



**Meeting Minutes**  
**Town of North Hampton**  
**Zoning Board of Adjustment**  
**Tuesday, October 26, 2021 at 6:30pm**  
**Town Hall, 231 Atlantic Avenue**  
**North Hampton, NH 03862**

These Minutes were prepared as a reasonable summary of the essential content of the Meeting, not as a transcription. All exhibits mentioned, or incorporated by reference, in these Minutes are a part of the official Case Record and available for inspection at the Town Offices.

**In attendance:** Jonathan Pinette, Chair; Robin Reid, Vice Chair; Members Rick Stanton, Audrey Prior, and Bill Clifford; Alternate Member Dennis Williams; and Recording Secretary Rick Milner.

**I. Preliminary Matters.**

Chair Pinette called the meeting to order at 6:35pm.

Mr. Pinette presented the minutes of the August 24, 2021 meeting.

**Ms. Reid moved that the ZBA accept the minutes of the August 24, 2021 meeting as written. Second by Mr. Stanton. The vote was unanimous in favor of the motion (5-0).**

**II. New Business.**

**1. Case #21:07 – Applicants: Millie Bauer, LLC, Scott Prince, and Jarrod Patten, 50-52 Lafayette Road and 1 Fern Road, North Hampton, NH 03862.** The Applicants request the following relief:

a. Administrative Appeal regarding approval of existing wall construction within the side yard structural setback,

b. Equitable Waiver to allow existing wall construction within the side yard structural setback, or

c. Variance to allow existing wall construction within the side yard structural setback.

Property Owners: Millie Bauer, LLC, 16 Woodknoll Drive, North Hampton, NH 03862; and Jarrod Patten, 1 Fern Road, North Hampton, NH 03862; Property Locations: 50-52 Lafayette Road and 1 Fern Road, North Hampton, NH 03862; M/L: 008-024-000 and 008-023-001; Zoning Districts: I-B/R, Industrial – Business/Residential District, and R-1, High Density District.

**Applicants: Millie Bauer, LLC, and Scott Prince, 50-52 Lafayette Road, North Hampton, NH 03862.** The Applicants request a variance from Town of North Hampton Zoning Ordinance Section 202.2 Permitted Uses in R-1 High Density District to allow commercial storage in the R-1 High Density District. Property Owner: Millie Bauer, LLC, 16 Woodknoll Drive, North Hampton, NH 03862. Property Location: 50-52 Lafayette Road; M/L: 008-024-000; Zoning Districts: I-B/R, Industrial – Business/Residential District, and R-1, High Density District.

In attendance for this application:

Greg Bauer, property owner and applicant; Scott Prince, applicant; Tim Phoenix, attorney; and John Chagnon, engineer.

Mr. Pinette recused himself. Ms. Reid seated as Acting Chair. Mr. Williams seated for Mr. Pinette.

Disclaimer – these minutes are prepared by the Recording Secretary within five (5) business days as required by NH RSA 91A:2,II. They will not be finalized until approved by majority vote of the Zoning Board of Adjustment.

47 All potential witnesses were sworn in.

48  
49 Mr. Phoenix explained to the Board that, during the Planning Board review of the site plan application  
50 for change of use and site improvements at the 50-52 Lafayette Road site, it was determined that the  
51 issuance of a special exception was necessary to allow operation of the proposed motor vehicle service  
52 activities on the site. Mr. Phoenix recently submitted a special exception application to the Zoning Board  
53 of Adjustment (ZBA) after the application submittal deadline. Mr. Phoenix requested that the Board  
54 continue consideration of all matters regarding the Map/Lot 008-024-000 site until the November 23  
55 meeting date so that the special exception application may be properly noticed to the public and all  
56 relief requests for the site may be discussed at the same meeting.

57  
58 Mr. Stanton stated his opinion that it would be prudent to hear all of the relief requests at the same  
59 time. It will also give abutters more time to review application materials and prepare comments.

60  
61 Mr. Clifford expressed his desire to view the site. Ms. Reid suggested that a site walk may be beneficial.

62  
63 **Mr. Stanton moved that the Zoning Board of Adjustment schedule a site walk on the Map/Lot 008-**  
64 **024-000 site at 50-52 Lafayette Road as part of the application review process for Case #21:07 on**  
65 **November 2, 2021 at 3:00pm. Second by Mr. Clifford. The vote was unanimous in favor of the motion**  
66 **(5-0).**

67  
68 **Ms. Prior moved that the Zoning Board of Adjustment continue Case #21:07 to the November 23, 2021**  
69 **meeting date. Second by Mr. Stanton. The vote was unanimous in favor of the motion (5-0).**

70  
71 **2. Case #21:08 – Applicant: Joseph Falzone, 7B Emery Lane, Stratham, NH 03885.** The Applicant  
72 requests the following relief:

- 73 a. Administrative Appeal regarding existing lot frontage requirement or  
74 b. Variance to allow 31.8 feet of frontage on a lot to be used for erection of a structure where 40 feet of  
75 frontage is required.

76 Property Owners: David and Julee Sanderson, Trustees, Jarib M. Sanderson Family Trust, 3 Olivia Lane,  
77 Kensington, NH 03833. Property Location: Post Road in vicinity of 85 and 87 Post Road; M/L: 008-104-  
78 000; Zoning District: R-1, High Density District.

79  
80 In attendance for this application:

81 David Sanderson, property owner; Tim Phoenix, attorney.

82  
83 Mr. Pinette returned to the Board as Chair. All potential witnesses were sworn in.

84  
85 Mr. Phoenix requested that the Board consider the variance request first and consider the  
86 administrative appeal at a later time if the variance request is denied or a variance request approval is  
87 challenged and overturned.

88  
89 Mr. Milner suggested that the administrative appeal should be considered first and the variance request  
90 could then be considered if the administrative appeal is denied.

91  
92 The Board discussed the process to follow regarding the two relief requests.

93  
94 Ms. Reid and Mr. Pinette stated their opinion that the administrative appeal request be considered first.

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Mr. Stanton stated his opinion that the variance request be considered first. There are various protections for the property owner and the applicant in the form of a rehearing and appeals if a variance request is denied. There is no official document to refer to in this case when considering the administrative appeal.

Mr. Clifford stated his opinion that the variance request be considered first.

The Board came to a consensus to consider the variance request application first.

Mr. Phoenix presented the following items to the Board:

- a. a site drawing showing the 14.68 acre property, lot line locations, 31.8 feet of frontage along town road, approximate wetlands boundary, 100 foot wetlands setback, 50 wetlands setback, and available building envelopes associated with both wetlands setbacks and
- b. a septic system design drawing showing approximate proposed home and septic system locations, approximate wetlands boundary, and various wetlands setback distances.

Mr. Phoenix explained that the residentially zoned lot was created no later than 1956. The lot is burdened by a significant amount of wetlands and associated buffer areas. Per the zoning ordinance, a 50 foot wetlands setback may be used to create an area of approximately 2.8 acres of contiguous uplands for the construction of the proposed home. The applicant is requesting approval of a variance to allow 31.8 feet of frontage on a lot to be used for erection of a structure where 40 feet of frontage is required.

Mr. Phoenix stated that the 31.8 feet of frontage has existed for 65 years. Many rights-of-way in towns are 40 feet. There is sufficient room for the reasonable use of a single family home and its associated driveway within the 31.8 feet of frontage on this lot.

Mr. Phoenix addressed the five criteria for granting a variance identified in the State of NH RSA's.

1. and 2. Granting the proposed variance would not be contrary to the public interest and would observe the spirit of the ordinance in that granting the variance would not unduly or to a marked degree conflict with the zoning ordinance purpose of promoting the health, safety, and general welfare of the community. The proposed home use is a permitted use within the zoning district. The home will be set back on the lot and would not alter the character of the neighborhood.

3. The proposed variance relief will have no impact on the value of the surrounding properties in that it has been conceivable that a home would be built on this residentially zoned lot at some point. A single family house on such a large lot will not affect surrounding property values.

4. There are special conditions of the property that distinguish it from other properties. The property is large and significantly impacted by wetlands and associated buffer areas. No fair and substantial relationship exists between the general public purposes of the ordinance and its specific application in this instance. Frontage requirements are intended to provide adequate space between properties and buildings. The frontage has existed for 65 years, long before the passage of the 2009 zoning ordinance frontage requirement. There is no harm to any neighbor of the public created by the proposed use. However, strict application of the zoning ordinance requirement will have the effect of prohibiting the owner from the ability to develop a very large lot for a permitted and reasonable residential use, rendering the property significantly less valuable.

143 5. Substantial justice will be done by granting the variance. The very large lot and existing frontage  
144 length which has existed for decades prior to the zoning ordinance requirement fully supports a home,  
145 septic system, driveway, and other features set back on the lot in a way which will cause no harm to the  
146 wetlands, neighbors, or the general public including the nearest abutters. Denial of a variance will result  
147 in a loss of use and value to the property owner and be an arbitrary and unreasonable taking of the  
148 property owner's constitutional right to own and develop property.

149  
150 Mr. Pinette asked for public comments.

151  
152 Mark Johnson addressed the Board. Mr. Johnson stated that he does not believe that the property  
153 warrants the construction of a house due to the large amount of wetlands on the property. Also, the  
154 proposed 20 percent deviation from the zoning ordinance frontage requirement is too large. In his  
155 opinion, at the time of the sale of the land, it was known that a house lot was not allowed on the  
156 property due to the zoning ordinance regulations. No one anticipated a house lot on this site. The site  
157 always had an agricultural use that was hayed once or twice a year.

158  
159 Mr. Johnson further stated his opinion that the deviation from the zoning ordinance requirement is too  
160 large. The 40 foot frontage figure has meaning as established by the voters of the Town. Mr. Johnson  
161 also stated that the abutters have not had constructive notice that a home may be built on the property  
162 at some point. He has relied on his belief that the zoning ordinance would have to change before a  
163 house could be constructed on the property. It is not guaranteed that every lot, regardless of size, must  
164 support at least one single family home.

165  
166 Mr. Johnson further stated that the land is wet in many areas around the proposed home location. The  
167 land does not drain well. He believes that the applicant should submit a professionally stamped survey  
168 plan, not a conceptual drawing, to indicate the actual location of the wetlands.

169  
170 Mr. Johnson submitted a letter from Homer Johnson. In his letter, Homer Johnson stated his opposition  
171 to the variance request application. The variance request was too large a deviation from the frontage  
172 requirement. The hardship associated with the frontage is self-created by the applicant by proposing a  
173 land purchase based on speculation.

174  
175 Barbara Silverstone addressed the Board. Ms. Silverstone stated that there is a lot of water on the  
176 Map/Lot 008-104-000 property.

177  
178 Mr. Phoenix stated the property owner now wants to do something different on the property than what  
179 has been done in the past. The surveys presented to the Board are accurate with regards to the frontage  
180 distance and wetlands locations. There is a sufficient amount of uplands to support a proposed home  
181 and septic system. The property owner has a constitutional right to a reasonable use of his property.

182  
183 Mr. Pinette closed the public hearing at 8:11pm.

184  
185 **Mr. Stanton moved that the Zoning Board of Adjustment grant a variance from Town of North**  
186 **Hampton Zoning Ordinance Section 203.4 to allow 31.8 feet of frontage on Map/Lot 008-104-000 to**  
187 **be used for erection of a structure where 40 feet of frontage is required.**

188  
189 Ms. Reid stated her desire to discuss the case prior to a motion being made.  
190 No second to the motion was made. The Board did not consider the motion.

The Board began its deliberation of the case.

Ms. Reid stated her opinion that the 20 percent deviation from the zoning ordinance frontage requirement is too large. At some point, a line must be drawn as to what is a significant deviation from the zoning ordinance. The subject property is not unique. There are other properties within the Town that have similar smaller frontages and characteristics. Due to the large amount of wetlands, stress may be put on the wetlands and aquifer by the proposed development.

Mr. Stanton stated his opinion that the eight (8) foot deviation from the zoning ordinance is not significant in that the 31.8 feet of frontage will allow for emergency vehicles to adequately access the proposed home site. There would only be a marginal increase in water use on the property. There is no benefit that the Town may gain by denying the variance request that outweighs the property owner's right to a reasonable single family home residential use of the property. He is in favor of granting a variance to allow a single family home to be built on the property.

Ms. Reid stated that the zoning ordinance provides reduced frontage for long-standing, pre-existing lots, down to 40 feet from the 175 feet required for other lots.

Mr. Pinette stated his opinion that he is not convinced that denial of the variance request would result in an unnecessary hardship.

Ms. Prior stated her opinion that the subject property is not unique from other properties throughout the Town.

**Mr. Stanton moved that the Zoning Board of Adjustment grant a variance from Town of North Hampton Zoning Ordinance Section 203.4 to allow 31.8 feet of frontage on Map/Lot 008-104-000 to be used for erection of a structure where 40 feet of frontage is required. Second by Mr. Clifford.**

After further discussion of the case details by the Board, Mr. Pinette suggested that a site walk may aid the Board with its deliberations.

**Mr. Clifford withdrew the second to the motion. Mr. Stanton withdrew the motion.**

The Board came to a consensus not to conduct a site walk.

**Mr. Stanton moved that the Zoning Board of Adjustment grant a variance from Town of North Hampton Zoning Ordinance Section 203.4 to allow 31.8 feet of frontage on Map/Lot 008-104-000 to be used for erection of a structure where 40 feet of frontage is required. Second by Mr. Clifford. The motion failed by a 2-3 vote with Mr. Stanton and Mr. Clifford in favor and Mr. Pinette, Ms. Reid, and Ms. Prior opposed.**

Ms. Reid presented the following reasons for the Board's decision:

**Summary For The Majority's Decision:**

**Denial of the variance request was based on the determination of a majority of the Zoning Board of Adjustment that all five of the standards for authorizing a variance listed in NH RSA 674:33 were not satisfactorily met.**

**1. The spirit of the ordinance is not observed. The requested relief of approximately 20% of the required frontage is too large a deviation.**

238 **2. The values of the surrounding properties may be diminished. The increase in impervious surface as**  
239 **a result of the proposed home and driveway may create an adverse impact on the surrounding**  
240 **properties as it relates to the wetlands and aquifer in the area.**

241 **3. There are no special conditions of the property that distinguish it from other properties in the**  
242 **Town. There are many other properties within the Town that do not meet the road frontage**  
243 **requirement.**

244  
245 Mr. Phoenix requested that the Board consider the applicant's administrative appeal. Mr. Phoenix  
246 stated that the 31.8 feet of frontage for Map/Lot 008-104-000 is a prior non-conforming dimension  
247 entitled to 'grandfathered' status. The lot, as it currently exists, was transferred by deed in 1956 creating  
248 the existing frontage. Town of North Hampton Zoning Ordinance Section 202.9 provides that all uses  
249 existing at the time of the adoption of the ordinance of any buildings or premises may continue without  
250 restriction. This section of the zoning ordinance is a savings clause which exempts pre-existing lots from  
251 later enacted frontage and/or lot size requirements. Therefore, the property owner can exercise  
252 whatever rights that clause gives the owners of substandard lots. Section 202.9 addresses the use of any  
253 building or premises. Since buildings is set forth distinctly from premises, it must follow that premises  
254 means, or includes the land and thus the frontage. Since the 31.8 feet of frontage was created in 1956,  
255 long prior to the 2009 passage of Town of North Hampton Zoning Ordinance Section 203.4 requiring a  
256 minimum 40 foot frontage, the frontage may continue without restriction.

257  
258 Mr. Milner explained that many prospective applicants seek his opinion regarding interpretation of the  
259 zoning ordinance or other town regulations or the appropriate procedure to follow regarding land use  
260 matters as a way to avoid the extra time and expense of filing an official building permit or land use  
261 board application only to find out later that some sort of relief or additional review process may be  
262 necessary. Mr. Milner further explained that he always notifies the prospective applicant that he is only  
263 giving his opinion and not making an official decision for the Town of North Hampton. Mr. Milner does  
264 not have the authority to make an official decision. It is then the applicant's choice to either proceed  
265 based off of the information provided or follow the appropriate process to receive an official decision  
266 from the appropriate Town authority.

267  
268 Mr. Milner referred to his memo responding to the applicant's appeal request which gives his opinion  
269 that an administrative appeal is not warranted in this case due to the fact that no official administrative  
270 decision was made by the Town of North Hampton. No Building Permit, Planning Board application, or  
271 other type of official land use applications have been submitted to the Town for review. The applicant's  
272 submittals are a reaction to opinions, not decisions, given in emails and in-person consultation sessions.  
273 Mr. Milner also referred to the opinion in his memo that Map/Lot 008-104-000 does not have a pre-  
274 existing right to the frontage non-conformity which currently exists (i.e., 'grandfathered'). Town of  
275 North Hampton Zoning Ordinance Section 203.4, not Section 202.9, is the appropriate zoning ordinance  
276 regulation to apply regarding frontage for Map/Lot 008-104-000.

277  
278 Mr. Stanton stated his opinion that there should be no need to seek a variance to allow the erection of a  
279 structure on the Map/Lot 008-104-000 property. The changes to the zoning ordinance occurred after  
280 the applicant obtained ownership of the property. A savings clause exists in the zoning ordinance that  
281 allows the applicant not to abide by the 40 foot frontage requirement. Mr. Stanton further stated his  
282 recollection that the 40 foot frontage requirement was established because that was the minimum  
283 measurement for roads previously approved by the Town at the time. Mr. Stanton stated that he agrees  
284 with the applicant's interpretation of the zoning ordinance.

285

**Mr. Stanton moved that the Zoning Board of Adjustment approve the administrative appeal on the basis that the existing 31.8 feet of frontage for Map/Lot 008-104-000 is a lawfully pre-existing non-conforming use. Second by Mr. Pinette.**

Ms. Reid stated that Town of North Hampton Zoning Ordinance Section 203.4 specifically references pre-existing lots of record. Section 202.9 does not reference lots. Premises are not lots. Ms. Reid stated that Section 203.4, not Section 202.9, is the appropriate zoning ordinance regulation to apply regarding frontage for Map/Lot 008-104-000.

Mr. Milner stated that the Town of North Hampton Zoning Ordinance clearly differentiates between non-conforming lots, non-conforming structures, and non-conforming uses in Section 104 Definitions.

**The motion failed by a 1-4 vote with Mr. Stanton in favor and Mr. Pinette, Ms. Reid, Ms. Prior, and Mr. Clifford opposed.**

#### **Summary For The Majority's Decision:**

**Denial of the administrative appeal request was based on the determination of a majority of the Zoning Board of Adjustment that:**

**1. An administrative appeal is not warranted in this case due to the fact that no official administrative decision was issued by the Town of North Hampton.**

**2. Map/Lot 008-104-000 does not have a pre-existing right to the frontage non-conformity which currently exists (i.e., 'grandfathered'). Town of North Hampton Zoning Ordinance Section 203.4 is the relevant section of the zoning ordinance that must be applied to the particular circumstances associated with frontage for Map/Lot 008-104-000. Section 203.4 specifically references pre-existing lots of record. Section 202.9 cannot be applied to the particular circumstances associated with frontage for Map/Lot 008-104-000. Section 202.9 references non-conforming uses, not lots. The Town of North Hampton Zoning Ordinance clearly differentiates between non-conforming lots and non-conforming uses.**

#### **III. Other Business.**

1. Discussion of alternate member positions and procedures.

Mr. Milner informed the Board that former ZBA member Mark Janos had expressed interest in becoming an alternate member of the ZBA.

**Mr. Stanton moved that the Zoning Board of Adjustment appoint Mark Janos as an alternate member for a three year term of office. Second by Ms. Prior. The vote was unanimous in favor of the motion (5-0).**

Mr. Milner informed the Board of Mr. Stanton's suggestion that alternate members of the Board be allowed to sit at the table and participate in case discussions in a limited way. Mr. Milner presented a draft of revisions to the ZBA Rules and Procedures that would need to be made if the Board allowed alternate members to participate in case discussions without being appointed to serve in the place of a regular member.

Mr. Pinette stated that he is not in favor of having alternate members seated at the member table and participating in case discussions. Other member opinions may be swayed and legal challenges could

result from the alternate member participation when not appointed to serve in the place of a regular member.

Ms. Prior stated that she is not in favor of having alternate members seated at the member table and participating in case discussions. If alternate members are seated at the table while not appointed to serve in the place of a regular members, the public and the applicant could be confused as to who is deliberating on the case. It should be clear to the public and the applicant who is voting on a case.

Mr. Stanton stated that it is a good idea to allow alternate members to join the regular members at the member table during case discussions. The alternate members could bring a different perspective to the deliberations by asking questions that other members may not have considered.

The Board came to a consensus not to change the ZBA Rules and Procedures to allow alternate member participation at the member table when not appointed to serve in the place of a regular member.

**Mr. Stanton moved to adjourn the meeting at 9:28pm. Second by Ms. Prior. The vote was unanimous in favor of the motion (4-0).**

Respectfully submitted,

Rick Milner  
Recording Secretary