been already occupied.

B. Ryan said that she did not know.

M. Burleigh noted that the complaint was verified on May 18, 2023.

P. Bealo asked if there were any inspections done.

B. Ryan replied that someone had called DES (Department of Environmental Services) and they had no issues. She added that Unitil had permitted and connected the electricity.

M. Burleigh offered that they were submitting the order to show that the intent is for the camper to not be permanent.

P. Bealo asked what their timeline was.

M. Burleigh explained:

- If the variance is denied, the camper will have to be removed within thirty (30) days
- If the variance is granted, a building permit for the ADU must be filed on or before December 1, 2023
- Construction of the ADU must commence within sixty (60) days of the permit and must be completed within one (1) year

J. Unger asked if the order called for the camper to be physically removed.

M. Burleigh replied it states unless there is a lawful reason that says it can stay, if not it has to be removed.

There was discussion regarding the timeline of the request for the temporary variance. It was noted that the Superior Court Order would give the one (1) year from the date of issuance of the building permit for completion. If the building permit application is made by December 1, 2023, and the Building Inspector has thirty (30) days to issue a residential permit, then it could be as much as January 1, 2024, date for the issuance of the permit. One (1) year from that date would put the deadline for completion out to a not-to-exceed date of January 1, 2025.

P. Kiley questioned if the timeline to completion was realistic.

B. Ryan responded that it was a step-by-step process, each step relying on the one before to meet the timeline. She added that she didn't want to start paying for the next steps without knowing that the step before it would be approved.

P. Kiley asked if they had spoken with a contractor yet and apprised them of the timeline.

B. Ryan answered that she had, which had given her an idea of the cost involved., but they hadn't yet decided on a contractor. She reiterated that they didn't want to invest money until they knew for sure they would have the ability to build.

There was discussion regarding the availability of contractors and how that could impact the timeline for the construction of the ADU. It was noted that no specific timelines had been provided to the applicant as yet.

P. Bealo noted the requirements for an ADU under the Town's Ordinance (1,000SF, no more than two (2) bedrooms) and asked if this one would be attached.

B. Ryan replied that it would be an attached.

B. Ryan offered the following responses to the criteria for the granting of a variance:

- The proposed variance will not be Contrary to the Public Interest because it is no way interferes with anyone else's property, it's well into the buffer zones.
- The Spirit and Intent of the Ordinance are preserved because it is neatly placed and groomed.
- There is Substantial Justice in granting the variance because daughter (of property owner) is facing a medical hardship and cannot do stairs. The camper is her escape. She lost her job over all the issues, has a broken back with a December 18, 2023, date for surgery, and has been burned out of her house.
- The Values of Surrounding Properties will not be Diminished because people can store campers on their property.
- Literal enforcement of the provisions of the ordinance would result in an Unnecessary Hardship:

- No fair and substantial relationship exists between the general purpose of ordinance provision and the specific application of that provision to the property because it is not the principal dwelling
- The proposed use is a reasonable one because it is a medical necessity and is only temporary

J. Unger noted that the Court Order required to make a building permit application by a date in December, and asked if there were any firm plans for the construction.

B. Ryan offered that they would have sixty (60) days to break ground after the building permit.

J. Unger asked if they had talked to anyone about what and where they were going to build.

B. Ryan replied that they did have leads and didn't want to just go with the first one.

J. Unger offered that he was in a related industry and there are significant timelines of as much as a year out.

B. Ryan answered that the contractors that she has been talking to are aware that there are time constraints and have said that they can work within them. She added that she knew people, who know people, who can juggle and speed things along. She said that nothing could move along before they had the plan. B. Ryan also noted that she wasn't sure if she still had to go to Planning (Board), but it was confirmed that she would not.

M. Burleigh noted that paragraph #9 of the Court Order was the enforcement clause of the agreement and the consequences of non-compliance, adding that there was a way for the Town to move the enforcement matter forward should there not be compliance.

J. Gifford noted that everything seemed to be laid out. He offered that if it was just a visual thing then people have their campers stored on their property anyway. He noted that now it was being offered as temporary housing, and questioned if the Building Inspector would be okay with the plumbing, electric and septic, would it be an issue.

P. Bealo asked if the Building Inspector had looked at the electric hook-up, or the water hook-up.

B. Ryan offered that they had done everything to comply with the agreement. She noted that to her understanding it was permitted.

J. Gifford asked if B. Ryan had the documents to provide, and she replied that she did not, as she didn't know they would need them.

J. Gifford questioned if there was documentation that Pete's (Sewer) has been pumping the tank every two (2) weeks.

B. Ryan confirmed that they had, and that Pete's was willing to write a letter.

P. Bealo asked if there was anyone speaking in favor of the application, or if any emails/letters had been received in favor. There were no new ones still the first hearing.

P. Bealo asked if there were any letters/email in opposition.

D. Voss read emails from:

- Rebecca Calloway, 8 Graystone Av, Plaistow, NH
- Pamela Boddy, Forrest St, Plaistow, NH
- Kristin Andrews, 6 Sunview Pk, Plaistow, NH
- Patrick & Amando Simpson, 10 Timberlane Rd, Plaistow, NH

All offered concern over the precedent this variance may set, its impact on abutters, the health and safety of the neighborhood and the Town in general.

After the emails were read, the chair opened the floor to additional comments.

Michelle Frongillo and David Tiberio, 17 Chandler Av, Plaistow, NH

M. Frongillo offered the following:

- Has been asking the Town to address this property since 2019
- Ongoing multiple years, with multiple violations
- Occupants have ignored the Town's requests and letter for compliance with the law resulting in the need for the Town Attorney's involvement
- Many neighbor complaints to Code Enforcement and Fire Department

M. Frongillo noted that it was her understanding that the Board was going to request the file for what has transpired over the last year, and that was the reason for the continuance.

P. Bealo responded that it was requested, but that he had decided for himself not to review it, as they were only looking at this variance, not what had happened in the past.

M. Frongillo offered that she was just trying to understand the reason for the continuance.

M. Murray added that he had reviewed the file.

M. Frongillo offered that she was mentioning it because it shows a pattern of past behavior that can be an indicator of future behavior. Ms. Frongillo continued:

- Asking permission after the fact seems out of the scope of a variance request
- They have been living in the camper since July of 2022, and proof has been provided, so it's been at least fifteen (15) months already and what they are asking for is beyond what the zoning law allows
- There is no public interest in allowing this camper to be used as a dwelling
- The camper is 100% altering the character of not only her home, but the neighborhood and the Town
- It's horrible to look at outside her window and when having guests in her backyard
- The health, safety, and welfare is compromised by the cords running off it to the main house

- The use the camper year round and have the motor going for what is assumed to be heat in the winter and air conditioning in the summer
- The camper has been winterized with wood planks around the bottom
- There is also a fence and a ramp, which she feels is indicative of it being a permanent dwelling and making it difficult to move in case of any emergency
- There is a fire pit inside the fence, within feet of the camper, which has been burning daily increasing the fire risk
- There is a record of sewer and gray water contamination and the Bryer's land is higher than Ms. Frongillo's property so everything runs downhill
- No permits have been provided as proof that the electricity, water, and cable are valid
- If they show the permits, that will show that the occupancy predates this meeting
- The standard for living in a camper is no more than ninety (90) days
- She had notified the environmental people because of concerns she had about hoses dripping on the ground. The property owners were notified of the pending visit and the hoses and cords were removed, only to return when the environmental people left
- She is not sure that inspections have been done
- The temporary use of a trailer is only allowed for housing after a fire, or damage to the permanent dwelling (14 Spinney Av) not for another property
- A trailer should have been allowed at the property where the fire was, not in this yard
- The general public will not gain from this variance, but to the contrary
- The value of surrounding properties will suffer, people might want to sell their homes, or someone might want to build in the neighborhood, but this is causing a depreciation and will continue to do so
- If Ms. Frongillo were to put her property on the market, she would either have to spend a lot of money to put up a fence, or she might have to drop the price because of what is visible from her backyard
- The property continues to be used in an unreasonable way, especially with the closeness of the neighborhood
- There are no special conditions of the property that should allow the variance
- The location of the camper is problematic, and people drive up and park next to it
- She has provided pictures of the conditions
- The property can and should be held in compliance with the ordinance because it is reasonable to do so
- The proposed use of the camper to recover from back surgery is unreasonable and invalid
- It was stated that she can't go up and down stairs, but has been in and out of the house and has also stated that she does sleep in the house
- The camper is parked closer to her house than to the house on the property, if care is an issue, then why is it not closer to the house
- It seems more like a place to stay than a place to heal
- If it was an accident that caused the back issue, then she's not sure why the job would have been lost, there should have been worker's compensation, or FMLA (Family Medical Leave Act) to subsidize finances, so money shouldn't be the issue
- They are asking for more than one person to live in the camper, which was not included in the variance paperwork, but was noted at the last meeting
- There are two (2) people and a dog living in the camper; one of the people has a full-time job so again, this shouldn't be a money issue
- There is no progress on the permits

- If this is granted for this instance, there will be others seeking the same consideration when they want to build on their homes
- The living in the camper for unfavorable conditions in the home is not a reasonable argument just because that situation is not ideal and does not give one permission to violate the law
- None of the conditions for granting a variance have been met
- For the past fifteen (15) months, the camper has been used as an accessory dwelling unit, bypassing all ordinance, permits, inspections fees and taxes and is a disservice to the Town, community and the neighborhood
- They oppose a non-family member, and a non-resident representing this property at the last meeting and now this one
- Ms. Ryan has stated that she is family, but she is not, and therefore the variance should be rejected
- None of the residents of the property have attended either of the meetings, not the ones living in the camper or living in Town, so it can't be that important
- She questioned why the husband wasn't at the meeting to defend himself
- It was requested that the Board consider this statement and the one from the last meeting and deny the variance
- It was asked that the Board act quickly before the colder months and eliminate the winterizing of the camper and take into consideration the feelings of others in Town

The Chair called for a break at 7:19pm for a parking matter. The meeting was called back to order at 7:25pm

M. Frongillo offered that the lawyer had stated that they have been cleaning up the property, but it has taken the involvement of the Town Lawyer to get it to this point, which hasn't been easy. She added that if for example a thirty (30) day variance is granted it will again turn into a year and will take more legal action to get them to comply.

D. Tiberio noted that he didn't think that the camper had been inspected in any way, because it was his understanding that the Building Inspector isn't allowed on the property without the owner's attorney being present, which hasn't happened.

M. Burleigh replied she didn't know if it had happening or not, but her office has been on the property.

M. Frongillo offered pictures to the Board of how the camper is impacting their property.

Nolan Pelletier, 24 North Av, Plaistow, NH, offered that he was in favor of the application, adding that it was funny that people were against people doing their own thing on their own property. He added that it was ridiculous that people were trying to block people from doing completely legal things on their property. It's their property, they should be able to do what they want. He noted there was a former member of the Planning Board that had cut into his property. People need to respect other people's property. If the applicant is here and offering compliance that should be welcomed with open arms. If someone wants to fight them it's going to be more of a battle than it's worth. The Town should hold them accountable and be done with it.

Dominic Leggeri, 12 Spinney Av, Plaistow, NH, noted the following:

- His property is located next door at 12 Spinney
- He shares a driveway with the subject property
- He wanted to bring up the point from the last meeting that his septic is located in front of this property and he has concerns with the amount of driving over it that has been occurring as well as the possibility of more heavy equipment with construction of the ADU
- It's not a paved area, it's all dirt, and is a recipe for disaster

D. Leggeri pointed out where his septic was located on the Pictometry image on the room screen.

- He noted the direction that vehicles were taking directly over his septic, and that if it were to break it would be a very costly repair.
- He offered that if it broke it could also slow down the development of their property while it was being fixed
- He added that he echoed the concerns of the others with regard to the conditions of the property and the use of the camper as a fire hazard and safety issue
- He noted the previously mentioned fire was not a little one, but a huge blaze twenty (20) feet into the air and that he was surprised that nothing else has happened

There was additional discussion with the Board regarding the location of the septic easement in proximity to the subject property and the camper. Mr. Leggeri explained how the easement for his septic came into existence prior to when Massasoit Blvd and Spinney Av came to be connected.

There was discussion about the vehicles traveling to the rear of a shed on the property, over his septic.

M. Frongillo offered that as they drive over his easement and they come around the camper they are facing towards her property at a higher elevation, and expressed concern that someone would go right off the wall and into her backyard. She suggested this was a danger to her children and her property.

P. Kiley suggested that the Board discuss any conditions they might want to consider as part of any motion.

P. Bealo expressed concern that the Building Inspector should be given unfettered access to the property to inspect the hookups and connections, the safety of the camper, the heating system, are there two (2) exits.

J. Unger agreed, the life safety issues.

J. Gifford added the Safety Officer should have unhindered access to the property, noting that he understood that there were the (court) documents.

M. Burleigh offer that access wasn't conditional on her being at that property if that was the concern, but she would be happy to also set up an appointment.

J. Gifford offered that what happens is that it gives people the opportunity to rectify a temporary situation, such as is there are gray water tank on the property. Is it an external tank or internal to the camper and what is the capacity.

B. Ryan replied that it was external, but that she didn't know the capacity.

J. Unger recalled that at the last meeting it was said to be the trailer tanks that were pumped. He added that most campers are made for a weekend, and a camper, not as large as the subject one, that he owned only held twenty (20) gallons.

B. Ryan offered that she had no issue with someone coming and checking what it is. She added that when the EPA (Environmental Protection Agency) came out and said there were no issues, they did not tell them they when they were coming.

J. Unger noted there were a lot of unknowns.

J. Gifford added that without Rick (Foye) and Patrick (Kiley) having unhindered access, the unknowns cannot be answered, and Ms. Ryan does not have the information. He suggested there needed to be some sourcing before any decision could be made. He also expressed concern over the fire pit being only ten (10) feet from the camper, when it should be twenty-five (25).

P. Kiley noted as a point of order that he is the Health Officer for the Town. He added that he had not been to the property in that capacity, and he was not acting in the capacity at this meeting.

P. Bealo asked if P. Kiley had an opinion at this time.

P. Kiley noted that he had an opinion.

M. Burleigh offered that he was wearing his proper hat at the moment.

P. Kiley suggested that the Board go through the list of conditions that were proposed as part of a draft motion. He explained how the Board considers conditions to a motion.

P. Bealo noted the conditions were based on the last meeting.

P. Kiley read the draft conditions:

- *The variance is temporarily granted due to the recognized disability of a broken back, is for their sole use, and shall expire no later than April 1, 2024.*
- *The camper will maintain 15' setbacks from the side/rear property lines, and 35' from the front property line as required per Article V, Establishment of Districts and District Requirements, Table 220-32I, for Medium Density Residential zoning.*
- *The Building Inspector shall verify that any electrical or water connections are safe and compliant with applicable codes.*
- *The Health Officer shall verify that adequate sanitary waste facilities are provided.*

- *The wastewater tanks, both black and grey water tanks, shall be pumped every two weeks by a licensed septic hauler and receipts shall be provided to the Plaistow Health Department on a Monthly basis on the last Thursday of each month.*
- *The Building Safety Department shall issue a temporary Certificate of Occupancy that shall expire April 1, 2024, at 11:59 PM. This Certificate of Occupancy shall be issued only if the above conditions are met, and shall be signed by the Building Inspector, Health Officer, and Fire Department.*
- *Violations of any applicable building or health codes, regulations, or laws shall result in immediate invalidation of the variance and revocation of the certificate of occupancy.*
- *Any violation of the conditions provided herein shall result in immediate invalidation of the variance.*

B. Ryan offered a response that her husband will need to be taking care of her and she will not be able to be left alone with a broken back. The mom (property owner) is 83 years old.

P. Bealo interjected that he didn't understand how that relates to the proposed conditions.

B. Ryan explained that the condition was for one (1) person and she was trying to explain why the husband was needed.

P. Kiley noted that the initial draft is written as the "sole" use, meaning singular.

J. Unger recalled that they were told this was just basically to get out of the house for a while, not to live there.

B. Ryan offered that she (the daughter) is inside and outside and at times she does stay out in the camper, but not alone.

M. Frongillo asked why the camper has to be lived in on the property, why can't they live in the camper where campers are allowed. If it is that her husband is going to take care of her, why does it have to be on the property.

P. Bealo explained that was why they were asking for the variance, because it is not allowed and they shouldn't be doing it.

M. Frongillo noted that the variance was being asked after the fact. She questioned if the homeowners weren't helping her heal and taking care of her, then why is it on the property. Why couldn't it be at a campground or where campers are allowed.

B. Ryan responded that other family members were assisting with care as well, adding the family helps each other. She added that she disagreed with the comment that money wasn't an issue, they were trying to put the money towards the ADU. She added that she had no problem with anyone coming to inspect, they have permits for everything. But she noted that there is a situation with the Code Enforcement Officer, though this meeting was not the time or place to get into it, and that's why it was stated that he couldn't be on the premises without someone being there.

M. Frongillo offered that money is going to be a factor no matter where, but money should not be the factor, the zoning ordinance should be.

P. Kiley asked if there were any questions about any of the other conditions.

B. Ryan stated that she did not, but the only other thing she wanted to note was to have some compassion, adding there was so much more to this story that not everyone is privy to, and that's why she is trying to focus on the camper and letting them live there. If that's a possibility that the Board would grant that they would follow everything that they needed to follow.

J. Unger offered that he thought the focus was on the camper, but that they also needed to consider the abutters, because that is part of the whole process.

B. Ryan agreed but noted that she could go tit-for-tat and also show photos.

J. Gifford offered that was not the purpose of the meeting, they were looking at finding a way to make things compliant. He asked if the variance were granted would it be possible to move the camper closer to the house.

B. Ryan replied sure.

J. Gifford asked how close the camper could be to the house. He also noted that they were facilitating a dog pen.

B. Ryan offered that everyone has dog pens.

J. Gifford responded they didn't on temporary buildings that's not up to par, so that is a concern. He added that he had concern about the fire pit as well.

B. Ryan noted that they did have a permit and that they (Fire Department) had come out and seen the location.

J. Gifford explained that the he didn't have any of this information, and wasn't at the last meeting so he was just looking for clarification so that he could make an judgment based on information that he needs to have.

B. Ryan offered that they could move the camper, it would just take some effort because it's all still dug up (from the septic installation) and they were waiting to put in the final grade. She suggested that it could be moved sideways. She noted that the properties do abut the entire length, but that it could be turned, it's not permanent.

J. Gifford noted that he was trying to see if there was a way to over the abutter's septic and keep the "lights and frights" out of there.

M. Frongillo stated that she would like to not look out her kitchen window right into the butt end of the camper.

J. Gifford explained that he was trying to work with the abutters and with the applicant and understood that there is a housing shortage and the costs of rents are crazy right now and that this is a temporary structure until you got the other one up. He added that whether this happened a year ago, he was looking at it from today forward.

B. Ryan offered that when construction starts there will be traffic over the easement.

There was discussion over measures, like steel planking, that a construction company could do to avoid damaging the septic. It was noted that should they damage it, they could be responsible for replacing/repairing it.

M. Frongillo asked for one more question, she noted the date discussed was April 1, and questions if the camper would be winterized again and if that needed to be inspected, as there was just wood previously.

P, Kiley offered that the dates were based on discussion at the last meeting and were just a place holder. He added that the Board would have to discuss the date.

M. Frongillo asked what happened if the date comes and there's no ADU.

J. Gifford noted there was a document signed with the Town Attorney and the dates will need to match up. He reiterated that this was only a draft to put it in front of the Board and they will adjust as they see necessary.

There was discussion regarding the date, to make everything match up with the Court Order would extend about more than a year, which one of the abutters noted would be more than two-and-a-half years since the start. It was reiterated that Board was moving forward from this date. It was suggested that the Board decide on an expiration date to include in the draft motion prior to going into deliberations so that it could be included in the motion instead of making an amendment. There was discussion of the timeline that was part of the Court Order, and the process to obtain a building permit, and working from that information the proposed expiration date would be January 1, 2025.

There was also a discussion about the number of vehicles on the property. It was noted to be three (3), all of which were legally registered. It was noted there are three (3) motorcycles that would be leaving the property soon. There was discussion about trying to park them as close to the primary dwelling as possible, and as much on pavement as possible.

N. Pelletier asked if the vehicles were registered. It was confirmed that they were, and he added they should park them wherever they want then.

There was additional discussion on the issue of the two (2) person occupancy. It was decided to note the two persons by name, Teri and Mort Robbie, by name in the draft motion.

M. Frongillo reiterated her concerns for privacy and what she saw as the depreciating value of her property with the occupancy of the camper.

It was requested that driving over the septic be avoided as much as possible and that the vehicles all be parked closer to the house. There was discussion about workarounds for access to avoid the septic area and to make sure that any future contractor is aware of its location and takes proper precautions.

There was continued discussion regarding what would happen with non-compliance. It was again noted that the Board was hearing the camper matter, and the enforcement was not their jurisdiction, but there were provisions in the Court Order for enforcement. It was also noted that any non-compliance with any variance that might be granted, would void the variance and result in a code enforcement action.

N. Pelletier questioned the building permit with the six (6) month expiration date, and the ability to extend an additional six (6) months and asked if that was any different than what any resident would be entitled to. It was confirmed that it was not.

There was discussion regarding the inspection process and whether it would be announced or unannounced. It was noted that there has been conflict between the Ms. Ryan and the Building Inspector. It was noted that he could go to the property unannounced but would still require the property owner's permission to enter the property. It was noted that building, fire, and health would all have to sign off on the Certificate of Occupancy (CO), which would routinely be done by an appointment. Any further needs for inspection would be derived from potential complaints, or property owner's request.

D. Tiberio asked what the timeline for the inspections would be, are they going to be in a week, or extended out thirty (30), sixty (60) days because in another 25-30 days it could be snowing and that would be an issue for the inspection. It was noted that it would be the property owner's responsibility to make the area accessible for the inspection, or they would not get their CO. It was noted that the timeline would be sooner, rather than later, as the applicant needs to have a CO to legally be there.

There was additional question about the timeline for submitting a building permit application. It was suggested by abutters that there wasn't enough time to have a plan drawn up and submitted before December 1. It was noted that would be the applications issue to resolve in order to be in compliance with the Court Order as well as any variance that may be granted. The timeline and process for building permits was reiterated. Mr. Tiberio reiterated his question regarding the timeline for inspections. It was noted that the Board could not speak for the Building Inspector. It was reiterated that it would be the property owner's responsibility to make the property accessible for inspection, either by granting permission, or making sure there is physical access, or they would not receive their CO.

There was discussion about moving the camper, which was not included in the motion over concern that moving it may interfere with the construction of the ADU.

The motion was amended with the new temporary expiration date of January 1, 2025, in both places in the draft and to add the names of the occupant. D. Voss read the amended draft and J. Gifford stated that would be his motion.

P. Bealo asked if there was any additional comment, there was none, and the public hearing was closed.

DELIBERATIONS:

★ J. Gifford moved, second by J. Unger, to grant the request from Barbara J. Bryer for a variance from Article V (five), §220-17.6 and to permit a camper to be used as temporary living space at 14 Spinney Av, Tax Map 38, Lot 15 with the following condition as discussed in the meeting:

- ***The variance is temporarily granted due to the recognized disability of a broken back, is for the sole use of Teri and Mort Robbie, and shall expire no later than January 1, 2025.***
- ***The camper will maintain 15' setbacks from the side/rear property lines, and 35' from the front property line as required per Article V, Establishment of Districts and District Requirements, Table 220-32I, for Medium Density Residential zoning.***
- ***The Building Inspector shall verify that any electrical or water connections are safe and compliant with applicable codes.***
- ***The Health Officer shall verify that adequate sanitary waste facilities are provided.***
- ***The wastewater tanks, both black and grey water tanks, shall be pumped at least every two weeks by a licensed septic hauler and receipts shall be provided to the Plaistow Health Department on a Monthly basis on the last Thursday of each month.***
- ***The Building Safety Department shall issue a temporary Certificate of Occupancy that shall expire January 1, 2025, at 11:59 PM. This Certificate of Occupancy shall be issued only if the above conditions are met, and shall be signed by the Building Inspector, Health Officer, and Fire Department.***
- ***Violations of any applicable building or health codes, regulations, or laws shall result in immediate invalidation of the variance and revocation of the certificate of occupancy.***
- ***Any violation of the conditions provided herein shall result in immediate invalidation of the variance.***
- ***All date benchmarks of the "Plaintiff's Assented-to Proposed Order" Rockingham Superior Court Matter 218-2023-CV-00642 shall be incorporated the variance and if not met will invalidate the variance.***
- ***Inspections for a temporary certificate of occupancy must be done by November 28, 2023.***

Discussion:

The Board reviewed the conditions for the granting of the variance noting the following:

- The proposed variance would not be Contrary to the Public Interest:

P. Kiley offered that this was an interesting trial of the section of the Zoning Ordinance that was new this year and there was a lot of public input from abutters and non-abutters. He expressed concern over setting a precedent that could result in numerous similar requests.

M. Murray added that this was more along the lines of a special situation with someone needing an operation and the disability that comes along with that. He offered that hopefully there wouldn't be too many residents in those circumstance that would be coming to the Board for variances.

J. Unger read from the applicable statute (NHRSA 676:4) regarding the Board's authority to grant a variance for a physical disability, as opposed to someone who would be seeking a variance to live in a camper for financial reasons. They would not qualify for a variance.

P. Bealo asked if this was a recognized disability.

P. Kiley offered that was his question as well and how to interpret that. He questioned if a significant personal injury could be a recognized disability.

J. Gifford noted that they weren't not residents at the time of the injury, and it was not a structure on the property that burned, they were brought in after events happened elsewhere, which compounded things. He added that if something happened to the dwelling and they had to live outside of the dwelling for a period of time that would be a different circumstance. Any variance considered would be to rectify a situation that happened here, they were brought in by family.

P. Bealo read from the statute noting "any variance granted under this paragraph shall be in harmony with the general purpose and intent of the zoning ordinance" adding that it wasn't clear to him that it was the case here.

P. Kiley offered they way he read and interpreted the ordinance was for example someone needs to put a ramp on the front of their house for access, and they have a permanent recognized disability, but they don't meet a setback or something, and would need the relief because they have the disability. His concern was that they had not been provided with any documentation of the need, without discrediting what was said. He suggested that the Board needed to be careful around the topic of what is a recognized disability as it relates here.

- The Spirit and Intent of the Ordinance are preserved

J. Unger offered that ordinance does not want trailers lived in, it becomes an issue to neighbors and others but there might be special cases because of need. But he also believed that they were living in it before the need arose.

P. Bealo added It's been reported to be an extended amount of time and now the Board was being asked for over another year. So, he was having difficulties with the spirit and intent being preserved as it's been such a long time period.

M. Murray noted that a year was a reasonable recovery time in this situation and reminded that it would be going away within 370 days.

P. Kiley offered, the Court Order notwithstanding, the statute related to this states the variance only lasts as long as the disability, and the surgical recovery time is likely be far less than that year proposed. He added based upon how the rules are enforced, he was unsure if the Board could even grant for as far out as a year, just until the recovery period was over.

- There is Substantial Justice in Granting the variance

P. Bealo noted that there multiple concerns from abutters and others that to them there is a substantial gain to them in not granting this.

J. Unger offered that there are many cases where we get no emails at all and on this matter, there were 4-5 who said they didn't want people living in trailers

P. Kiley added that the residents made it clear when they voted that changes to the zoning.

- The Values of Surround Properties will not be Diminished because

P. Bealo offered in the short run they will be, but in the long run once the ADU is constructed it may increase values.

J. Unger added that the neighbors believe there is an impact to their property values.

J. Gifford offered that what is being said is that there will be a larger building, with grading and landscaping.

M. Murray noted that there is no way to know how it will be constructed, what materials, colors, etc.

P. Kiley added that he didn't think what might be built should be part of the consideration as the property owner could get a building permit for an ADU without coming to the Board that would not have any restrictions on materials as long as it complies with the applicable codes.

- Literal enforcement of the provisions of the ordinance would result in an Unnecessary Hardship:

P. Bealo reminded that hardship related to the land, not to the financial.

P. Kiley noted the language in the statute that a variance can be granted without a finding of hardship because of the physical disability.

J. Gifford offered that none of the criteria were clear-cut in their answers.

P. Kiley added that this was a special circumstance from the normal applications the Board reviews.

P. Bealo offered that all criteria would be weighed in the decision.

J. Unger offered that it came before the Board because it became illegal.

D. Voss noted that it's never been legal to live in a camper, the ordinance clarified what would be allowed for long-term visitors who stay in a camper.

P. Bealo asked for the roll to be called.

Roll call vote: J. Unger – no; M. Murray – yes; J. Gifford – no; P. Kiley – no; P. Bealo – no. The vote was 1-4-0 and the motion did not pass.

Findings of Fact:

- Granting the variance would be contrary to the Public Interest because the camper is not a dwelling intended to be used for long-term temporary housing. It was also noted in the Board's discussion that it wasn't clear if the need was more of a financial situation versus a disability situation. It was unclear if the stated disability, while serious to the person, was what would be considered as a recognized disability under the ADA (Americans with Disabilities Act). It was noted that the temporary variance relief for a recognized disability was more intended for someone in need of a structure, such as a ramp, to be able to access their home but cannot meet a dimensional setback.
- Granting the variance would not be in keeping with the spirit and intent of the ordinance because it sets a precedent with the long duration of the use of the camper. It was reported that the camper was in use as much as a year prior to this application and the applicant was looking for another year's use. It was also noted in the Board's discussion that the occupant of the camper was not living in the dwelling on this property, nor even in Plaistow, at the time of the injury or when their home burned. The provisions in the ordinance for a temporary trailer in times of a structure fire were to allow the residents to remain on their property while re-building, not to house others.
- Granting the variance would be a loss to the general public in the precedent that it sets. It was also noted in the Board's discussion that the abutters stated the impacts to their properties and the peaceful enjoyment thereof. It was also noted in the Board's discussion that the impact to the neighbor's septic system with the vehicle and equipment traffic over it was of a concern as well.
- By allowing the use of a recreational camper for temporary living there may be an impact on the surrounding property values owing to the amount of time the condition has been going on. It was also noted in the Board's discussion that the eventual building of the proposed Accessory Dwelling Unit (ADU) could improve the property, which in turn could also improve the values of the neighborhood.
- There is a financial hardship for the applicant in not granting the variance, but there are no special conditions in the land itself. It was also noted in the Board's discussion that it was unclear if the reason stated for the variance need, recovering from back surgery, met the definition of a recognized disability that is referred to in the NH RSAs (Revised Statutes Annotated) regarding temporary variance requests.

#23-13: A request from Joseph Greenwood for a variance from Article V, Table 220-32F.C(1)(b) to permit the construction of a single-family home on a lot of record that does not have the required frontage on a Class 5 Road. The lot is reported to have 800'+ of frontage on Carlton Path, which is not a Class 5 road. The property is located at 2 Carlton Path (aka 14 Lynwood), Tax Map 18, Lot 8 in the LDR Zoning District. John E. Landry is the property owner of record.

Kevin Hatch, LLS, Cornerstone Survey, Chester, NH was present for the application.

It was noted for the record that there were letter from the property owner and the applicant to authorize Mr. Hatch's representation.

K. Hatch offered the following information in support of the application:

- The parcel is 2 Carlton Path, Tax Map 18, Lot 8
- The owner is John Landry and the applicant is Joseph Greenwood, both in attendance at the meeting
- The request is for a variance from Article V, Table 220-32F.C(1)(b) to allow building on a four (4) acre lot with frontage on Carlton Path, which is not a town maintained road
- The minimum lot sizing is about two-and-a-half acres with 200' frontage on a Class 5 road
- Carlton Path is a 20'-wide gravel road that extends off the end of Lynwood St and goes up to the Mosher property at 3 Carlton Path
- The path continues beyond Mosher's house as basically a forestry trail into the Town Forest that abut the subject property and the Mosher property

K. Hatch provided a plan with the proposed location of a dwelling, noting they had done some survey and soils work to see where it would be appropriate to construct the house.

- The subject property is approximately 900' from the end of the paved, maintained road
- Carlton Path the currently maintained by the Moshers, who were granted the same variance and signed a hold harmless agreement with the Selectmen, just as this applicant would if the variance is granted
- The RSAs state that you cannot build on an unmaintained road unless you sign an agreement with the Selectmen accepting responsibility for the maintenance of the road
- The Town is not liable for providing services to the property and the applicant is aware of that
- There is a small wetland pocket at the entrance to the parcel, which is why the driveway is located a little farther up Carlton Path, as they must maintain a twenty-five (25) foot no cut buffer around the wetland.
- There is history in the files regarding Carlton Path, the abutters and access to the Town Forest
- The road is a good solid road
- It will be up to the applicant to work out some kind of maintenance agreement with the Moshers as both would be using Carlton Path, but that is not part of the ZBA's process

P. Bealo questioned a woods road that was showing on an aerial plan that was provided.

K. Hatch replied he wasn't sure as it looped behind the Mosher property and showed up on some older survey maps and was once known as Brookside Road.

There was some discussion of some of the maps and pictures that were included in the application package.

- The lot was created long before Zoning and was once part of the same parcel and the Moshers and the Town Forest
- There was also a sample of a Waiver of Municipal Liability in the packet. It was noted that the RSA has been re-written so the sample would need to be updated to comply with the RSA and be reviewed by legal counsel

- An old survey map was provided

P. Kiley asked if the road was adequate for emergency services.

K. Hatch replied that it was a good, wide stable road. He added that he believed that Mr. Mosher built it and did a good job.

There was discussion regarding the status of the road as a Class 6 road and what access that provides. It was offered that the Town owns property beyond the Mosher's and has the rights to use the road. It was noted that there was some recent logging in the Town Forest that access through this road. It can be gated, but it cannot be locked. The old roads can be messy when it comes to access and ownership.

K. Hatch noted that because the terms can get mixed, scrambled, and misunderstood, the State did re-write the RSA to say not only Class 6 roads, but private roads are included because sometimes is very difficult to prove that something is a Class 6 road and there are no paper trails. So, the definition has been broadened so that it is all the same under the RSA.

Kevin Hatch offered the following responses to the variance criteria:

- The proposed variance would not be Contrary to the Public Interest because it will allow a single-family home on a 4-acre lot without any additional infrastructure for the Town to maintain.
- The Spirit and Intent of the Ordinance are preserved because the request meets the intent of the ordinance which is to promote a rural character by spacing homes with 200' of frontage
- There is Substantial Justice in Granting the variance because granting this variance will allow a reasonable use similar to surrounding properties without adverse impact on the public. The same variance was granted for the property directly across the road from this lot.
- The Values of Surround Properties will not be Diminished because a new home in this location will have no negative effects on property values. New construction of similar use generally improves property values.
- Literal enforcement of the provisions of the ordinance would result in an Unnecessary Hardship:
 - o No fair and substantial relationship exists between the general purpose of the ordinance provision and the specific application of that provision to the property because: The purpose the frontage requirement is to promote a rural character and this lot has four (4) times the required frontage, it's just not maintained by the Town.
 - o The proposed use is a reasonable one because: The frontage road will be privately maintained. It will allow the landowner the use of his land just as the surrounding lots have been allowed.

P. Bealo questioned a couple of smaller parcels that are across the road from this parcel and adjacent to the Mosher parcel. Does that imply that someone could come in the future, particularly for the larger lot (18-7) for the same relief.

K. Hatch noted they would be looking for area, frontage dimension, and the frontage not on a Class 5 road, and probably setback relief. He compared it to the size of the Mosher property and noted that it was unlikely that someone could get the property to meet setbacks and get a septic system in order to build on it.

It was noted that the waiver would need to be prepared by the applicant's attorney and then Town Counsel would review it to make sure it's up to the most recent RSA requirements.

P. Bealo, noted that there wouldn't be any Town services to the property and questioned where the trash would go.

K. Hatch offered that they would have to drive it to the dump.

It was noted that the Town does not have a dump, so the property owner would have to find another way to dispose of his trash. It was noted that he owned another parcel on Lynwood, which may be a solution for him.

P. Bealo asked if the Board had any questions.

J. Gifford offered that it was the perfect opportunity for someone to get a piece of land out in the middle of nowhere, adding that it was beautiful land.

P. Bealo asked if there were any letters or emails received for this application. There were none.

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.

James Mosher, 3 Carlton Path, Plaistow, NH offered the following:

- His property was located at Map 18, Lot 5
- The proposed driveway goes across his property
- He does have a Municipal Waiver with the Town
- It is not a Class 5 road, it is a private road

P. Bealo offered it was a Class 6 road.

J. Mosher disagreed, reiterating that it was a private road.

P. Bealo asked if Mr. Mosher had any proof .

J. Mosher responded that if it were a Class 6 road that the Town would maintain it.

P. Bealo noted they would not, the Town does not maintain a Class 6 Rd

K. Hatch noted that Mr. Mosher does own the dirt under the road (he pointed out the land on the map). He added that it was clarified with the Court that there was an easement right to cross over that area for access to the Town Forest. He explained using the example that there was no deed to Main St, so underneath it was technically owned by the abutters to the center, but they don't own the rights to the surface, just the dirt underneath.

J. Mosher offered that the land is totally on his deed and there are no easements on his deed. He added the only thing is that the Town can go across to do forest maintenance and emergency services only.

P. Bealo asked if there was anything in writing.

J. Mosher said that the could get anything the Board wanted, and that he'd been through a lot with the property. He added that he went to Court with the Town and the Judge gave the Town access for logging so the Town wouldn't lose a grant with the State.

P. Bealo offered that he wished Mr. Mosher had brought the documentation.

J. Mosher replied that the didn't know there was going to be an inquisition.

P. Bealo asked if Mr. Mosher was notified of the meeting.

J. Mosher replied that he was, but he didn't know that he should have brought a lawyer with him.

J. Unger noted that the Waiver that Mr. Mosher signed references that his property abuts Carlton Path.

J. Mosher responded that Carlton Path was his.

J. Unger reiterated that the property had to have frontage on Carlton Path just to exist, according to the paperwork signed in 2006.

P. Bealo read from the Waiver of Municipal Liability signed by Mr. Mosher that states: "*Mosher assumes responsibility for maintenance, replacement and repair of Carlton Path and agrees at their expense, or at the expense of themselves or other owners on the property, similarly located on Carlton Path to clear and maintain said Carlton Path to a width of not less than twenty (20) feet.*" He added that the agreement seems to imply that other people own property located on Carlton Path.

J. Mosher offered that he was trying to say drive over his property on Carlton Path.

J. Unger read another section of the Waiver "*whereas the relevant portion of said Carlton Path upon which Mosher's real property fronts is a Class 6 highway.*"

There was continued discussion regarding the Mosher property and who has rights to Carlton Path. It was noted that the Waiver of Municipal Liability that was signed by the Mosher's calls Carlton Path a Class 6 road and notes their property to front on it. It was noted that there was

also a portion of Carlton Path that crosses over the Twin Ridge Condo property and it was still an easement with usage rights, it's all based on how the land was subdivided years ago.

K. Hatch noted that the 1981 survey shows Carlton Path as a physical road. He added that the survey of the subject property shows the location of Carlton Path, and if the chain of title is followed back it shows the property to be all one big piece. The survey of Mr. Mosher's property also shows Carlton Path and the lots adjacent to it. K. Hatch added he (Mosher) does own the dirt under the road, which is common in New England, that most roads don't have deeds to them, there was no documentation from when the settlers created most of these roads.

J. Unger noted that the deed for the subject lot is very old as it refers to the property n rods, links, and chains, having frontage on the path.

K. Hatch noted that this is step one of the process, he will still need to work out the details with the Selectmen, their attorney and the applicant's attorney for the language that will describe what he is legally allowed to do. He added that there would likely be a title search done by any bank that may be involved to make sure their money is secure. So, there are several layers of inspection along the way.

Kimberly Raymond, non-resident, but owns property on Lynwood St.

She questioned why the property was also known as 14 Lynwood St (Staff Note: The application was for 2 Carlton Path, the Assessor's Tax Card showed the property as 14 Lynwood, so it was advertised as both so there was no mistaking the location.). She recalled some of the history of the neighborhood and offered that she had consultants working on some property issues she was having. She acknowledged the good job Mr. Mosher was doing with the maintenance of the road and noted that permission was necessary to use the road.

K. Raymond pointed out where her property was located on the map. Her questions and concerns were related to the labeling of the lots and how the parcel were addressed. She noted concerns with the Assessing database and it was suggested that she address her concerns with the Assessing Department at Town Hall. K. Raymond did offer that she felt that granting the variance would increase traffic on Lynwood St, emergency vehicle access and snowplowing. She also expressed concern that someone else was going to be able to access the Mosher property and how that would impact the value of their home.

K. Raymond expressed additional concerns related to Assessing matters and was again encouraged to bring them to the proper department. She also noted there are wetlands and vernal pools in the area.

P. Bealo noted that it was stated they would be working around the wetlands and the buffers. He added that the properties are on a Class 6 road, which is a public road that is not maintained by the Town. The proposed single dwelling is likely to only have single digit numbers of cars, not to impact traffic Lynwood.

K. Raymond offered that she understood that to be the Mosher's driveway.

P. Bealo explained that similar to this application, he was allowed to put up a single family dwelling because he agreed to maintain the access and now there is another entity that wants to do the same. In order to do so, they need to obtain a variance and then work with the Town on a Waiver, just as Mr. Mosher had done.

There was additional discussion on the process. It was noted that any property owner on Carlton Path who wanted to build a house would follow the same process and they would be jointly and separately responsible for the maintenance of the road. Who would be responsible for what duties would have to be worked out between the parties.

J. Mosher offered that he wanted to clarify where his property is located on the map, he questioned why the applicant couldn't just use the frontage that didn't impact his property. It was reiterated that there were wetlands there.

J. Unger noted that the original layout, that pre-dates the Mosher home, shows Carlton Path going over what is now the Mosher property, as a right-of-way.

There was discussion at the table regarding the map and the location of Carlton Path.

P. Kiley noted that the Waiver of Municipal Liability was recorded at the Registry of Deeds and notes Carlton Path to be a Class 6 road. It further notes that the owner of the property at Map 18, Lot 8 (subject parcel) has a right to access that property.

P. Bealo offered that Mr. Mosher's path, if the variance were to be granted, would be to consult with his attorney.

J. Unger offered that it was not in within the Board's purview, that's for lawyers and land surveyors to determine. He questioned if the Board could grant the variance without knowing if it was a Class 6 road.

P. Bealo noted that the recorded Mosher waiver calls it a Class 6 road, and that is what made it so their house could exist.

J. Mosher asked for clarification if the Board was granting the applicant the right to cross over his property.

It was noted that the Board would only be granting the right to build a house on a lot that doesn't have frontage on a Class 5 road. The rest would be figured out by lawyers and the rest of them.

J. Mosher asked again if the Board was granting anything. It was noted that if they were granting anything, they were granting the right to build on a lot without frontage on a Class 5 road if the rest could be figured out, and it wasn't up to this board to figure the rest out. He would still have to make sure the access was legal.

K. Hatch noted that it was no different than both land owners being able to access the property owner the easement rights over the condo project property.

J. Mosher offered that he was still disagreeing on the access rights. He noted that there was land he could cross without going over his property.

K. Raymond asked the address 14 Lynwood St be struck, as it was confusing to someone trying to do title research.

N. Pelletier asked if the road was Class 6, it was confirmed that it was. He asked that even if it wasn't maintained by the Town, it's still a public way. He asked what was the agreement that Mr. Mosher signed. The Municipal Waiver of Liability was explained to be an agreement that holds the Town harmless for delayed emergency response if Mr. Mosher does not property maintained the access.

N. Pelletier asked if the other property owner would be held to the same standard of accountability as Mr. Mosher, and it was confirmed they would. He noted that he was then speaking in favor of the application.

J. Mosher asked if the application did move forward, he questioned how the property owner would be getting electricity, adding that he owned the service pole.

It was noted not to be in the purview of the Board to work that out, it would be yet another thing that the potential property owner would need to work out.

N. Pelletier offered that he is an electrician and the power company owns all the poles that go into the properties unless the poles are on private property. The electric company owns up to the masthead unless there are a series of poles on private property.

P. Bealo noted that isn't known, nor is within the Board's jurisdiction.

Joe Greenwood, 3 Lynwood St, noted that he was the applicant, adding the Mr. Mosher's argument is that he owns the portion of Carlton Path that is over his property, but he also passes over properties owned by Twin Ridge Condos and JJAMBS, LLC and a couple other owners, the road, path is an easement.

N. Pelletier as a tax payer he welcomes a new property to bear the tax burden on the property owners.

There was discussion regarding the location of the driveway and wetland locations. Mr. Mosher questioned why they didn't try to get a variance to cross the wetland instead. K. Hatch noted that since there was a way around them, he wouldn't qualify for a variance, and the Conservation Commission to support a variance and State was unlikely to permit a crossing either.

P. Bealo offered that a wetlands variance was a bigger "crapshoot" and it wasn't what they were asking for in this application. He added the Board could only consider what is in front of them.

J. Unger reiterated that the document that's in the Registry of Deeds, and that Mr. Mosher signed, specifically says Carlton Path is a Class 6 highway. That was to build his house. He added that Board can't tell him to go over Mr. Mosher's property, but they had to look at the application as a Class 6 road.

J. Mosher asked if everyone who came up to his property on Carlton Path was trespassing because the Board hadn't voted yet.

P. Bealo replied that he didn't see it that way; it's a Class 6 road.

J. Mosher questioned why the Police were allowing him to throw people out of there.

P. Bealo offered that he couldn't speak for the Police Department.

J. Mosher reiterated that he disagreed with the Board and the variance request.

P. Bealo acknowledged J. Mosher's position. He asked K. Hatch if he had anything else. He did not and the public hearing was closed.

DELIBERATIONS:

★ P. Kiley moved, second by J. Unger, to grant the request from Joseph Greenwood for a variance from Article V, Table 220-32F.C(1)(b), and to permit single-family home to be constructed at 2 Carlton Path, Tax Map 18, Lot 8, with the following conditions:

- ***No more than a single-family dwelling, or a single-family dwelling with an Accessory Dwelling Unit, may be constructed on the lot and shall meet all minimum setback requirements in accordance with Article V, Table 220-32I, or be able to obtain variances for setbacks.***
- ***The property owner and/or applicant shall obtain a Waiver of Municipal Liability from the Plaistow Board of Selectmen prior to making application for a building permit from the Department of Building Safety.***

Discussion:

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

- The proposed variance would not be Contrary to the Public Interest because it's single-family dwelling a four (4) acre parcel in the middle of the boondocks
- The Spirit and Intent of the Ordinance are preserved because there is still the rural character, with over 800' frontage and meets all other zoning requirements.
- There is Substantial Justice in Granting the variance because it's an identical use to the property across the street. Not granting the variance does not result in the gain to the general public.
- The Values of Surround Properties will not be Diminished because a single-family home will not make the area over dense.
- Literal enforcement of the provisions of the ordinance would result in an Unnecessary Hardship:

- No fair and substantial relationship exists between the general purpose of the ordinance provision and the specific application of that provision to the property because: The frontage requirement is to preserve the rural character, and this property has four (4) times the required frontage, it's just not maintained by the Town. This is the exact same use as the property across the road and there is no expectation for the Town to maintain it.
- The proposed use is a reasonable one because: it is reasonable and it's the same intent that was previously granted to allow a property owner fair use of their property. There is no reason that this is different than the first property, it's a carbon copy.

***Roll call vote: M. Murray – yes; P. Kiley – yes; J. Gifford – yes; P. Bealo – yes; J. Unger – yes.
The vote was 5-0-0 U/A***

Findings of Fact:

- The applicant met all the criteria for the granting of a variance
- Granting the variance will not be contrary to the Public Interest because the house will be located on a four (4) acre parcel, out in the woods.
- The Spirit and Intent of the Ordinance are preserved because a single home will not impact the rural character of area and the structure can comply with all setbacks.
- There is Substantial Justice in granting the variance as there is an identical use across the street, and there is no positive gain to the public in denying the application.
- Values of Surrounding Properties will not be Diminished as there was no evidence presented that a single-family dwelling would have an adverse impact.
- Denial of the variance would mean an unnecessary hardship as the applicant would not be allowed to build on the lot because the parcel doesn't have frontage of a Class 5 road. The proposed use is reasonable and is a carbon copy of what was granted across the street.

OTHER BUSINESS:

D. Voss offered that a Motion for Re-Hearing had been received in the recent Sweet Hill Farm matters (ZBA #23-07 and #23-08) that day. It was noted that due to the volume of materials and to allow the Board time to digest everything and consult with their Counsel, if necessary, the matter would be considered at the November 20, 2023, meeting.

P. Bealo suggested a separate meeting (non-meeting for legal consultation) be scheduled with he Board's Counsel to discuss the motion for re-hearing.

J. Gifford noted the Veteran's Day breakfast to be held at the Vic Geary Center on November 11.

There was no additional business before the Board and the meeting was adjourned at 9:50 pm.

Respectfully Submitted,

Dee Voss

Administrative Assistant