

MEETING MINUTES  
ZONING BOARD OF ADJUSTMENT PUBLIC MEETING  
**NEW LOCATION--BARRINGTON MIDDLE SCHOOL**  
**MAIN ENTRANCE-LIBRARY**  
**51 HALEY DRIVE (Off Franklin Pierce Hwy)**

Barrington, NH  
August 19, 2015  
7:00PM

Members Present

Karyn Forbes, Chair  
George Bailey  
Meri Schmalz-Alt  
Raymond Desmarais  
Dawn Hatch

**MINUTES REVIEW AND APPROVAL**

1. Approval of June 17, 2015 Regular Meeting Minutes.

*A motion was made by G. Bailey and seconded by R. Desmaris to approve the June 17, 2015 meeting minutes. The motion carried unanimously*

**ACT ION ITEMS**

2. [112-35-GR-15-ZBA \(Nippo Pond LLC\)](#) Request by applicant to request a variance from Article 11.2 (1) 75' setback from pond over 2 acres and Article 4.1.1 Minimum front setback to build a 2 bedroom single family house adjacent to Nippo Pond on a .41 acre lot on Harlan Drive (Map 112, Lot 35) in the General Residential Zoning District. BY: Geometrics Blue Hills, LLC; PO Box 277; Farmington, NH 03835.

Bernard Cote of Geometrics Blue Hills, LLC represented the applicant. Bernard described the application which included the access easement. Wetlands delineation had been redelineated. The house was the same size and located in the same place. The stream channel had been clearly identified.

K. Forbes asked if the house was the same size and in the same location as the prior proposal.

Bernard Cote stated it was the same size and in the same location. A site walk had been done with the Conservation Commission.

Attorney Gregory Wirth explained they were requesting a variance from 4.1 and 11.2 due to the small size of the lot. The house had been placed to maximize the setback as much as possible. The setbacks of 75' from the water and 40 feet from the front made the lot unbuildable without the variances.

Test #1 Unnecessary Hardship, the hardship test under current zoning the lot would be unbuildable. Hardship existed when the use sought is reasonable. They were seeking a variance for the setback to the water and the front setback. The use is permitted and reasonable considering everything around it.

Test #2 Is it consistent with the spirit of the ordinance? Does the proposal alter the existing conditions of the neighborhood? The proposed house does not and was consistent with the neighborhood. There were other homes close to the water and some closer than the proposed house. The house was sited to best maximize the regulations. They were losing 22 from the Shoreland and 18 feet from the road in terms of what would be required.

Test #3 There would be no diminution of property values and they presented an opinion from Brian Dubois, a real estate appraiser. The lot was a legal lot of record and the applicant wished to develop the lot in a reasonable manner.

Test #4 The variance would not hurt the public health, safety or welfare. If the variance was not granted the lot would be undevelopable. The balancing test weighed far in the granting of the variance.

Test #5 In the effect on the public interest the proposal would not affect the health, safety or welfare.

K. Forbes expressed there was a claim that the 75' Shoreland requirement could be met if the house was made smaller and the deck moved to the side.

Bernard Cote explained it would not be reasonable to reduce the size smaller for living purposes.

G. Bailey asked the dimensions.

Bernard Cote expressed 26'X 32'

K. Forbes asked for those to speak in favor.

None

K. Forbes asked for those to speak against.

Kevin Fitzgerald Attorney for the Home Owners Association described the cyanobacteria bloom. The lake was currently being monitored. The current level of contamination was currently 4 times higher than anytime. There was currently an enforcement action on an adjacent lot owned by the applicant. The applicant meets none of the conditions. Hardship was not development of a desired home in a multi home subdivision. The granting of the variance was not consistent with the spirit and intent of the ordinance. The granting of the variance will diminish the property values by reducing the buffer and increasing the contamination to Nippo Lake. The applicant had other options.

K. Forbes asked how the lot was created.

Linda Brushette explained that a lot line adjustment was done in 2008. She provided a copy of the 2008 plan.

Kevin Fitzgerald expressed the purpose of the overlay was to protect the public health. This application did just the opposite.

Bill Totherow expressed he had been involved with the lake monitoring program. Attorney Fitzgerald had discussed the cyanobacteria outbreak and distributed a picture showing the highest level of contamination in a lake in NH. Nippo Lake was in serious jeopardy based on a UNH scientist. The lake had the potential to be unusable ice out to ice in. Rain storm erosion into the lake was the cause. Phosphate levels were causing the contamination. The lack of buffer that was on a site had caused this issue.

Alice Briggs 152 Flower Drive expressed the applicant wanted a reduction of 30% in the buffer. She expressed the neighborhood was a neighborhood of little camps. The only inlet to Nippo Pond was adjacent to the lake.

John Wallace of the Conservation Commission expressed that the stream was a perennial stream, which required a 75' setback.

Linda Brushette expressed the style of the house was the issue.

Steve Michaud of Liberty Lane expressed he could not help but to see the cumulative effect of the two lots

Mark Morrow expressed that the applicant had got slapped in the face for the infraction on the adjacent lot.

Charlie Briggs of Flower Drive expressed people had lost money due to the bloom. The property values could not afford further blooms.

Donna Mitrushki expressed enough was enough. Once the water was gone there is no value without the water.

R. Desmaris asked if the contamination was natural or manmade.

Bill Totherow expressed that the contamination was coming from runoff from camp roads. The material contained an incredible amount of phosphate. Buffers help take carry of particulates. Dissolved phosphate can go directly into the lake if a buffer does not allow it to filter it out. The living things in the buffer absorb and grow while pulling out the phosphate.

G. Bailey asked how many years of testing Bill Totherow had. Mr. Totherow expressed had six years.

Bill Totherow expressed the septic's did not appear to be the cause.

M. Schmaltz asked if there were other areas without buffers.

Bill Totherow expressed he was only aware of the lot adjacent to the subject parcel.

Bill Totherow expressed the question was if the problem of internal loading was where the lake was headed.

Jake Corcoran expressed there was 150' no cut buffer on the Liberty Lane subdivision.

Paul Mausteller asked if codes could make them replant.

K. Forbes asked for response from Attorney Wirth.

Attorney Wirth expressed they were sensitive to the issues of the lake. It would do his client no good to cause harm to the lake. The problem started in 2010 when the applicant's lot was undeveloped. The focus needed to be on the variance and not on nature. The development would be done subject to NHDES regulations. The lot next door was not clear cut. The point system was correct but some of the trees in one area should not have been cut. A plan was in place to rectify the situation. The difference between 52' and 75' has not been demonstrated that the applicant has caused the problem. There was no evidence that there would be diminution of value. The comments on the neighboring lot were irrelevant to the analysis of whether a variance should be granted. The permits on the adjacent lot would be complied with. The five

factors mandate that a variance be granted. The two pictures show no buffer and they have nothing to do with the applicant.

Alice Briggs expressed the stripping would never be rectified. There was not substantial justice to allow a violator to re-violate. The 75' buffer was to protect the lake and a 30% reduction was absurd. The buffer was put in so any development like the grandfathered development would not occur.

D. Hatch asked if the applicant could agree to a 50' no cut buffer.

Bernard Cote expressed the owner could not place the condition on those entitled to access the beach.

K. Forbes expressed that there were concerns with the application. She expressed that the applicant was free to come back with a different proposal.

Attorney Wirth expressed they would go back and start by taking off the deck.

G. Bailey asked that the restoration plan be provided.

*A motion was made by D. Hatch and seconded by G. Bailey to continue the application to October 21, 2015. The motion carried unanimously*

- 3. 109-5-GR-15-ZBA (John and Karin Schempf)** Request by applicant to request a variance from Article 4 Dimensional Requirements Table 2 to build a 28 x 34 three bedroom home where the setbacks will be 15.9' from one side and 14.4' from the other side where 30' is required and 43.5 from Ayers Lake where 75' is required on a .15 acre site on Small Road (Map 109, Lot 5) in the General Residential Zoning District. By: Jason Pohopek, NHLLS; 269 Parker Mountain Road; Barrington, NH 03825.

**WITHDRAWN**

- 4. 220-43-RC-15-ZBA (Kendall Auto & Truck Sales)** Request by applicant for two variances 1) Definitions of Retail Sales to allow the proposed use of Used Car Sales and Automotive Repair. 2) Sections 4.2.3 (5) to allow the removal of a 50' buffer required to the right of way of Calef Highway (a/k/a Route 125) located at 16 Calef Highway on a 2.07 acre lot in the Regional Commercial Zoning District. By: Chris Berry, Berry Surveying & Engineering; 148 Second Crown Pt Road; Barrington, NH 03825

Chris Berry represented the applicant. He described the request and existence of other exiting auto repair and sales facilities along Route 125. The first variance was for the use. The second variance was for the use of display in the 50-foot setback from the road. The 50' buffer would make the site very difficult for a commercial use. Chris expressed that there was a character that was trying to be preserved along route 125. There was concern with how current auto operations were conducting business within the Town. He expressed that the applicant's current site was kept clean with vehicles outside of the right of way. He expressed that they were proposing a permanent barrier to keep vehicles out of the right of way even though the property line was set back from the right of way. The existing pine trees were dangerous and damaging and would be removed and replaced with plantings. There would be flanking vegetation that would be remaining.

Chris Berry read from the submitted justification for the Variance to the definition of Retail Sales”.

As noted on page 1, the first request is a Variance to the Definition of “Retail Uses” currently located on page 85 of the Zoning ordinance, which states: “A business or activity having as its primary function the supply of merchandise or wares to the end consumer, or establishments engaged in the rental of goods at retail, or in providing a service(s) to individuals and households. This category excludes animal sales or service: building and garden materials, supplies, sales or rental; and motor vehicle and related equipment sales, leasing, rental, or repair.” It is important to note that “Service for Autos and Trucks” is specifically allowed in the Table of Uses Table 1. Given the most restrictive applies, and the definition is more restrictive, the request is sought. This speaks to the “Spirit and Intent” of the original ordinance discussed below.

1.) “Special conditions exist such that literal enforcement of the Ordinance will result in unnecessary hardship to the applicant as defined under applicable law.”

a. There are special conditions associated with this parcel of land. This is an existing lot of record, clearly located within the Regional Commercial Zone, and only contains 2.07 acres of land, which is largely comprised of an oddly shaped “L” containing wetlands. This is important given the fact that many larger scale commercial uses require much more land area for development / re-development on a more regularly shaped lot. The site already contains a barn / shop which is conducive to the proposed use. It contains a small residential structure, also found towards the middle of the site, well suited for the in home sale of used cars. Located within this zone, and within the immediate area, are three parcels of land which sell used cars and have automotive repair contained within their buildings. A special condition of this property is that there is an existing hill, atop which the applicant proposes to display cars and landscape. This will create a natural barrier, along with the proposed modifications, to keep the vehicular sales position fixed to an appropriate location. The special conditions of this topographic break between NH Route 125 and the usable land area shields much of the activity proposed on the site. Lastly, the special condition of the existing structures and their positions on the lot limit the use to a low intensity use as is being proposed. Very few other low intensity businesses would be able to utilize this property in the commercial capacity intended for this zone, and thus literal enforcement would preclude this business owner from bringing her business to the Town of Barrington, to a parcel which she now owns, which contains the ready infrastructure required, for competing with the surrounding similar use businesses.

2.) “Granting the variance would be consistent with the spirit of the Ordinance”

a. It is clear through the added language to the definition, that the original ordinance specifically allowed this use. This is witnessed on the table of uses and the existence of other like businesses within the immediate area. The spirit and intent of the revised ordinance is to prohibit the appearance of the major corridor from becoming one uninterrupted automotive sales display area. These two uses are commonly complementary to each other, however as described above this project preserves the intent of the ordinance because:

i. The topography on and off the site break up the appearance of the project. The cars, though on display, will be tucked off the edge of pavement atop the hill, between two vegetated areas, and will contain a landscaped buffer along the front.

ii. The applicant is willing to place a physical barrier preventing vehicles from getting any closer to the street, and is willing to leave the natural trees along the

edge of the property and along the North edge of the driveway, creating an appealing streetscape of vegetated over story with some new fresh ornamental trees.

iii. The repair shop is situated off the roadway at such a distance that will not be readily visible from the road. The size and mass of the existing shop will be broken up by the ornamental trees planted along the boundary line of the site.

3.) “Granting the variance will not result in diminution of surrounding property values”

a. The surrounding properties are all located within the same Regional Commercial Zone. The proposed use has a very low intensity proposed, and in our opinion is a good fit for commercial use between two residential properties. No structures are being enhanced in size, and very little buffering is being removed which will affect the neighboring properties.

4.) “Granting the variance would do substantial justice.”

a. The substantial justice would be to allow this land owner the proper use of the existing infrastructure in which she has invested and to allow her to bring her existing thriving business to the Town of Barrington, to a zone which is well suited for this use, as witnessed by surrounding users.

5.) “Granting the variance would not be contrary to the public interest.”

a. The public interest is to invite long standing businesses to locate and re-locate in appropriate areas of the Town. This zone and project site are specifically suited for this low intensity use. With respect to the immediate abutting public, the applicant’s activity has a very low intensity. As stated above, 20 trips per day is assumed, which equates to 10 cars or patrons to both portions of the business. The average single family home of this size generates approximately 10 trips per day, or 5 cars coming to and leaving the site. Noise levels on site are contained within the shop structure and will not to be a nuisance to the surrounding general public.

Chris Berry read from the submitted justification for the Variance to allow the proposed pavement for the used car lot to be within ten feet of the Right of Way where 50’ is required.

A variance to Section 4.2.3 (5) is requested to allow the proposed pavement for the used car lot to be within ten feet of the Right of Way Line, where a fifty foot buffer is required.

1.) “Special conditions exist such that literal enforcement of the Ordinance will result in unnecessary hardship to the applicant as defined under applicable law.”

a. A special condition is the existing lot of record shaped as it is, with the fifty foot buffer rendering much of the lot useless. Though the ordinance allows for existing lots of record prior to a certain date, such as this one, to adhere to the “extent possible” to the ordinance, this is difficult to quantify and measure. For this reason, we would submit that the ordinance itself creates the hardship upon the lot, whereas it fails to define what is “reasonable” or “extent possible” for lots of record such as this one and is subjective to each applicant. As noted on page one, the odd shape, topographic features, existing infrastructure, and usable land area remaining after setbacks and buffers are applied, are all special conditions of this lot. The hardship to this specific applicant is that in the Commercial Zone, business activity is required for any user to survive, and buffering a business and the uses associated with that business will stifle any business owner. Not allowing the use to be displayed as presented, with the buffering proposed, would put the

owner at a disadvantage over the other similar users within the immediate area.

2.) “Granting the variance would be consistent with the spirit of the Ordinance”

a. The spirit and intent of the ordinance is to create an attractive gateway and corridor setting throughout the town. Through the use of plantings, and hardscapes, combined with keeping the vehicles out of the right of way, the spirit of the ordinance is preserved.

3.) “Granting the variance will not result in diminution of surrounding property values”

a. The surrounding properties are all located within the same Regional Commercial Zone. The proposed use has a very low intensity proposed, and buffering replacement is proposed to break up the street view of the display area. Very little is changing with respect to the immediate abutters and the buffers they currently enjoy and therefore the use existing on those properties remains equitable.

4.) “Granting the variance would do substantial justice.”

a. Granting the variance would allow the applicant to move her business to the Town of Barrington and allow her to display the business and product for sale in an appropriate and tasteful manner, while preserving the feel of the existing corridor in relation to abutting land owners.

5.) “Granting the variance would not be contrary to the public interest.”

a. The public interest is in not having an open view of every lot and building up and down every corridor and gateway into the Town of Barrington. This project proposes to leave some of the perimeter buffering and re-establish the ornamental buffering along the front of the lot. The sales area of the project is set much farther off the edge of the pavement than those on surrounding parcels, due to right of way location in reference to the existing edge of pavement.

D. Hatch asked if it was possible to extend back 10’.

Chris Berry expressed it would push the display back from the street and over the effluent area.

G. Bailey expressed they were asking not to provide the 50’ green belt.

D. Hatch asked how much of the greenbelt was actually in the right of way.

Chris Berry expressed much of the green belt on other properties was within the right of way.

G. Bailey asked how far from the edge of road to the property line it was.

Chris Berry expressed 35’.

G. Bailey asked if some trees could be left.

Chris Berry expressed the applicant was concerned with the pines and the area was required for the rain garden.

K. Forbes opened public comment.

Dan Barbin asked questions about hours of operation and noise.

Chris Berry expressed the hours of operation would be 8am – 5pm Monday through Friday, 10 to 2 on Saturday with no Sunday hours. They would not be opposed to a fence on the side property line for 55'. The lot would be paved.

Tom Maciolek expressed BRG would not be a good example. He asked if someone would be living in the house.

Chris Berry expressed that the repair person would live in the house.

D. Hatch expressed one of the reasons for the 50' buffer was to protect from a future four lane highway.

K. Forbes closed public comment.

The Board discussed it would be problematic denying the application where three auto lots currently existed. The majority of the businesses along Route 125 did not have an existing buffer.

D. Hatch expressed the applicant had done a good job of presenting their request.

*A motion was made by D. Hatch and seconded by M. Schmaltz to approve both variances. The motion carried three to two (3-2).*

## **ADJOURNMENT**

*A motion was made by G. Bailey and seconded by R. Desmaris to adjourn at 9:25 p.m. The motion carried unanimously.*

Respectfully submitted,

Marcia J. Gasses  
Town Planner and Land Use Administrator