

MINUTES OF 2/19/2013



Town of Hebron
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Hebron Zoning Board of Adjustment Minutes of Public Hearing 2/19/2013

Members Present: Pete Carey (Chair), Alison York (Alternate), John Matthews (Member), Derry Riddle (Member), and Bill Lucarelli (Alternate)

Members Absent: Doug McQuilkin (Vice Chairman), Ileana Saros (Member), Pat Moriarty (Alternate), and Earl LaFlamme (Alternate)

Others Present: Doug Robertson (Abutter), Beth Robertson (Abutter), Tom Cates (Applicant), Gerald Fransen (Abode), Bob Wildes (Abode), Dan Merritt (Hebron Compliance Officer), Bruce Barnard (B.A. Barnard Enterprises, Inc.), and Barbara Spike (Secretary)

Time Convened: 7:00 PM **Time Adjourned:** 8:00 PM

Next Meeting: TBD based on submitted applications

Agenda:

- 1) Minutes and other administrative matters
- 2) Hearing of Thomas M. and Julia A. Cates' application for a variance under Article IV, Section H.1, of the Hebron Zoning Ordinance to construct an addition to their house within a side boundary setback area on their property located at 22 Onaway Point Road (Map 6-0P, Lot 3). (Case #257)
- 3) Any other business that may come before the Board

Administrative Matters/Announcements:

Chairman Pete Carey opened the meeting at 7:00 p.m. He appointed Bill Lucarelli and Alison York voting members for purposes of this meeting. Bill recused himself from acting on any issue dealing with the Cates' application since he is a Camp Onaway trustee. Camp Onaway is an abutter to the Cates' property.

Chairman Carey then ascertained that all the members had reviewed the minutes of the December 4, 2012 meeting. **Derry Riddle made the motion to accept the December 4, 2012 minutes as submitted; John Matthews seconded the motion; and the motion passed unanimously at 7:03 p.m.**

Hearing of Thomas M. and Julia A. Cates' application for a variance under Article IV, Section H.1, of the Hebron Zoning Ordinance to construct an addition to their house within a side boundary setback area on their property located at 22 Onaway Point Road (Map 6-0P, Lot 3). (Case #257)

Chairman Carey announced that notices of tonight's hearing were posted in two places in Hebron, on the town website and published in the Record Enterprise newspaper. Certified mail notices were also sent to abutters, and appropriate fees were paid.

The public hearing on the Cates' application was then opened and Tom Cates, Bob Wildes (Abode), and Gerald Fransen (Abode) brought the plans to the table.

Discussion ensued showing that plans as now drawn would not increase the current footprint of the structure. Road and side boundary setbacks will be unaffected. There will be an increase in the elevation of the house, however. The house will be remodeled, not demolished as originally planned. All stamped structural drawings were in compliance. Impervious surface was still below 30 percent. Property frontage was discussed. The State has approved the new, Bruce Barnard-designed septic system, which is designed correctly for the number of bedrooms. There is no visual impact to the lake. Abutters on the east side, Beth and Doug Robertson, were asked for their comments. Beth said she was pleased with the house design and wished them good luck. Dan Merritt was also pleased with the 42.5' setback from Onaway Point Road. At 7:25 p.m., the public hearing was closed.

Chairman Carey and the Board began deliberations. Derry questioned the distance of the roof line from ground level, which measured 16 feet more or less. John Matthews wanted to be sure of the height of the addition, which was ascertained to be under 35'. The Board then discussed all five statutory variance criteria. All five points were unanimously agreed upon. As to the hardship criterion, the Board members agreed that the non-conforming configuration of the property left no other reasonably feasible building alternative.

Motion to approve Thomas M. and Julia A. Cates' application for a variance under Article IV, Section H.1, of the Hebron Zoning Ordinance to construct an addition to their house within the current road setback area on their property located at 22 Onaway Point Road (Map 6-OP, Lot 3), as shown in their submitted plans. Overall height of the structure shall not exceed 29 feet, as measured from the north side ground level. Road setback shall not exceed 41 feet. **Motion was made by Alison York and was seconded by John Matthews. MOTION PASSED at 7:36 P.M.**

Chairman Carey said a published Notice of Decision would be sent to Abode and to Dan Merritt. Dan Merritt will then re-sign the building permit. Chairman Carey cautioned that the Board's approval of the variance was appealable for a period of 30 (thirty) days and that any work performed prior to then would be at the applicant's risk.

Any other business that may come before the Board:

Dan Merritt joined the table to update the Board on the situation with Mark Braley's request for a change of use of the greenhouse to include retail operations. John Matthews brought up the need for designated parking. Concerns were also expressed about additional traffic flow in the area, lighting and restroom requirements, specifying what hours/days of operation would be, and what permits would need to be secured from which departments. The greenhouse operates within the Historic District. Mark Braley also would like to serve coffee and maybe light breakfast to snowmobilers during that season.

There is no State licensing requirement as this would be on an “occasional” basis. Mark Braley currently holds a ZBA special exception for his business. Chairman Carey and others felt that this situation might require another special exception with the specific terms spelled out. A three-way meeting between the ZBA, Historic District Commission, and Hebron Planning Board might be an expeditious and economical solution so that all issues could be addressed.

Chairman Carey said he would talk to Kathy Kearns and Andrea Goldthwaite and get back to the Board if this is feasible in the near future.

There being no further business, **John Mathews moved and Derry Riddle seconded a motion to adjourn the meeting at 8:00 pm. PASSED**

Respectfully submitted by Barbara A. Spike, Board Secretary



Town of Hebron

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Public Hearing Hebron Planning Board, Zoning Board of Adjustment & Historic District Commission Monday, April 8, 2013

Time: 7:00 p.m.

Location: Town Hall Land Use Room, Second Floor

Board Members Present: Hebron Planning Board (PB) Members Roger Larochelle (Chair), regular member Mitch Manseau, and alternate members Joe Hogan, Arthur Cummings and Karl Braconier; Hebron Historic District Commission (HHDC) Members Andrea Goldthwaite (Chair), Alfred "Trip" Swartz (Vice Chair), and alternate member David Brittelli; and Hebron Zoning Board of Adjustment Members (ZBA) Peter Carey (Chair), regular member Derry Riddle, and alternate members Earl LaFlamme, William Lucarelli, and Alison York.

Others Present: Applicant Mark Braley, Conservation Commission Members Suzanne Smith and Mavis Brittelli, Alan Barnard (Barnard Survey Associates), Gordon Matthews (Braley abutter), Kathy Kearns (serving as Acting Secretary).

Agenda:

1. Planning Board Site Plan Application Review of Mark Braley's greenhouse business located at his 23 Braley Road residence; Tax Map #17, Lot #32
2. Application for Special Exception from the Zoning Board of Adjustment for a home occupation as provided in Article V, Section E, of the Hebron Zoning Ordinance and a Certificate of Approval from the Hebron Historic District Commission. Mark Braley proposes to expand his greenhouse business, located at his 23 Braley Road residence, in the Common Historic District of Hebron (Tax Map 17, Lot 32), from its current wholesale business into a combined wholesale and retail business.
3. Any other matters that come before the Board

Call to Order: At 7:01 p.m., Roger Larochelle (Planning Board Chair) called the three-way joint board meeting to order. Larochelle then appointed PB alternate members Joe Hogan and Arthur Cummings as full voting members for the meeting.

Larochelle outlined meeting procedures, stating that for the sake of time efficiency and convenience, all three boards would review the merits of Mark Braley's application concurrently.

The Planning Board would begin with a review of the Site Plan Application submitted by Mark Braley for his greenhouse business located at his 23 Braley Road residence; Tax Map #17, Lot #32.

The Planning Board would review the application for its completeness; and if complete and approved by the Planning Board, such approval would be conditional on the approval of the HHDC and ZBA.

Larochelle asked Mr. Braley for an overview of the project to explain Braley's anticipated future use of the greenhouse.

Mr. Braley stated that he had gone through the permitting process to build a greenhouse at his residence back in November of 2011. At that time, he had appeared at a joint public hearing of the Zoning Board of Adjustment and the Hebron Historic District Commission. He had been granted the necessary permits and the greenhouse has been operated as a part-time wholesale business since its construction.

Braley stated that the cost of heating the greenhouse has recently skyrocketed, and in order to keep his enterprise a viable business, he is seeking approval to make the change from strictly wholesale to wholesale and limited retail. Braley believes the additional sales will help to cover his cost for fuel/heat. Braley was questioned about the scope of the project and he said he was planning to operate the business on a part-time basis for two to two and a half months each spring, with limited retail sales to customers on Fridays, Saturdays and Sundays.

Larochelle invited members of the other boards to speak and question Braley as "members of the general public" until such time as their own board's review of the application.

Alan Barnard stated that he thinks the ZBA needs to act on the application first, considering its proposed change of use. Barnard also stated that Braley's property poses concerns regarding protection of the Flood Plain; that it is in the Historic District; and that as the Planning Board reviews the Flood Plain and Buffer Overlay for conservation purposes, the greenhouse proximity to Designated Brooks needs to be considered. Additionally, Barnard mentioned the Shoreland Water Quality Protection Act and the fact that it requires that protected shoreland extend 250 feet landward from protected water bodies. Barnard is of the opinion that Braley's greenhouse is partially located in a "fringe area" and that the 250 foot demarcation requires a State permit by notification. He stated that it is partially located in Zone A which means a variance is needed for the location of propane tanks. He stated that the greenhouse is within 500 feet of the river which could require DES notification as it is near a designated brook which requires a protected buffer. Barnard cited the Hebron Zoning Ordinance Article II definition of "lot" and stated his opinion that Braley's residential use of the property and proposed retail business use would violate the "one principal structure or use" requirement of the Ordinance. Barnard felt that the structure was sited wrong in the original site plan review, and that a special investigative study should analyze fertilizer and pesticides run-off, parking and lighting concerns and other conditions to be met within the Flood Plain Overlay and the Historic District.

Mavis Brittelli asked if Mr. Braley planned to expand or add an addition to the greenhouse and Braley said no, he had no plans to change the structure.

Peter Carey reiterated that Braley was given a Variance from shore setback requirements with his initial application to build the greenhouse, in addition to a Special Exception to conduct his greenhouse home occupation in the Common Historic District.

Alan Barnard replied that the Flood Plain issues need to be addressed and related his concerns that the gas tanks and greenhouse structure violate the Flood Plain provisions of the Zoning Ordinance.

Roger Larochelle asked the members of the Planning Board to proceed through the Planning Board checklist to see if Braley's application is complete. Larochelle read through the checklist and the Planning Board determined that the conditions of the Site Plan Review had been met, while waiving the following items D, F, G, J and L as not relevant to the current application:

(D) Certification of the boundary survey by a land surveyor licensed to practice in New Hampshire;

(F) The perimeter boundaries of the lot or lots of the proposed site, including compass bearings, distances, lot areas and bounds.

(G) Existing and proposed grades, including topographic contours at intervals not exceeding two (2) feet.

(J) The plan of abutting properties with location of all structures and access roads thereon within two hundred (200) feet of the site boundaries.

(L) The size and location of all existing and proposed public and private utilities.

Mitch Manseau moved to accept the Site Plan application as complete.

Arthur Cummings seconded the motion. **PASSED.**

Larochelle then turned the meeting over to Andrea Goldthwaite, Chair of the Hebron Historic District Commission, and Peter Carey, Chair of the Zoning Board of Adjustment, for their review of the application for Special Exception and a Variance for change of use in the Flood Plain Overlay.

Carey noted at the outset that notices of the joint hearing had been sent to all property abutters, published in the Plymouth Record Enterprise, and posted in at least two public locations in town.

He confirmed with Mark Braley that Braley had submitted his various applications with the full knowledge and consent of his landlord, the owner of the 23 Braley Road property. Braley added that his landlord had actually encouraged him to pursue his greenhouse operation. Carey asked if the principal use of the property continues to be residential and whether the greenhouse remains an ancillary use. Braley replied in the affirmative.

Carey stated that the Board of Adjustment may make Special Exceptions to the terms of the Zoning Ordinance (as per Article X) if the Board finds:

1. That the granting of such special Exception is not contrary to promoting the public interest and convenience of the citizens of Hebron;
2. That the granting of such Special Exception will not result in diminution of the values of surrounding properties;
3. That for any uses involving vehicles, the Special Exception will be granted only if adequate provisions for off-street parking is provided; and
4. That the granting of such Special Exception will not be contrary to the spirit of this Ordinance.

Carey stated that a Special Exception was granted to Mark Braley when he came before the Hebron Historic District Commission and the Zoning Board of Adjustment on November 29, 2011, but now

another is required before Braley can expand his current greenhouse business into both a wholesale and a retail business.

Carey asked Braley if he had anything else to add to the discussion. Braley said he had nothing else to add.

Carey opened the meeting up to the general public for discussion and questions.

Alan Barnard quoted Article V, Section E of the Hebron Zoning Ordinance which states that permitted uses by Special Exception of the Board of Adjustment include Retail Stores, Home Occupation, Renting of Rooms, and Post Office. He asked if the greenhouse qualifies as Home Occupation or Retail Store. The ZBA members agreed the proposed greenhouse retail business would no longer fit the definition of Home Occupation and would be considered as a Retail Store.

Andrea Goldthwaite said signage, though permitted, is an issue in the Historic District as it must be within the guidelines of both the District Guidelines and the Zoning regulations. Braley said there would be no signs added, and that parking would be in his driveway. Ms. Goldthwaite asked if the side walls of the greenhouse would be painted white as per the agreement on November 29, 2011. Mr. Braley agreed to the white paint and added that the greenhouse has neither grow nor exterior lighting.

Derry Riddle asked about use of pesticides. Braley said he grows everything organically and free of pesticides. He uses fish emulsion as the only fertilizer, and no pesticides or fertilizers are stored at the property.

Peter Carey asked about the propane tanks, and Mr. Braley said that as soon as the snow melts, they will be bolted to the slab.

Andrea Goldthwaite reminded the HHDC members that propane tanks had been previously approved. Ms. Goldthwaite asked for a motion for the HHDC to accept the application.

Trip Swartz moved to accept the application with the condition that the greenhouse be painted white to conform with the Historic District regulations.

David Brittelli seconded the motion. PASSED.

Trip Swartz moved to adjourn the Hebron Historic District Commission portion of the meeting.

David Brittelli seconded the motion. PASSED.

Peter Carey asked if there were any other comments from the general public.

Alan Barnard said that the greenhouse is partially located in Flood Zone A, an “Area of Special Flood Hazard” and that a variance should be granted “as a housekeeping matter” and to “correct the mistake of the past.”

Gordon Matthews, in response to Carey’s question, indicated that, as an abutting property owner, he has no objection to Mark Braley’s greenhouse operation and proposed expansion into a retail business.

There being no further public comments, Peter Carey proposed that the ZBA first take up and deliberate on the floodplain variance issue raised by Mr. Barnard. He reminded the ZBA members

that, in accordance with Article VIII, Item IX of the Hebron Zoning Ordinance, they have the authority to grant such a variance under RSA 674:33, I(b), after favorable consideration of all of the five statutory variance criteria, as well as the three criteria spelled out in Article VIII, Item IX of the Hebron Zoning Ordinance:

RSA 674-33, I(b) criteria:

- (1) The variance will not be contrary to the public interest;
- (2) The spirit of the ordinance is observed;
- (3) Substantial justice is done;
- (4) The values of surrounding properties are not diminished; and
- (5) Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.

Hebron Zoning Ordinance, Article VIII, Item IX criteria:

- (1) The variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense;
- (2) If the requested variance is for activity within a designated regulatory floodway, no increase in flood levels during the base flood discharge will result; and
- (3) The variance is the minimum necessary, considering the flood hazard, to afford relief.

The ZBA members discussed all of the statutory and ordinance variance criteria. Since the greenhouse is not located within a designated regulatory floodway—a point earlier confirmed by Mr. Barnard—the Board members agreed that the second of the three Zoning Ordinance criteria is not applicable to this case. The Board members unanimously agreed that all other statutory and ordinance criteria were satisfied.

William Lucarelli moved, in accordance with RSA 674:33, I(b) and Hebron Zoning Ordinance Article VIII, Item IX, to approve the variance from floodplain building requirements and to allow Mark Braley to keep his greenhouse at its current location, subject to the following conditions being met:

- (1) That the structure be painted white to conform to the rules of the Hebron Historic District;
- (2) That the propane tanks be secured;
- (3) That the property be kept in a reasonable state of repair;
- (4) That the wooded buffer be maintained to shield its view from the abutting properties;
- (5) That no additional signage or exterior lighting be added to the greenhouse; and
- (6) That no pesticides or fertilizers be stored at the greenhouse.

Earl LaFlamme seconded the motion. PASSED

Peter Carey then initiated discussion of the four criteria required to grant a Special Exception under Article X of the Hebron Zoning Ordinance:

- (1) That the granting of such special exception is not contrary to promoting the public interest and convenience of the citizens of Hebron;
- (2) That the granting of such special exception will not result in diminution of the values of surrounding properties;
- (3) That for any uses involving vehicles, the special exception will be granted only if adequate provisions for off-street parking is provided; and
- (4) That the granting of such special exception will not be contrary to the spirit of this Ordinance.

The Board members discussed each of the Special Exception criteria and unanimously agreed that all four criteria were satisfied in this case.

Derry Riddle moved, in accordance with Article V, Section E, and Article X of the Hebron Zoning Ordinance, to grant Mark Braley a Special Exception to expand his current greenhouse wholesale business into a wholesale and retail business at 23 Braley Road (Tax Map #17, Lot #32), in the Common Historic District, subject to the same conditions specified in the approved variance motion.

Alison York seconded the motion. PASSED

Alison York moved to adjourn the Hebron ZBA portion of the meeting.

Earl LaFlamme seconded the motion. PASSED.

Peter Carey turned the meeting back to Roger Larochelle. Larochelle returned the discussion to the Planning Board to consider the approval of the Site Plan Application, already accepted as complete, while noting the Variance and Special Exception approved by the Zoning Board of Adjustment dated as of April 8, 2013.

Arthur Cummings moved to accept the Site Plan as submitted subject to the following condition:

That retail operation of the greenhouse be strictly limited to Fridays, Saturdays, Sundays and holidays and during daylight hours only.

Joe Hogan seconded the motion. PASSED

There being no further business on the agenda, Larochelle asked for a motion to adjourn the meeting.

Mitch Manseau moved to adjourn.

Arthur Cummings seconded the motion. PASSED

The meeting was adjourned at 8:20 p.m.

Respectfully submitted by Kathleen Kearns, Acting Secretary,

Substituting for Secretary Barbara Spike.



Town of Hebron
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Zoning Board of Adjustment
Minutes of Public Hearing
Tuesday, May 14, 2013

Present: Peter Carey (Chair), Derry Riddle (Member), Bill Lucarelli (Alternate), Alison York (Alternate), Ileana Saros (Member)

Absent: Douglas McQuilkin (Vice Chair), John Matthews (Member)

Others present: James "JJ" Owen, Jesse Bourque, Barbara A. Spike (Clerk)

Time Convened: 7:08 PM **Time Adjourned:** 7:46 PM

Next Meeting: TBD based on submitted applications

AGENDA:

1. Minutes and other administrative matters
2. Hearing of James Owen, Laura Rudolph-Owen, James McNally, and Kristen Biber's application for a variance under Article IV, Section H.1, of the Hebron Zoning Ordinance to replace their current deck with a new deck, both within a boundary setback area on their property located at 9 Stonegate Road (Map/Lot SG-23-07). (Case #259)
3. Any other business that may come before the Board

Minutes and other Administrative Matters:

Chair Pete Carey opened the meeting at 7:08 p.m. He reported that Earl LaFlamme had resigned due to health issues. He just learned that Sheila Oranch and John Dunklee have been appointed as members, but but have not yet been sworn in. Alison York and Bill Lucarelli were appointed regular members for voting purposes of this hearing. There are two sets of minutes to be approved; the first being the April 8, 2013, the minutes of the preliminary business meeting to elect officers. Seeing no corrections or additions, **Derry Riddle moved, and Alison York seconded the motion, to approve the minutes as submitted. Passed unanimously at 7:09 p.m.** The minutes of the April 8 Joint meeting with the Planning Board and Historic District Commission were recorded by Kathleen Kearns. **Bill Lucarelli moved, and Derry Riddle seconded the motion to approve those minutes as submitted. Passed unanimously at 7:11 p.m.**

Hearing of James Owen, Laura Rudolph-Owen, James McNally, and Kristen Biber's application for a variance under Article IV, Section H.1, of the Hebron Zoning Ordinance to replace their current deck with a new deck, both within a boundary setback area on

their property located at 9 Stonegate Road (Map/Lot SG-23-07). (Case #259)

Chair Pete Carey opened hearing on the Owens/McNally/Biber's application for a variance for replacement of their deck. Mr. Carey said that all abutting property owners had been timely notified of the hearing by certified mail, that hearing notices had been timely posted in the *Plymouth Record-Enterprise* and on two public bulletin boards in Hebron. James Owen and Jesse Bourque, of Anything & Everything Handyman, came forward with their plans for the new deck. The proposed new deck will measure 16' x 16', which is smaller and less non-conforming than the existing deck. The new design is purely functional to replace the old degraded deck and to keep deck users from hitting their heads on the open casement windows. The existing deck extends all the way to the boundary line. The new deck will be built at least eight feet back from the boundary line.

There has been no comment from abutters or others on this matter. Dan Merritt, Compliance Officer, has no problems with the plans.

Derry Riddle asked if there was a need to keep dimensions on record. Mr. Carey said the dimensions were included on the sketches submitted with the variance application.

Mr. Carey opened the hearing to further public comment. There being none, the hearing was closed, and the Board began deliberations. The Board discussed the five variance criteria. The Board unanimously decided that all five criteria for granting a variance were satisfied in this case. More specifically, the Board found that the applicants satisfied the hardship criterion in that the unique configuration of the lot leaves them no other reasonably feasible building alternatives, and the current deck configuration poses a safety hazard to users from casement windows opening onto the deck. The Board members concluded that granting a variance would be consistent with both public interest and spirit of the Hebron Zoning Ordinance, do justice, and certainly not diminish neighboring property values. The members found that the current deck extends right to the boundary line; the new deck will be set back at least eight feet from the boundary line. Therefore, the new deck will be less nonconforming.

Derry Riddle made the motion to approve James Owen, Laura Rudolph-Owen, James McNally, and Kristen Biber's application for a variance under Article IV, Section H.1, of the Hebron Zoning Ordinance to replace their current deck with a new deck, both within a boundary setback area on their property located at 9 Stonegate Road (Map/Lot SG-23-07), which new deck will be 16 feet long by 16 feet wide, and no closer than 8 feet to the boundary line. Ileana Saros seconded. Motion passed unanimously at 7:22 p.m.

Mr. Carey said that Dan Merritt will re-sign the building permit. He further cautioned that the Board's approval of the variance was appealable for a period of 30 (thirty) days and that any work performed prior to then would be at the applicant's risk.

Any other business that may come before the Board

Derry Riddle reported that the Hebron church shed addition variance application will be submitted imminently. The proposed shed addition involved will be half the size of the existing shed and will be attached on the east side. The church also proposes to erect a kiosk, like the town office kiosk, next to the west entrance to the church. Derry is awaiting Dan Merritt's denial of the building permit.

The Board then discussed the issue of Trip Swartz' barn. Neighbors report that the barn, located in the Lake District, is being used in Trip's construction business, in apparent violation of the Hebron Zoning Ordinance. There have been noise complaints. According to Dan Merritt, the Select Board took up the matter at the last Select Board meeting, directed Trip to stop all commercial activities on his property, and will continue to monitor the situation.

The Board took up another Zoning Ordinance enforcement matter concerning the Matthews property across from the Public Safety Building. According to reports, the Matthews are planning to have 13 pigs and a considerable number of chickens on their three-acre parcel—many more animals than they had last year when neighbors complained. According to one neighbor, the Matthews are dumping animal waste in the area where Tannery Brook runs into the Cockermouth River, an area that is regularly flooded. Mr. Carey will take this issue up with Dan Merritt.

The Board next discussed the matter of Bill Robertie's property. Mr. Robertie continues to use his property in his commercial business, in apparent violation of the Hebron Zoning Ordinance. Moreover, his property appears to meet the Hebron Zoning Ordinance "junkyard" definition. According to Ileana Saros, Mr. Robertie has recently purchased a four-acre parcel in Rumney, where he intends to move his stuff and conduct his business.

Finally, the Board took up the Yarrick matter. Robert Yarrick has not complied fully with the ZBA's decision in his case regarding his solar arrays.

The Board members shared their concerns that the Hebron Zoning Ordinance needs to be applied and enforced more vigorously and uniformly. Mr. Carey will take this up with Dan Merritt and the Select Board.

There being no further business to come before the Board, **Derry Riddle moved and sAlison York seconded a motion to adjourn the meeting at 7:46 pm. PASSED**

Respectfully submitted, Barbara Spike, Clerk

These minutes may be amended at a future meeting. Any changes will be included in the minutes of that meeting.



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Hebron Zoning Board of Adjustment
Minutes of Meeting 7/16/2013

Members Present: Peter Carey (Chair), John Matthews (Member), Alison York (Alternate), Sheila Oranch (Alternate)

Members Absent: Douglas S. McQuilkin (Vice Chairman), Ileana Saros (Member), Patrick Moriarity (Alternate), Derry Riddle (Member), William Lucarelli (Alternate), John Dunklee (Alternate)

Others Present: Dan Merritt (Hebron Compliance Officer), Michael Vermouth (Abutter), Barbara Spike (Secretary)

Time Convened: 7:06 PM **Time Adjourned:** 7:38 PM

Next Meeting: TBD based on submitted applications

Agenda:

- 1) Minutes and other Administrative Matters;
- 2) Hearing of Jim Bivona and Amy Bassett's application for a variance under Article IV, Section H.1, of the Hebron Zoning Ordinance to construct a 6' x 9' addition to their existing shed located within a boundary setback area on their property located at 10 Stoney Brook Road (Tax Map 8-SG-9). (Case #261)
- 3) Any other business that may come before the Board.

Administrative Matters/Announcements:

Chairman Pete Carey opened the meeting at 7:03 p.m. It was determined that a certified mailing went out to abutters, notice was posted in the proper places and the newspaper ad had been placed. The applicants had not received notice. Chair Pete called Jim Bivona and learned that Jim had a conflicting meeting at that time, so a phone conference could not be held. Chair Pete learned that Jim was not planning to pursue the project until the fall, so a new hearing will be scheduled later in August or September.

There were not enough board members in attendance to make a quorum so discussion of the May and June minutes is postponed until the next meeting.

There was general discussion about possible applications which might be submitted and what matters were in front of the Select Board.

There being no further business, John Matthews moved and Alison York seconded a motion to adjourn the meeting at 7:38 pm. **PASSED**

Respectfully submitted by Barbara A. Spike, Board Secretary



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Hebron Zoning Board of Adjustment

Minutes of Meeting

August 13, 2013

Members Present: Pete Carey (Chair), Doug McQuilkin (Vice Chairman), John Matthews (Member), Derry Riddle (Member), Alison York (Alternate), Bill Lucarelli (Alternate), John Dunklee (Alternate), and Sheila Oranch (Alternate)

Members Absent: Ileana Saros (Member)

Others Present: Dan Merritt (Hebron Compliance Officer), Jim and Amy Bivona, Jennifer Bean, Elaine Sears Coughlin Bean, Keri Camarigg, Mary Ann Coughlin, Bruce A. Barnard, Alan M. Barnard, and Barbara Spike (Clerk)

Time Convened: 7:10 PM **Time Adjourned:** 8:53 PM

Next Meeting: September 3, 2013

Agenda:

- 1) Minutes and other administrative matters;
- 2) Hearing of Jim Bivona and Amy Bassett's application for a variance under Article IV, Sections H.1 and N.2, of the Hebron Zoning Ordinance to construct a 6' long by 9' wide addition to their existing shed located within boundary and designated brook setback areas on their 10 Stoney Brook Road property (Tax Map 8-SG-9). (Case #261)
- 3) Hearing of Mary A. Coughlin and Elaine S. Bean's application for a variance under Article IV, Sections H.1, N.2, and P, of the Hebron Zoning Ordinance to tear down and replace their old house and storage shed, both located within road, boundary, and lake shore setback areas on their 5 Point Drive property (Tax Map 18A-IP-10) (Case #262)
- 4) Any other business that may come before the Board.

Administrative Matters/Announcements:

Chairman Pete Carey opened the meeting at 7:10 p.m. In light of Ileana Saros' absence, he appointed Alison York as a regular member for purposes of tonight's hearing. Pete then asked for any comments, corrections, or additions to the minutes of the May 14, 2013, meeting. Hearing none, he called for a motion on the minutes. **Derry Riddle made the motion to accept the May 14, 2013, minutes as submitted; Alison York seconded the motion; and the motion passed unanimously.**

Pete asked for comments, corrections, or additions to the June 11, 2013, minutes. Doug McQuilkin asked that on page 2, paragraph 6, the words “for the kiosk” be inserted after “pressure-treated wood.” There was no other discussion. **Doug McQuilkin made the motion to accept the June 11, 2013, minutes as corrected; John Matthews seconded the motion; and the motion passed unanimously.**

The discussion then turned to the July 16, 2013, minutes. **Alison York made the motion to accept the June 11 minutes as submitted; Sheila Oranch seconded the motion; and the motion passed unanimously.**

Pete noted for the record that hearing notices were posted on the two official bulletin boards in town, published in the Plymouth Record-Enterprise, and sent by certified mail to applicants and abutters. All application fees have been paid.

Pete then opened the hearing and asked Jim Bivona and Amy Bassett to join the ZBA members at the table for discussion of their application. In 2008, the applicants applied for a variance to construct a 20’ long by 12’ wide in place of an old existing one. They ended up building a slightly smaller shed—20’ long by 10’ wide. Stone Gate Acres Association covenants allow one shed per lot. The applicants now want to construct a 6’ long by 9’ wide by 7’ high addition to their existing shed.

Doug McQuilkin pointed out that one provision of the original application approval was that, due to the shed’s proximity to Stoney Brook, the floor was to be constructed of an impervious material like cement with appropriate, built-in spill containment features. Jim Bivona said this was done. He added that, even though they would not be putting any gas-powered vehicles in the shed addition, he would be amenable to putting the same kind of floor under the shed addition. When asked what they planned to store in the shed, Jim said they were planning to store odds and ends. He further explained that there would be a separate entrance to the addition.

Doug McQuilkin said it looks like the proposed addition is no closer to Stoney Brook—which also serves as the property boundary line—than the existing shed. Jim replied in the affirmative. The question was then asked whether Stoney Brook is a “designated brook” and whether it flows year-round or seasonally. Dan Merritt confirmed that Stoney Brook flows year-round and is a “designated brook” under the Hebron Zoning Ordinance, and, therefore, the 50-foot protective buffer ordinance applies. Stoney Brook became a “designated brook” after the first Bivona-Bassett variance application was approved by the ZBA in July 2008.

Doug McQuilkin asked about the roof height on the proposed addition. Jim Bivona said the roof will be a little lower than the one on the existing shed.

Pete solicited comments from Dan Merritt about the project. Dan clarified some of the measurements and distances on the plans.

Pete then invited public comment. Bruce Barnard asked how far the proposed structure would be from the high-water mark of Stoney Brook. Jim answered five feet, the same distance the existing structure is from the Brook.

There being no further questions or comments from the public, Pete asked the Board to consider the application with respect to the five variance criteria. It was agreed by all that granting the variance would not be contrary to the public interest and would be consistent with the spirit of the ordinance. The Board further unanimously agreed that granting the variance would do substantial justice and would not adversely impact the value of surrounding properties. Finally, the Board members all concurred that the applicants satisfied the hardship criterion in that the unique size

and configuration of their lot, along with association covenants and restrictions, leaves the applicants no other reasonable feasible building alternatives.

Doug McQuilkin added that the Board should include the same floor construction requirements as in the previous approved application. All the members agreed.

Doug made a motion, seconded by Alison York, to approve Jim Bivona and Amy Bassett's application for a variance under Article IV, Sections H.1 and P, of the Hebron Zoning Ordinance to construct a 6' long by 9' wide addition to their existing 20' long by 10' wide shed located within boundary and designated brook setback areas on their 10 Stoney Brook Road property (Tax Map 8-SG-9). The addition will be constructed no closer than five feet to the high-water mark of Stoney Brook. The floor will be constructed of poured concrete with appropriate built-in spill containment features. The motion was passed unanimously.

Pete reminded the applicants that the Board's decision can be appealed within 30 days, and that any construction work done during that period would be at their own risk.

Pete then asked Alan Barnard, Mary Coughlin, and Elaine Bean to present their variance application to the Board. The application calls for the razing of a house and garden shed, both non-conforming structures, and replacement with two less non-conforming structures. Alan explained that the essence of the plan is to make the structures much less intrusive, keeping them essentially the same size, but pulling them back from the lakefront and closer to Point Drive. He pointed out that there will be no impact on neighboring properties or road users.

The new house will be two feet closer to the boundary line shared with the Mullens. The Mullens are in the process of totally rebuilding their home on the same footprint as their preexisting home. They received a variance from lake shore, boundary, and road setback requirements after a December 2012 hearing. Unlike the Mullens' two-story home, the applicants' proposed house is a one-and-a-half story structure. Alan explained that Indian Point community covenants established in 1959 prohibit two-story dwellings. He also pointed out that this particular restriction has never been enforced by the community or its members. There are a number of two-story homes in the neighborhood. John Matthews and Pete Carey emphasized that the ZBA and Town of Hebron are not the ones to enforce association covenants and restrictions. Pete argued that to the extent that potential covenant violations may adversely affect neighboring property values, they may enter into the ZBA's consideration of a variance application. He added, though, that the existence of two-story houses in the neighborhood—built in apparent violation of the association covenants and restrictions—would undermine any argument of adverse impact. Doug McQuilkin observed that since the variance application does not involve any variance from Hebron Zoning Ordinance building height limitations, the association covenants and restrictions are irrelevant.

Pete then segued into a discussion about an email to the Hebron Select Board that he had received, via Karen Corliss, just hours before the hearing from Indian Point Road residents named Pat and Bob McGowan. Pete read the email into the record as follows:

“Dear Select Board,

My name is Pat McGowan and we have a question about a covenant in our neighborhood on Indian Point Road/Point Road. There was a rule that the homes on the water on Point Road, in front of the homes across street on Indian Point Road, were not able to raise them above their existing level so as to not block the views from those homes.

These minutes may be amended at a future meeting. Any changes will be included in the minutes of that meeting.

We know that the Coughlin home on Point Road is to have a hearing today for a variance to knock down their house and build a two story home. This would greatly diminish the value and appeal of our home as we do have a view over their existing home and would no longer have that if they go another story. My homes value was in part due to this view and it is not right that I should have to endure this depreciation because someone is allowed to build against the original covenant rules. We all know the value of homes around the lake are based on views/access and proximity to the lake. Also, if a permit can be given in a situation that negatively impacts surrounding homes.

If you have the original plans for the development of this neighborhood, I would appreciate a copy so that we can confirm that rule or provide documentation that states the rule is no longer in existence.

We appreciate your assistance and look forward to your reply.

Thank you.

Pat and Bob McGowan”

Pete indicated that his reply to the McGowans—also on file—was essentially that association covenants and restrictions are not the Town's to enforce, that he would include their concerns in the record. He also made sure to invite the McGowans to the hearing.

Mary Coughlin summed up the discussion by saying that that the plans were drawn so as to protect the lake and be neighbor-friendly. Indeed, no abutting landowners have stated any sort of objection to the plans or the variance application.

Alan Barnard highlighted the location of the new septic system. Bruce Barnard assured the Board that the 1,250 gallon septic system will handle the property easily.

Alison York asked whether the house will be built on a slab and whether the heating oil tank will remain. Mary said the house plans contemplate a full basement, the house will be heated with an electric forced hot air system, and the oil tank will be removed.

Alan stated that another improvement included in the proposal involves the removal of about fifteen feet of driveway, thus significantly reducing the amount of impervious surface on the lot.

Pete opened the hearing to public comment. Bruce Barnard stated that back in the late 1960s the applicants were very helpful, generous, and environmentally sensitive in allowing the Town to make some substantial improvements in the neighborhood.

With no further public comment, Pete closed the hearing to public comment. Alan Barnard then read a portion of the application concerning how this particular project satisfies the five variance criteria. To summarize, granting the variance

(1) Would not be contrary to the public interest since reconstruction of the house and lot improvements will enhance the neighborhood, protect even more Newfound Lake, and not interfere at all with public use of the lake and Point Drive.

(2) Would be consistent with the spirit of the ordinance. The lot was created before Hebron adopted zoning regulation, and the current dwelling has been standing for over 50 years. The proposed reconstruction and improvements will make the lot and improvements more nearly conforming in its entirety to the current ordinance.

These minutes may be amended at a future meeting. Any changes will be included in the minutes of that meeting.

(3) Would do substantial justice because it allows the owners the ability to enhance and improve the use of this residential lot. The proposed plan is in keeping with the character of the entire neighborhood. Others in the neighborhood have sought and received variances for their property improvements. The applicants' request is supported by lots of precedent.

(4) Would not diminish the value of surrounding properties. Construction of the new dwelling to updated standards, along with improved aesthetics of the area, will likely have the opposite effect and actually increase neighborhood property valuations.

(5) Would satisfy the hardship criterion in that the unique size and configuration of this lot—which existed long before zoning regulation came to Hebron—leaves the applicants no other reasonably feasible building alternatives.

The Board members unanimously agreed that the application for variance satisfied all of the five variance criteria. Doug McQuilkin added that all State permits have to be obtained prior to construction going forward.

Derry Riddle made a motion, seconded by Doug McQuilkin, to approve Mary A. Coughlin and Elaine S. Bean's application for a variance under Article IV, Sections H.1, N.2, and P, of the Hebron Zoning Ordinance to tear down and replace their existing house and/or storage shed, both located within road, boundary, and lake shore setback areas on their property at 5 Point Drive (Tax Map 18A-IP, Lot 10, in accordance with the plans dated August 13, 2013, submitted by applicants. This is subject to applicants receiving all necessary State permit approvals. Motion was passed unanimously.

Pete told the applicants that the Board's decision is appealable for 30 days and any work started within that time would be at their own risk.

Pete then brought up the timing and subject of the next ZBA hearing. Pete received two variance applications submitted by Attorney Paul Fitzgerald on behalf of his clients, the Braley Family Trust and its Trustee, Judy Rogers. Pete received the applications a week before tonight's hearing, but it was too late to include them on tonight's agenda.

Dan Merritt briefly described the Braley Trust's two properties and the improvements thereon. He furnished the Board a sketch of the lots and buildings. Pete added that the properties' tax cards were included in the application and provided more detail. Pete and Dan then summarized the applications and the issues involved. The Board members concurred that a site visit prior to the hearing would be critical to understanding and ruling on the issues.

The Board members agreed on a Tuesday, September 3, 2013, hearing date. They further agreed that Pete should contact Attorney Fitzgerald and line up a site visit sometime before the hearing.

Finally, on an unrelated note, John Matthews expressed his concern that the Board needs to be careful in its determinations of hardship for purposes of granting or denying variances. Pete produced a copy of the statute (NH RSA 674:33) which defines the term.

Doug McQuilkin made a motion, seconded by Derry Riddle, to adjourn the meeting. All members voted in favor of the motion, and the meeting was adjourned at 8:53 p.m.

Respectfully submitted,

Barbara A. Spike, Clerk



Town of Hebron
PO Box 188
Hebron, NH 03241
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**Hebron Zoning Board of Adjustment
Minutes of Meeting
October 15, 2013**

Members Present: Doug McQuilkin (Vice Chairman), Ileana Saros (Member), John Matthews (Member), Derry Riddle (Member), Alison York (Alternate), Bill Lucarelli (Alternate), John Dunklee (Alternate), and Sheila Oranch (Alternate)

Members Absent: Pete Carey (Chair)

Others Present: Dan Merritt (former Hebron Compliance Officer), Judy Rogers (applicant), Attorney Paul Fitzgerald, Tom Gump, Rick Wendell, Al DeFao (Compliance Officer), and Barbara Spike (Clerk)

Time Convened: 7:01 PM **Time Adjourned:** 8:19 PM

Next Meeting: November 5, 2013

Agenda:

- 1) Minutes and other administrative matters;
- 2) Hearing of the Braley Family Irrevocable Trust's applications for variance to keep more than one primary structure on each of its lots located at 5 Veasey Drive (Tax Map 17, Lot 48) and 67 Groton Road (Tax Map 17, Lot 49), which lots under the Hebron Zoning Ordinance are not of sufficient size for multiple dwelling units. At the applicant's request, this matter had been continued from its original September 3, 2013, hearing date. (Case #263)
- 3) Any other business that may come before the Board.

Administrative Matters/Announcements:

Vice-Chairman Doug McQuilkin opened the meeting at 7:01 p.m. Doug McQuilkin appointed Bill Lucarelli as a regular member for purposes of tonight's hearing. Doug McQuilkin then asked for any comments, corrections, or additions to the minutes of the August 13, 2013, meeting. Hearing none, he called for a motion on the minutes. **John Dunklee made the motion to accept the August 13, 2013, minutes as submitted; John Matthews seconded the motion; and the motion passed unanimously.**

Doug McQuilkin noted for the record that hearing notices were posted on the two official bulletin boards in town, and ascertained that notice was mailed to applicants and abutters.

Hearing of the Braley Family Irrevocable Trust's Applications

Doug McQuilkin announced this meeting was continued at the applicant's request from the September 3rd meeting. There are two separate variance applications. One is for what the applicant noted as 7 Veasey Drive, the other as 9 Veasey Drive. Neither are official or legal addresses according to Dan Merritt nor the tax records. Seven Veasey Drive is on Lot 5, and 9 Veasey Drive is actually on 67 Groton Road.

Paul Fitzgerald, as attorney representing Judy Rogers, Trustee of the Braley Trust, was asked to make the presentation. He stated that the responses to the Zoning Board criteria, are included in the original applications. He presented three letters from two abutters and another neighbor (Chase Hamblett Matthews). All were in support of the variance. Barbara Spike, the secretary, read them.

A fourth notification, which was received from Mary DeWolf by the Hebron Town Office assistant this afternoon, was also in support of the variance.

Doug McQuilkin confirmed there was no variance application submitted to convert the cellar of the main house at 67 Groton Road into a rental apartment. The applicant stated that they were not yet ready to file for that variance.

Ileana Saros asked Paul Fitzgerald for his position on whether the existing safety and health violations are relevant to his applications. He stated that they are irrelevant as the owner is going to comply with or address those issues. He believes the ZBA's issues are with land use only. John Matthews stated that property cannot be in the public interest due to fire safety violations or police calls. Paul Fitzgerald went on to say that the spirit of the ordinance should allow it to be returned to the use it had for quite some time. Judy Rogers said that the "cottage" on 67 Groton Road was used for nearly 20 years as a residence. Ileana Saros noted that inaction by prior administrations set no precedent and did not prohibit future ones from taking appropriate action.

Sheila Oranch said she surmised from the discussion that one building has been more recently adapted to the new use. Judy Rogers said that 7 Veasey Drive has only been occupied for the last two years. Paul Fitzgerald said that was correct.

Doug McQuilkin asked for the dates when the properties became rentals. Dan Merritt used 7 Veasey and 9 Veasey as identifiers. Seven Veasey was most recent, it's the smaller of the two, which is on 2.3 acres, and it was originally a workshop that was converted to a dwelling sometime between 2009 and 2011. It morphed into a living space without approval for septic from the State, and no building permit issued by the Town. John Dunklee then asked if it had been surveyed and the applicant stated not to her knowledge.

Doug McQuilkin opened up discussion to the audience. Judy Rogers said that 67 Groton Road is only a three-bedroom house, with one bedroom in the cottage. She went on to say that her mother got the building permit to turn the cottage into a rental in 1995, and that it was not limited to just a bedroom. Judy Rogers presented the permit papers to Doug McQuilkin. Doug McQuilkin said there were several issues on 67 Groton Road that the

These minutes may be amended at a future meeting. Any changes will be included in the minutes of that meeting.

Board needed to research further. These include the density regulations at the time the permit was issued as well as the details of the 1995 building permit.

Judy Rogers stated that she took over as trustee only a few years ago from her mother. She further added that the cottage on the property has been on the tax map as a rental. She produced documents relevant to the conversion to the cottage, which she obtained from the Town file. Doug McQuilkin asked her if she could copy those documents or allow him to keep them to copy them. This was not done. Doug McQuilkin stated that the Board would look at the file. Dan Merritt indicated that all of these documents are in the file.

Judy Rogers then said Bruce Barnard was Selectman at that time. He said that as long as the septic system was working, just use it.

Doug McQuilkin asked how the Board felt about continuing the 67 Groton Road application to a later meeting, and all agreed.

Attorney Paul Fitzgerald conferred with his client, Judy Rogers, in the hall and subsequently agreed to a continuance to November 5. **John Dunklee moved to continue the issue of 67 Groton Road to the November 5th meeting; Bill Lucarelli seconded. Motion to continue the issue passed unanimously at 8:02 p.m.**

Vice-Chair Doug McQuilkin asked for questions and comments regarding the 5 Veasey Drive application from the audience.

Rick Wendell, who is an abutter, said it was correct that that building was a shed two years ago.

Sheila Oranch asked whether the definition of “cottage” was determined to be for transient rental or for full-time residential. No one had that information.

Dan Merritt was not sure when 9 Veasey Drive became a rental, but it was definitely within the last three years. The applicant said that was correct.

Ileana Saros stated that she wanted to be sure that the July 8, 2013 letter from the Board of Selectmen to Judy Rogers, Trustee, concerning the properties, together with all attachments, as well as the July, 2013 memoranda to the file from the Fire Chief and those from the Compliance Officer/Health Officer, were made a part of the official record.

Doug McQuilkin asked for further public comment. Hearing none, he opened deliberations on 5 Veasey Drive, and said that each criterion would be voted on individually. This is the parcel of 2.3 acres with the cottage. The issue is density, with two dwellings on a 2.3-acre lot and the property cannot be legally subdivided. These are two separate buildings and need to be on two separate lots. The conversion was well within the 2006 zoning ordinance of 2 acres per dwelling.

The criteria are as follows:

1) Would granting this variance not be contrary to the public interest. John Matthews feels it will be. The only exception would be if it were a large lot with 300 ft. frontage. Ileana stated that the safety and health code violations were contrary to the public interest. Doug McQuilkin interjected that the Board's only interest is land use. Parking was brought up as an issue. Doug McQuilkin asked for a vote: a "yes" vote would be for the applicant.

John: no
Bill: no
Doug: no
Derry: no
Ileana: no

2) Is the spirit of the ordinance observed? Ileana Saros said this seemed to be tied to the public interest issue. Doug McQuilkin asked for a vote on the spirit of the ordinance: a "yes" vote would be for the applicant.

John: no
Bill: no
Doug: no
Derry: no
Ileana: no

3) Would substantial justice be served if the property were allowed to revert back to a rental? Doug McQuilkin asked for a vote on whether substantial justice would be served by allowing this application: a "yes" vote would be for the applicant.

John: no
Bill: no
Doug: no
Derry: no
Ileana: no

4) Would the values of the surrounding properties not be diminished by approving this application? Doug McQuilkin struggled with the issue of the structure having been built without a permit. Ileana said the same reasons are applicable. The vote taken for this is a "yes" vote would be for the applicant.

John: yes
Bill: no
Doug: yes
Derry: yes
Ileana: no

5) Would not granting the variance present unnecessary hardship to the applicant?

John: no
Bill: no
Doug: no
Derry: no
Ileana: no

These minutes may be amended at a future meeting. Any changes will be included in the minutes of that meeting.

Ileana Saros moved to deny the variance for 7 Veasey Drive. Bill seconded.

Unanimous vote to deny variance application for 7 Veasey Drive.

Doug McQuilkin said he will delve into the issues on 67 Groton Road more closely before the meeting on Tuesday, November 5.

Derry Riddle made a motion, seconded by Bill Lucarelli, to adjourn the meeting. All members voted in favor of the motion, and the meeting was adjourned at 8:19 p.m.

Respectfully submitted,
Barbara A. Spike, Clerk



Town of Hebron
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Hebron Zoning Board of Adjustment
Minutes of Meeting
November 5, 2013

Members Present: Doug McQuilkin (Vice Chairman), Ileana Saros (Member), John Matthews (Member), Derry Riddle (Member), Alison York (Alternate)

Members Absent: Pete Carey (Chair), William Lucarelli (Alternate), Sheila Oranch (Alternate), John Dunklee (Alternate)

Others Present: Dan Merritt (former Hebron Compliance Officer), Judy Rogers (applicant), Harold Matthews, Michael Avery, Chris Kelly, Paula Kelly, Al DeFao (Compliance Officer), and Barbara Spike (Clerk)

Time Convened: 7:01 PM **Time Adjourned:** 8:20 PM

Next Meeting: TBD

Agenda:

- 1) Minutes and other administrative matters
- 2) Continuation of the Hearing of the Braley Family Irrevocable Trust's application for variance to maintain more than one primary structure on 67 Groton Road (Tax Map 17, Lot 49), which lot under the Hebron Zoning Ordinance is not of sufficient size for multiple dwelling units. By agreement, this matter had been continued from its original October 15, 2013, hearing date. (Case #263)
- 3) Michael Avery's application for a variance from the road setback requirements of Hebron Zoning Ordinance Article IV, Section H.1, to construct a ramp for handicap access to his home at 129 N. Mayhew Turnpike (Tax Map 2, Lot 12-3) (Case #264)
- 4) Any other business that may come before the Board

Minutes and Other Administrative Matters:

Vice-Chairman Doug McQuilkin opened the meeting at 7:01 p.m. and elevated Alison York to regular member status for voting purposes of this hearing.

Doug McQuilkin directed the Board's attention to the previous minutes of October 15 asking for corrections and additions.

Derry Riddle noted on page 3 where the paragraph started with "Attorney Paul Fitzgerald" that the minutes said Alison York seconded the motion, when she wasn't a voting member for that meeting. It was later determined that Bill Lucarelli had seconded them.

Derry Riddle said that on page 4, Article 4 her vote had been a "Yes", not a "No."

Ileana Saros moved, Doug McQuilkin seconded the motion to accept the minutes as amended. The motion passed unanimously at 7:04.

Michael Avery's application for a variance from the road setback requirements to construct a ramp for handicap access at 129 N. Mayhew Turnpike

Doug McQuilkin noted for the record that hearing notices were posted on the two official bulletin boards in town, an ad placed in the Laconia Citizen, and ascertained that notice was mailed to applicants and abutters.

Michael Avery and Chris Kelly (builder) approached the Board and presented the plans showing the as-built dimensions after construction of the handicap access ramp, along with the original plot plan of 129 N. Mayhew Turnpike. The road setback is now 22 feet from the front of the house, a half foot closer than the original walkway.

John Matthews asked if this were to be a temporary or permanent ramp due to the condition. Michael Avery replied permanent because the person had M.S.

John Matthews requested that a stipulation be added that the ramp be removed if the real estate were sold unless the new purchasers needed it.

Before going through the five criteria, Vice-Chairman Doug McQuilkin asked for public comments. Dan Merritt responded that a provisional permit was issued because the construction was so vital. He added that as soon as it was issued, Michael Avery went to the Town Hall to submit the variance application the next day.

Vice-Chairman Doug McQuilkin asked for any further comments; hearing none, he closed the discussion. John Matthews asked that before the motion was voted on if the ZBA could require removal of the ramp if it is no longer medically necessary. Doug McQuilkin responded that this is now permitted under RSA 674:33 V(6).

These minutes may be amended at a future meeting. Any changes will be included in the minutes of that meeting.

Vice-Chairman Doug McQuilkin asked the Board to vote. A “Yes” vote would be in favor of the application, despite how the question is asked.

- 1) Would granting this variance not be contrary to the public interest. All in favor, say yes. Unanimous agreement.
- 2) Is the spirit of the ordinance observed? Unanimous agreement signified by all members saying “Yes.”
- 3) Would substantial justice be served by granting this variance? All members said “Yes.”
- 4) Would the values of the surrounding properties not be diminished by approving this application? All Board members said “Yes” on this matter.
- 5) Would not granting the variance present unnecessary hardship to the applicant? All members voted “Yes” unanimously.

Vice-Chairman Doug McQuilkin stated the motion is granted to Michael Avery to build a handicap ramp.

With further discussion, it was agreed that the variance shall survive only so long as it is needed.

Motion was made by John Matthews, seconded by Ileana Saros to approve the application and may be subject to removal of the ramp if and when it no longer is medically necessary. Motion passed unanimously at 7:16 p.m.

Vice-Chairman Doug McQuilkin cautioned Michael Avery that for 30 days from approval of the variance application, abutters can appeal.

Continuation of the Hearing of the Braley Family Irrevocable Trust's application for variance to keep more than one primary structure on 67 Groton Road

Doug McQuilkin announced this meeting was continued at the applicant's request from the September 3rd meeting to October 15 and further continued to this meeting. This latest continuation was to allow the Zoning Board to investigate the historical record from 1995 to the present.

Judy Rogers, the applicant, said her brother, Harold Matthews, was also able to attend this meeting. Judy Rogers stated the only way to keep their mom in her home and to pay taxes, insurance, and upkeep was with property rentals. Further, it was her understanding that the conversion of the workshop to a rental apartment was approved by the Select Board in 1996, and that her mother obtained the necessary permits.

Judy Rogers then said Bruce Barnard was Selectman at that time. He said that as long as the septic system was working, just use it. Harold Matthews said the septic has been

upgraded and a lot of work has been done. Judy Rogers added that she is still confused as to why now this is happening.

Ileana Saros asked Judy Rogers what official documents from the Town she had that applied to changing the workshop to a rental apartment. Judy Rogers brought paperwork forward where Stephen Weber the contractor, who performed the energy audit, noted that the structure would be used as a rental apartment. Ileana Saros again asked where the agreement was that the Town accepted it as an apartment, not a “one bedroom.”

Ileana Saros said it was her understanding that the approval was given for it to go from a workshop to a bedroom. Judy Rogers said when she went through her mother's file that she saw “note paper” with “one bedroom” written on it but no other indication of what the building permit was for.

Dan Merritt said on the official Selectmen's log that it was requested for a “one bedroom.” Beginning in 2009, he suspected that it was being rented as an apartment but never could examine the interior to confirm it.

Judy Rogers said the Tax Map shows it as a cottage.

Doug McQuilkin said that then, as well as now, the Selectmen had no authority to grant variances. Only the ZBA has the authority, and two variances were required. At that time one acre was required for each dwelling.

Ileana reiterated that whatever actions or inactions regarding Building Permits or Zoning Ordinances taken by the Town in the past do not legally mandate the current Board to allow it to continue.

In 1995, the building was an accessory structure, and it conformed to the 1995 setback requirements. Once converted to a dwelling, it was definitely non-conforming.

Judy Rogers asked why it was approved back then and that her mother was allowed to go forward.

Ileana Saros said according to the Selectmen's Log, the Selectmen intended to only approve a bedroom conversion.

Judy Rogers asked where that determination came from, and Dan Merritt replied it was from the Selectmen's Log Book, a copy of which he circulated.

Harold Matthews stated that Town inspectors came out to the property and made suggestions on how to upgrade it to fire and safety codes but made no mention of variances.

These minutes may be amended at a future meeting. Any changes will be included in the minutes of that meeting.

Ileana replied that the Selectmen must have believed it to be a one bedroom, which was legitimate then as it is now.

Judy Rogers argued that she still can't believe that after 18 years with no one saying anything, that it's now illegal. She further said she spent \$18,000 to get the place into shape, where it had been run down because her mother couldn't keep it up any longer.

Judy Rogers said the costs of in-house nursing is prohibitive. The rentals were a way for her to pay for her mother's care due to Alzheimer's.

Vice-Chairman Doug McQuilkin reminded the Board that its sole purpose is to enforce land use regulations.

Dan Merritt said the original building permit was denied. Subsequent approval was contingent upon obtaining a successful energy audit. The energy audit was done, and the permit was approved in June, 1996. The number of bedrooms determines the required septic system capacity and type.

John Matthews said for two years the assessors were not allowed inside. Notices were left, however, no one ever responded. Judy Rogers said she never received any notices about that.

Dan Merritt said that 67 Groton Road most recently has been listed as a 2-bathroom house, where it had always been known prior as a 3-bedroom, 1 bathroom, with a finished cellar.

Derry said the observation by the person doing the energy audit showed it as a dwelling.

Judy Rogers said that honestly if she'd known all of this she wouldn't have spent \$18,000 on improvements. Why was it her mother felt all was right, and then all of a sudden after 18 years this just came to the attention of the Selectmen. Ileana said it was because of safety issues brought up by a tenant.

Vice-Chairman Doug McQuilkin said as a bedroom, it was conforming in 1996; if that use continued, it would still be conforming. However, we need to deal with the regulations as they exist now. Because prior regulators were not aware, that does not mean the current Zoning Board should follow suit.

Dan Merritt read aloud the Hebron Zoning Ordinance section concerning multi-family dwelling units.

Dan Merritt further added that renting of "rooms" was a permitted use at that time, whether the rooms are attached or not. That is true today as well. However, when the bedroom became a dwelling, it became a non-conforming use.

John Matthews asked how long the the unit had been used as a rental. Judy Rogers answered since 1996, 17 years.

Vice-Chairman Doug McQuilkin opened it up to public discussion. Ileana Saros said that as with the last hearing in October, she wanted to be sure the Selectmen's letter to Judy Rogers of July 18, along with all the attachments, be part of the record.

Judy Rogers asked that all documents be sent to her at: PO Box 762, Campton, NH 03223.

Hearing no further comments from the public, Vice-Chair Doug McQuilkin closed the public portion at 7:57 p.m.

John Matthews said he felt it was blatantly unfair that the Town overlooked this issue for 18 years, and that it now just surfaced. John Matthews said he would like to grant the variance on the basis that the Town was remiss in not investigating it as it was in full view of the town.

Derry Riddle said she agreed with John Matthews. As a single-family dwelling, Selectmen should have noticed something.

Ileana Saros said the official Selectmen's Log shows "bedroom." Any information from outside officials should have been noted, such as the energy audit. She further said that on the bottom of the building permit there is a statement printed to the effect that the applicant is responsible for conforming to all ordinances and codes.

Ileana Saros said that if mistakes were made by any prior board, it does not set precedent for not applying the correct regulations now.

Vice-Chairman Doug McQuilkin asked Alison York if she had any comments, to which she replied no.

Closing the discussion by the board, Vice-Chairman Doug McQuilkin then went on to recite the five State criteria for issuing a variance. He said a "Yes" vote was in favor of granting the variance no matter how the question was read.

1) Would granting this variance not be contrary to the public interest.?

John: Yes

Alison: No

Doug: No

Ileana: No

Derry: Yes

2) Is the spirit of the ordinance observed?

John: Yes

Alison: No

Doug: No

Ileana: No

Derry: No

These minutes may be amended at a future meeting. Any changes will be included in the minutes of that meeting.

- 3) Would substantial justice be served?
John: Yes
Alison: Yes
Doug: Yes
Ileana: No
Derry: Yes
- 4) Would the values of the surrounding properties not be diminished by approving this application?
John: Yes
Alison: Yes
Doug: Yes
Ileana: No
Derry: Yes
- 5) Would not granting the variance present unnecessary hardship to the applicant?
John: Yes
Alison: Yes
Doug: No
Ileana: No
Derry: Yes

John Matthews moved to approve the variance application as a single vote. Derry Riddle seconded it. John Matthews instructed to give either “yea” or “nay.” All in favor of granting the application:

John: Yes
Alison: Yes
Doug: No
Ileana: No
Derry: Yes

Vice-Chairman Doug McQuilkin warned Judy Rogers not to do anything until she receives official notice from the Town and that deliberations would continue at a future ZBA hearing after the Board confers with the Town's attorney.

Discussion finished, **Ileana Saros moved, Alison York seconded, a motion to adjourn. Meeting adjourned unanimously at 8:20 p.m.**

Respectfully submitted,
Barbara A. Spike, Clerk