



Stratham Zoning Board of Adjustment
Meeting Minutes
May 11, 2021
Municipal Center/Virtual Meeting/Conference Call
Time: 7:03 PM

Members Present: Garrett Dolan, Chairman
Bruno Federico, Full Time Member
Amber Dagata, Full Time Member
Drew Pierce, Full Time Member
Richard Goulet, Alternate

Members Absent: Phil Caparso, Vice-Chair

Staff Present: Shanti Wolph, Code Enforcement Officer/Building Inspector

1. Call to Order/Roll Call

Mr. Dolan called meeting to order and took roll call. Mr. Dolan asked Mr. Goulet to be a voting member for this meeting. Mr. Goulet agreed.

2. Approval of Minutes

a. April 27, 2021

Mr. Federico made a motion to accept the April 27, 2021 meeting minutes as submitted. Mr. Goulet seconded the motion. Motion passed unanimously.

3. Public Hearing(s)

- a.** Case #658, Lester and Cathy Carbonneau, 83R Bunker Hill Avenue, Map 10, Lots 6 & 7, Residential Agricultural Zoning District, represented by Ray Bisson of Stonewall Surveying, P.O. Box 458, Barrington, NH 03825.

The applicant requests a Variance from Section 4, Article 2, of the Stratham Zoning Ordinance in order to create a new buildable lot with zero frontage on Bunker Hill Avenue.

Ray Bisson, Stonewall Surveying, representing Lester and Cathy Carbonneau. Mr. Bisson explained the Carbonneau's home is located on a 10.85 acre parcel (Map 10 Lot 7-85 Bunker Hill Avenue) and the parcel next door (Map 10 Lot 6-83 Bunker Hill Avenue) is 2.48 acres with an existing home on the parcel. The applicant is requesting to create a 3.31 acre lot from the 10.85 acre lot. The lots combined have 278 feet of frontage. Mr. Bisson stated there is not enough road frontage to create another frontage lot and two pipelines currently run

45 through the property which makes creating driveway access may be difficult. The applicant is
46 asking the board to create this lot with zero frontage that will create a 25 foot right of way
47 across the Carbonneau's lot. Mr. Bisson explained the property layout, including the existing
48 well, to the board. The potential lot meets all the zoning criteria except for road frontage.
49 Minimum lot depth is 150 feet and currently showing approximately 400 feet. Using the
50 existing driveway as the access point prevents another curb cut onto the road which could
51 pose additional hazards and maintains the current country appearance. The new parcel drops
52 off so the proposed home will not be visible from the road. Using the existing driveway also
53 prevents crossing the gas line on the existing property. The zoning specifications in place do
54 not work for every lot and must be reviewed on a case by case basis to have the most
55 sufficient use of the property. Mr. Bisson stated part of the purpose of the road frontage is
56 also for density purposes and driveway separation. The spirit of the ordinance is to guide
57 development from public safety and interest. This proposal has the least impact to allow the
58 homeowner to utilize his land that has been in family since 1956. Granting this variance
59 would in the spirit of the ordinance and would not be contrary to the public interest and
60 substantial justice.

61
62 Ms. Dagata questioned if the lot is to be subdivided. Mr. Bisson stated yes. Mr. Bisson
63 explained if the variance is granted the applicant would go before the planning board for the
64 subdivision. Mr. stated once the subdivision is approved the original lot will be 7.01 acres,
65 the existing house parcel will be 2.64, and the proposed new lot would be 3.31 acres. Mr.
66 Dolan asked Mr. Wolph if the property is currently a pork chop lot. Mr. Wolph stated 200
67 feet of frontage is required for a lot and in order to get a pork chop lot 50 feet of right of way
68 would be designated to a pork chop. Mr. Wolph explained the property does not have the
69 required 200 feet of frontage. Mr. Wolph explained the parcel being subdivided currently has
70 175 feet of frontage and the applicant is proposing to take two existing parcels to create three
71 parcels. Mr. Wolph stated the regulations allow for a porch chop to be created from an
72 existing lot, to create two lots, but the applicant is requesting to use to existing lots to create a
73 third lot. Ms. Dagata questioned how the two lots would share a driveway in the future if the
74 lots were sold. Mr. Bisson stated there would be a deeded right of way. Mr. Goulet stated
75 there are currently two existing lots that do not meet the required frontage. Mr. Bisson
76 explained the frontage is 173 feet plus 55 feet. Mr. Pierce asked why the proposed lot is
77 placed where it is and whether there are future subdivision plans. Mr. Bisson stated the
78 proposed lot was designed to keep the access minimal and to keep the lot square, and there is
79 no plan to subdivide in the future. Mr. Goulet questioned where the house would be located
80 on the proposed lot. Mr. Bisson showed the board on the plans before them. Mr. Pierce
81 questioned if there was topographical information available. Mr. Bisson pointed to the
82 topographical information on the plans before the board.

83
84 Mr. Dolan opened the hearing for public comment in favor of this application. Hearing none.
85 The hearing opened for public comment in opposition to this application.

86
87 Attorney Derek Durbin, Durbin Law, stated he is representing two abutters and introduced
88 Andrew Sinclair and Jason Ernst. Attorney Durbin handed out a letter to the board in
89 opposition of this variance application. Attorney Durbin stated granting the variance would
90 be contrary to the public interest and would fail to observe the spirit and intent of the
91 ordinance. The primary purpose of the 200' frontage requirement as applied to the RA
92 Zoning District is to preserve what is left of Stratham's residential-agricultural areas.
93 Requiring the 200 foot frontage. The spirit of the ordinance is intended to provide a more rural,
94 open, uncluttered streetscape and to provide safe egress and ingress. The applicant has

indicated they meet the intent and spirit of the ordinance because they can meet the setbacks of the dimensional requirements, but this not relevant when looking at the spirit and intent of the frontage requirement. The request for relief is significant and the applicant is asking for a “backyard” lot out of their existing and is severely non-conforming. Granting this variance would promote greater density, result in an odd configuration of land between the properties, the new parcel would be completely dependent on shared driveway access, and these concepts are more commonly applied with urban development as opposed to developing more rural residential zones. Attorney Durbin stated granting this variance would be contrary to the spirit and intent of the ordinance. The use and extension of the shared private drive, presently shared by Lot 6 and 7, Lot 7 has alternative access as well, raises questions on public health and safety. The applicant has not provided much detail in the plans to the board and although they will need to provide more detail if granted to go before the planning board for subdivision, the public health, safety, and welfare is involved with an application by creating a very unusual lot with zero road frontage, and the concerns that come along regarding public health and safety. The lack of detail provided to this board is a detriment to the applicant and it does not meet the intent of the ordinance. The town has a master plan that includes guided documents that has to follow development, this plan is what one would call “premature, scattered development” and is not something ever intended by the town or incorporated as a concept into the master plan. Attorney Durbin stated substantial justice will not be done by granting the variance. The applicant stated they intend to convey the back lot to a family member to build a home but no matter the good intentions there may be, the reality is that there is nothing to prevent the applicant or a future owner from selling the back lot to a non-family member in the future. If the goal is to provide a family compound situation there are other avenues for relief that don’t involve the need for zoning relief from this board. The applicant could build an ADU by right which would accomplish all the same goals of the intent tonight except for separate ownership of land. Ultimately, the harm to the general public in granting this variance outweighs the loss to the applicant. Attorney Durbin stated the third point is literal enforcement of the ordinance would not result in an unnecessary hardship. Attorney Durbin gave the board a recorded plan from a subdivision recorded in 1984. This plan shows the Carbonneau family created the original and current configuration of Lots 6 and 7 creating the hardship that they claim now exists. The lots lines were adjusted in 2020 to add lot area to two different lots and increased the frontage of the current Lot 7 which only had approximately 178 feet of road frontage. Attorney Durbin stated when the subdivision plan was approved by the town the Carbonneau family also owned the contiguous property to the east which is possibly the current property owned by Jason Ernst. Prior to and during that time there was ample opportunity to adjust the lot lines as they felt appropriate. The applicant created the situation that now exists and is a self-created hardship. The NH Supreme Court defines “self-created” hardship as; a result of changes to the land brought out by the landowner which he or she sought to use as a basis for hardship, rather than the mere purchase of property with knowledge of restrictions. Even if this was deemed to be a self-imposed hardship, the Carbonneau’s claim the current lot size and configuration of Lot 7 is an unnecessary hardship is without merit. Lot 7 is not distinguishable from surrounding properties; see Tax Map 10, Lots 1, 2, and 3. In order to meet the unnecessary hardship criteria the lot has to be distinguishable from surrounding properties. Attorney Durbin stated what is being proposed here is a major deviation from the ordinance, goes against the spirit and intent of R/A zoning, it defeats the purpose of frontage requirement. Attorney Durbin stated granting the variance would result in diminution of surrounding property values for his

clients. This application fails to meet the five criteria for granting a variance. It is important to note that RSA 675:41 generally prohibits the issuance of a building permit for properties with no road frontage absent authorization from the Board of Selectmen.

Mr. Pierce questioned if there is a difference in safety between an ADU and a single family home. Attorney Durbin stated an ADU would be connected to the existing home and there would be no extension of the driveway and would satisfy the need for family living space. Mr. Wolph stated the Town of Stratham allows for a detached Accessory Dwelling Unit and it is limited to 1,000 SF. Mr. Wolph stated the restriction on the ADU is that the primary property owner must live in either the single family dwelling or the ADU, both properties cannot be rented. Attorney Durbin stated having a detached unit in the back would create more impact to the property if it is detached. Mr. Goulet asked where Mr. Ernst's property is located. Attorney Durbin stated it is located to the left of Lot 6 in the back of the property.

Jason Ernst, 79 Bunker Hill Avenue, showed the board will his house is located on the map before them. Mr. Ernst stated when he purchased the property he was told based on the town nothing could be built back there and they would have their own little family compound. Mr. Ernst voiced concern with a new single family residence versus an accessory dwelling unit on the property which will increase the amount of residents on that parcel. Mr. Ernst stated there is a possibility of eight different people using the driveway that shares with Lot 7. Mr. Ernst explained when he and Mr. Sinclair drive up the driveway they are sharing with duplex and a single family home and if another lot is granted there will be possibly six households coming out of the same spot. Mr. Ernst voiced concern with his kids walking up the driveway to the bus stop having to be even more aware of more vehicle traffic on a 50 foot driveway. Mr. Ernst does not disapprove of an attached or detached ADU to help keep family together but is concerned with having another separate parcel and having potentially eight families sharing one access point onto Bunker Hill Avenue and the potential danger. Mr. Ernst stated he has a log cabin in the middle of the woods and his value is not conserved by possibly having a house right out in his front yard. The value of his log cabin will be diminished. Mr. Dolan questioned if Mr. Ernst shared a driveway with the Carbonneau's. Mr. Ernst stated him and Mr. Sinclair share a driveway which is right located right next to Lot 6 driveway. Lot 6 driveway is shared by Lot 6 and Lot 7 and potentially with the new parcel. Mr. Wolph showed the board the driveway distance on the GIS maps online.

Mr. Dolan asked for anyone in the audience in opposition to come forward to speak. Hearing none Mr. Dolan asked the agent for the Carbonneau's to address the issues brought forth during public comment.

Mr. Bisson explained the configuration. The lot line adjustment in 2020 corrected the property line going through the existing house. Mr. Bisson stated the house was a duplex at that time. Mr. Bisson explained the property back in 1950's was owned by two different Carbonneau family members. Mr. Bisson explained Al Carbonneau wanted to sell his property and decided to move the property line out of the house to improve a non-conforming issue and made the frontage larger. Mr. Bisson stated a Carbonneau daughter is fixing the property up to become a single family house. Mr. Bisson pointed to the current driveway for the house to the board. Mr. Bisson explained the applicant is using the driveway that currently exists due to the pipeline across the

property. Mr. Bisson stated the applicant can put a detached ADU in the back corner with a separate well and septic and it will not change the driveway configuration. Mr. Bisson stated the developed property at Lot 2 and Lot 3 were developed by a different family member and not the applicant. Mr. Bisson explained abutters cannot control what neighbors do with their property. Mr. Bisson stated the house is being proposed for the top portion of the new proposed lot since the applicant only wants to extend the driveway to the lot and not further into the parcel. Mr. Bisson explained the Carbonneau daughter would like to keep as much of the land as she can. This proposal will improve the configuration of the lots. Mr. Bisson showed the board the proposed new lot layout. Mr. Bisson explained the applicant went before the Planning Board last year and was directed to go before the Zoning Board for relief from the setback regulation. Mr. Bisson stated the spirit of the ordinance does not say the town is going to penalize large lots. The ordinance is to allow relief for residents with large parcels.

Cathy Carbonneau, 83 Bunker Hill Avenue, explained they have owned the property for many years and their intention is not to invite every cousin they have to come live with them in stand-alone units. The property is being developed so her son can live behind their property. Ms. Carbonneau stated they are willing to put that in writing to satisfy a zoning ordinance change or planning board approval. Ms. Carbonneau stated she's offended that it has been stated that allowing this will open Pandora's Box.

Mr. Bisson stated the abutting neighbor is in a similar situation with 50 feet of frontage and a shared driveway. Both abutters have the opportunity to have an ADU if they chose which would be four households using a shared driveway and no different than what the applicant is proposing.

Mr. Dolan opened the hearing to the opposition to give feedback. Attorney Durbin asked the board what the hardship the applicant is seeking if this property is not distinguishable from surrounding properties. The property has to be distinguishable from surrounding properties such that there is no fair and substantial relationship between the general purpose of the ordinance and the specific application of that provision to the property. There has been a debate as to whether this is a self-created hardship or not. In addition to the fact that the applicant cannot meet the hardship criteria being is there something inherent with the land that makes this so different from the others. If there is, it is a condition the family created. Attorney Durbin stated the abutters made a legitimate argument regarding their view being disrupted. The proposal is not on a sub dividable lot and a deviation from the zoning ordinance, the subdivision regulations, the master plan, and requires Select Board relief. Attorney Durbin stated the applicant agreed they could build an ADU but it will not happen because nobody would have an interest in 1,000 square foot property with those site constraints.

Hearing no further public commentary on the application Mr. Dolan made a motion to close the public portion of the hearing. Ms. Dagata seconded the motion. Motion carried unanimously.

- a. As provided for in NH RSA 674:33-I(a), the Board of Adjustment shall hear and decide requests to vary the terms of this Ordinance. At the hearing on the application, the applicant shall present testimony and other evidence to establish that the conditions for a variance have been met. The decision of the Board shall be based on the evidence both written and oral which shall be presented at the hearing and as may be contained in the

application. Abutters and residents shall be entitled to present testimony and other evidence to establish that the applicant either has or has not met all of the listed conditions as stated below.

b. No variance shall be granted unless all of the following conditions are met:

i. The variance will not be contrary to the public interest.

Mr. Dolan asked Mr. Wolph if the Select Board has provided comment on the road frontage. Mr. Wolph stated the Select Board would not be involved at this time and would depend on whether the cut would be a driveway meeting town standards or a private road. If this is proposed as a private road then the Select Board would have to give authorization to the Building Inspector to allow releasing the building permit. Mr. Dolan stated the applicant stated in their application this will be a shared driveway, not a private road. Mr. Wolph stated the Town Planner will confirm that the standards for the road is accessible for fire trucks and meets the town road regulations. Mr. Wolph stated the fire chief has not given formal feedback on this application but has stated concern with accessibility for the fire truck. Mr. Federico stated the standards and conditions will not be fully discussed until this is formally before the planning board. Mr. Wolph stated the NFPA state fire code states dead-end, fire department, access roads in excess of 150 in length shall be provided with approved provisions for the fire apparatus to turn around, fire department access road shall have an unobstructed width of not less than 20 feet, and shall be designed and maintained to support the imposed loads of fire apparatus, and shall be provided with an "all weather" driving surface. Mr. Federico stated if the applicant was requesting a private road they would have to go before the Select Board.

Mr. Dolan stated the variance will not be contrary to the public interest because the public interest is to ensure that the land area provided for a lot is sufficient to support the lot and the dwelling unit and provide the necessary water and septic for sustaining that lot. Since this is a back lot with no frontage is what is before the board. The configuration laid out and the square footage contained within it and the fact that the lot lines will be conforming to the zoning ordinance if this lot was placed in any other location it does, in fact, comply with public interest. Mr. Federico, Mr. Pierce, Ms. Dagata, and Mr. Goulet agreed.

ii. The spirit of the ordinance is observed.

Mr. Dolan stated with the square footage being in excess of minimum required for a stipulated lot, that the configuration of the lot in any other location would meet the criteria being considered a buildable lot the spirit of the ordinance is observed. Mr. Federico, Mr. Pierce, Ms. Dagata, and Mr. Goulet agreed.

iii. Substantial justice is done.

Mr. Dolan stated the lot in any other circumstance, other than being a land-locked lot, would meet the requirements of the zoning ordinance that access to the lot by a shared driveway would grant substantial justice to the property owner. Mr. Federico, Mr. Pierce, Ms. Dagata, and Mr. Goulet agreed.

iv. The values of surrounding properties are not diminished, and

Mr. Federico, Mr. Pierce, Ms. Dagata, and Mr. Goulet agreed the values of surrounding properties is not diminished.

v. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.

1. For purposes of this subparagraph, “unnecessary hardship” means that, owing to special conditions of the property that distinguish it from other properties in the area:
 - a. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and
 - b. The proposed use is a reasonable one.

Mr. Federico, Mr. Pierce, and Ms. Dagata agreed. Mr. Goulet stated the applicant made a statement regarding uniqueness of the property relative to other properties in the surrounding area with long driveways or lots with zero frontage and that is just a statement, the applicant has not provided any examples of that. Mr. Goulet sees uniqueness of this property with utilities running through but not really the configuration. Mr. Dolan agreed that the applicant is trying to mitigate crossings of other rights of way and are utilizing an existing right of way and driveway makes this a unique circumstance to that particular lot. The board for is 5:0 in the affirmative

Having the board vote 5:0 in the affirmative and meeting the 5 criteria for the granting of a variance Mr. Dolan moved to approve this variance. Mr. Dolan stated the applicant agreed to conditions being established. Mr. Dolan requested a condition of approval be no further subdivision of this lot due to the lot being non-conforming lot the board is granting a variance for frontage and driveway access that no further subdivision of this lot. Mr. Wolph asked Mr. Dolan to clarify that the board that the applicant would need to provide a deed restriction, that is recorded, that would specify no further subdivision to the existing parcels and the third proposed lot. Mr. Dolan, Mr. Federico, Ms. Dagata, and Mr. Goulet agreed.

Mr. Dolan made a motion and Mr. Pierce seconded the motion to approve the Variance from Section 4, Article 2, of the Stratham Zoning Ordinance for Lester and Cathy Carbonneau, 83R Bunker Hill Avenue, Map 10, Lots 6 & 7, Residential Agricultural Zoning District, in order to create a new buildable lot with zero frontage on Bunker Hill Avenue as specified in the application presented by Ray Bisson of Stonewall Surveying with the following with condition.

Condition:

- 1) A deed restriction shall be placed on the properties such that no creation of new lots on the two (2) existing parcels and the third (3) proposed parcel. Mr. Wolph will add the map and lots for all parcels in the Notice of Decision.

Mr. Goulet questioned if the decision required a permanent easement. Mr. Wolph stated it will require a legal instrument that the Planning Board will have to address for their approvals.

The board voted 5:0 to grant the variance with the conditions stipulated above.

Mr. Dolan stated the applicant has a 30 day appeal period and any action taken before that time is at the applicant's own risk.

4. New Business

a) Discussion regarding the recruitment of members and the succession of the officers.

Mr. Dolan stated he is stepping down from the Board of Adjustment as he is relocating out of Stratham. Mr. Goulet asked if there has been any recruitment for these positions. Mr. Wolph stated it has been out to the public but no applicants have come forward. Mr. Federico stated he did not see the recruitment for ZBA board members in the Select Board newsletter. Mr. Wolph stated it was add to the newsletter a couple months ago. Mr. Dolan suggested that it should be a reappearing article in the newsletter. Mr. Wolph will request the Town Administrator put the need for members in the Select Board newsletter on a reoccurring basis. The board discussed what is needed to complete the succession of officers.

b) Other Business

May 25, 2021 Special Exception for Home Occupancy- Art Classes at 3 Hillcrest Drive. Mr. Wolph gave the board a quick overview of the upcoming hearing. Mr. Wolph updated the board on the bank sign located at 293 Portsmouth Avenue and the parking situation at 217 Portsmouth Avenue. Mr. Federico asked if there has been interest in the old technical school property. Mr. Wolph stated there were a few interested but there is nothing concrete and the property has not been sold. Mr. Federico asked about updates on the Burger King property. Mr. Wolph stated they are renovating to remain in place.

c) Adjournment

Mr. Dolan made a motion to adjourn at 9:10 pm. Mr. Goulet seconded. Motion passed unanimously.

Note(s):

- 1. Materials related to the above meeting are available for review at the Municipal Center during normal business hours. For more information, contact the Stratham Building/Code Enforcement Office at 603-772-7391 ext.180.*
- 2. The Zoning Board of Adjustment reserves the right to take items out of order and to discuss and/or vote on items that are not listed on the agenda.*