



**Meeting Minutes  
Town of North Hampton  
Zoning Board of Adjustment  
Tuesday, January 24, 2023 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:** Robin Reid, Chair; Bill Clifford, Vice Chair; Members Audrey Prior and Larry Miller; Alternate Member Mark Janos; and Recording Secretary Rick Milner.

**I. Preliminary Matters.**

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

Mr. Janos seated for regular member vacant position.

Ms. Reid presented the minutes of the December 20, 2022 meeting.

Ms. Reid requested that the minutes of the December 20, 2022 meeting be amended to include her comments regarding the discrepancy in the depiction of the side yard setback distances for the existing garage and the proposed home addition at 8 Post Road in the application information packet and on the application plan set and the applicant's response to her comments. The Board came to a consensus to add Ms. Reid's amended minutes language.

**Ms. Prior moved that the ZBA accept the minutes of the December 20, 2022 meeting as amended. Second by Mr. Clifford. The vote was unanimous in favor of the motion (5-0).**

The amended language can be found in lines 78-85 of the December 20, 2022 minutes.

**II. Other Business.**

Ms. Reid presented the request of resident Charles Hoyt to be appointed as an alternate member of the ZBA.

Mr. Hoyt addressed the Board. Mr. Hoyt expressed his desire to serve the Town of North Hampton. Mr. Hoyt explained his previous experience as a land use board member in Rye, NH and his professional knowledge of architecture and building construction which may be helpful to the Board.

**Mr. Janos moved that the ZBA appoint Charles Hoyt as an Alternate Member of the ZBA for a three year term. Second by Mr. Clifford. The vote was unanimous in favor of the motion (5-0).**

**III. New Business.**

**Case #23:01 – Applicant: Brian Dube, 64 Cobblers Ridge Road, Danville, NH 03819.** The Applicant requests a variance from Town of North Hampton Zoning Ordinance District Requirements Section 203.4 to allow erection of a structure on a lot without the minimum required frontage. Property Owner: WNRV, LLC, 7B Emery Lane, Stratham, NH 03885. Property Location: Back land lot off of Post Road between 75 and 83 Post Road; M/L: 008-101-000; Zoning District: R-1, High Density District.

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 In attendance for this application:

48 Brian Dube, applicant; Tim Phoenix, attorney; Christopher Albert, wetlands scientist.

50 Ms. Reid swore in the applicant and his representatives.

52 Mr. Phoenix addressed the Board. Mr. Phoenix presented a plan which indicated the following:

53 a. a 1.46 acre lot (M/L 008-100-000) with 0.37 acres of uplands and frontage along Post Road,

54 b. a 4.67 acre lot (M/L 008-101-000) with 1.67 acres of uplands on back land with no frontage along a  
55 town road abutting the rear of the Post Road lot,

56 c. an existing dirt path starting on Post Road, crossing through the front lot, and ending at the upland  
57 area of the rear lot,

58 d. a brook along the boundary line shared by both properties,

59 e. a wetlands crossing culvert at the point where the dirt path crosses the brook,

60 f. delineated wetlands areas, wetlands setback areas, and uplands areas on both lots,

61 g. proposed single family home and septic system construction within uplands area on the rear lot (M/L  
62 008-101-000),

63 h. proposed driveway and utilities construction from Post Road, through front lot (M/L 008-100-000),  
64 and ending at the proposed home, and

65 i. proposed reconstruction of the wetlands crossing culvert.

67 Mr. Phoenix stated that the dirt road and front lot (M/L 008-100-000) have been in existence since 1939.  
68 The rear lot (M/L 008-101-000) was created in 1951. The front lot is burdened by an existing right of way  
69 along the dirt road for the benefit of accessing the rear lot. The application of the allowed 50 foot  
70 wetlands setback on the rear lot provides sufficient area for the proposed construction of a single family  
71 home on the rear lot. The proposed home will be served by municipal water, septic system, and a  
72 driveway along the existing woods path from Post Road and crossing over the front lot. The construction  
73 of the road within the wetlands buffer area will require Planning Board approval of a conditional use  
74 permit.

76 Mr. Phoenix explained that the applicant had the option of merging the two lots to create the frontage  
77 required by the zoning ordinance. However, if the lots were merged, then a 100 foot wetlands setback  
78 would be imposed and eliminate the allowed buildable area on the combined property. A greater  
79 amount of relief from the wetlands ordinance would need to be granted by the Planning Board. The  
80 applicant chose to keep the lots separate to maintain the buildable area on the rear lot allowed by the  
81 50 foot wetlands buffer. In his opinion, requesting relief from the frontage requirement was more  
82 reasonable than requesting substantial relief from the wetlands setback requirement.

84 Mr. Phoenix further stated that the applicant and property owner were willing to agree to a condition of  
85 approval to only sell the front and rear lot properties together and construct only the one home as  
86 represented in the application.

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

89 1. and 2. Granting the proposed variance would not be contrary to the public interest and would  
90 observe the spirit of the ordinance in that the purposes of zoning such as preventing overcrowding of  
91 land, securing the public's safety, providing adequate light and air, lessening traffic congestion, and  
92 assuring proper use of natural resources would not be adversely affected by the granting of the  
93 variance. The access proposed for the rear lot from Post Road through the front lot has been in  
94 existence since at least 1951. The front lot will remain vacant. The proposed home will be set far back

from the road on the rear lot. The result of the proposal will appear the same as on a large lot with double the amount of required frontage with a home out of view and only a driveway visible. Granting the variance neither alters the essential character of the neighborhood nor threatens the public health, safety, and welfare.

3. The proposed variance relief will have no impact on the value of the surrounding properties in that the proposed residential use is allowed in the underlying zoning district. The front lot will remain undeveloped; resulting in no changes viewed from the street. The rear lot will be developed with a single family home that complies with all yard setbacks and will not be visible from the street. The only visible alteration will be installation of the driveway and a mailbox.

4. Special conditions distinguish this property from other properties in the area. The lots have existed in their current state for over 70 years. While merging the lots would provide adequate frontage to enable development, it would also create a non-compliance with the wetlands structure and impervious surface setback regulations. 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, reduce overcrowding, and provide land area for stormwater treatment. The proposed project does not adversely impact these goals. The effect of the project will be identical to similar development on any oversized lot. The proposed single family residential use is reasonable.

5. Substantial justice will be done by granting the variance. There is no benefit to the public that would outweigh the hardship to the applicant. Since the rear lot and its deeded access have existed since 1951 and can support a home, septic system, and driveway unseen from the road, there is no harm to the general public by granting the variance. Denial of the variance would prohibit the applicant from the reasonable use of the property for a single family home.

Ms. Reid asked for public comments.

Abutter Lee Brooks addressed the Board. Mr. Brooks asked for clarification on how the two lots could be tied together for conveyance purposes in the future.

Mr. Milner stated that a deed restriction could be added to the deeds for both lots by the property owner. Mr. Phoenix concurred with Mr. Milner's statement.

Mr. Miller asked for confirmation of the dates when the wetlands on the properties were delineated.

Mr. Albert stated that the wetlands were delineated 12 years ago and last year.

Mr. Miller stated his desire for a site walk. Ms. Reid stated that it would be helpful to see the wetlands conditions at a site walk.

Abutter Julia Malloy asked for clarification regarding how a driveway can be built over the existing stream on the property.

Mr. Milner explained how a wetlands crossing culvert can be constructed over the stream and that there are driveway construction methods and materials that may allow a driveway to be constructed on the properties.

Ms. Reid closed the public hearing at 7:07pm.

The Board discussed timing for a site walk due to the current weather and land conditions.

Ms. Prior stated her opinion that a site walk was not necessary. She is satisfied with the professionally stamped plans which delineate the wetlands areas and other conditions of the property.

A poll of the Board indicated that three members (Mr. Clifford, Ms. Prior, and Mr. Janos) were of the opinion that a site walk was not necessary and two members (Ms. Reid and Mr. Miller) were of the opinion that a site walk was necessary. Ms. Reid announced that, based on the poll of the Board, a site walk will not occur.

Mr. Janos stated his opinion that a site walk is not necessary because the wetlands issue and other site conditions fall within the domain of the Planning Board. The responsibility of the ZBA is to focus on the frontage issue and the five criteria for granting the variance request .

Mr. Miller stated his opinion that a site walk is necessary for him to make an informed judgement regarding the variance request. A site walk will give him information about the properties that will aid with his decision making process. Without a site walk, he will find it difficult to approve the variance request.

Ms. Reid agreed with Mr. Miller's comment regarding a site walk.

Mr. Clifford stated that he is comfortable relying upon the credibility of the professionally prepared and stamped plan of the properties presented to the Board.

Mr. Janos stated his opinion that the application has met all five criteria for granting the frontage variance as requested. Mr. Janos suggested that the following conditions, as proposed by the applicant and the property owner, be placed on an approval decision:

- a. The proposed project should receive Planning Board and other necessary permits and approvals.
- b. The front lot shall remain undeveloped.
- c. The two lots should be conveyed together, not separately.

Ms. Prior and Mr. Clifford stated their opinions that the application has met all five criteria for granting the frontage variance as requested. They have no issues with granting the variance as long as the Planning Board reviews and approves the project, all other necessary permits and approvals are obtained, and deed restrictions, as proposed by the applicant and property owner, are established.

Mr. Miller and Ms. Reid re-stated their opinion that a site walk is necessary to obtain all of the information to make an informed judgment regarding the variance request.

**Mr. Clifford moved that the Zoning Board of Adjustment grant a variance from Town of North Hampton Zoning Ordinance Section 203.4 to allow erection of a structure on a lot without the minimum required frontage subject to the following conditions:**

**1. As voluntarily proposed and agreed to by the applicant and the property owner, the following deed restrictions shall be established and recorded for both M/L 008-100-000 and M/L 008-101-000:**

- a. M/L 008-100-000 and M/L 008-101-000 shall only be conveyed together, not separately.

**b. No structures shall be erected and no development shall occur on the M/L 008-100-000 property, with the exception of the driveway and wetlands crossing which enable access to the M/L 008-101-000 property and necessary utilities features for the proposed home on the M/L 008-101-000 property within the area of the proposed driveway.**

**2. The applicant receives all required federal, state, and local permits and approvals including, but not limited to, Planning Board, Building Department, and Fire Department permits and approvals.**

**Second by Ms. Prior. The vote was 3-2 in favor of the motion with Ms. Reid and Mr. Miller opposed.**

**III. Other Business.**

Ms. Reid and Mr. Clifford indicated that they will not be able to attend the February 28, 2023 ZBA meeting. Mr. Milner suggested that the Board appoint an Acting Chair for the meeting since the Chair and Vice Chair will not be attending the meeting. Ms. Prior indicated that she would be willing to act as Chair for the meeting.

**Mr. Clifford moved that the ZBA appoint Audrey Prior to be the Acting Chair of the ZBA at its February 28, 2023 meeting. Second by Mr. Janos. The vote was unanimous in favor of the motion (5-0).**

Ms. Reid suggested that the ZBA consider moving its regularly scheduled fourth Tuesday of the month meeting date in February 2024 to another date to avoid a scheduling conflict for some members during the February school vacation week. Mr. Milner stated that he would research other possible dates and report back to the Board.

**Mr. Janos moved to adjourn the meeting at 7:57pm. Second by Ms. Prior. The vote was unanimous in favor of the motion (5-0).**

Respectfully submitted,

Rick Milner  
Recording Secretary