

DRAFT—NO LEGAL VALUE

Minutes

Board of Adjustment Meeting

April 15, 2021

As Acting Chair of the Board of Adjustment of the Town of Strafford, Lynn Sweet, Vice-Chair, opened the meeting by stating that due to the State of Emergency declared by the Governor as a result of the COVID-19 pandemic and in accordance with the Governor's Emergency Order #12 pursuant to Executive Order 2020-04, this public body is authorized to meet electronically.

The Vice-Chair then summarized the following announcements: There is no physical location to observe and listen contemporaneously to this hearing, which was authorized pursuant to the Governor's Emergency Order. The Board is utilizing Google Meet for this electronic hearing. In accordance with the Emergency Order, I (the Chair) am confirming that we (the Board of Adjustment) are:

- a) providing public access to the meeting by telephone, with additional access possibilities by video or other electronic means. We are using the Google Meet platform for this public meeting. All members of the Planning Board are able to communicate contemporaneously during this meeting through this platform, and the public has access to contemporaneously listen and, if necessary, participate in this meeting through dialing +1 513-666-0228 using the assigned meeting code or by clicking on the website address: [meet.google.com/yaa-nzbc-ttc](https://meet.google.com/yaa-nzbc-ttc)
- b) providing public notice of the necessary information for accessing this meeting. We previously gave notice to the public of the necessary information for accessing this meeting, including how to access the meeting via Google Meet or telephonically. Instructions were posted on the website of the Town of Strafford at [www.strafford.nh.gov](http://www.strafford.nh.gov). The application documents discussed tonight were made available to the public at the Town of Strafford Land Use Office.
- c) providing a mechanism for the public to alert the public body during the meeting if there are problems with public access: If anybody has a problem they were directed to call or email [eevans.strafford.nh@gmail.com](mailto:eevans.strafford.nh@gmail.com).
- d) adjourning the meeting if the public is unable to access the meeting: In the event the public is unable to access the meeting, the meeting will be adjourned and rescheduled.

After waiting for attendees to sign on, the Vice-Chair opened the meeting at 7:05 PM by taking roll call attendance. Members present were Lynn Sweet, Terry Hyland, and Alison Brisson and Jeffrey Sanita, Alternate members. All votes will be roll call votes. Ms. Sweet noted that the next regular meeting of the Board will be Thursday, May 20, 2021. The Chairman noted that three regular members are missing this evening and designated both alternates as voting members for this meeting. A number of interested parties for Cases Number 427 were present. The Building Inspector was also present.

Case Number #427

Nathan Gagne is requesting an Equitable Waiver of Dimensional Requirements under NH RSA 674:33-a for a garage and a barn under construction on his property. Foundations for both structures come closer to the northwesterly side boundary than the 25 foot setback required by current ordinances. (115 Back Canaan Road, Tax Map 4, Lot 95-2)

Nathan Gagne, petitioner, was present. Jean and Dan Ewen, abutters, were also present.

Lynn Sweet, Vice-Chair, then addressed the applicant and advised that there are only four Board members present this evening. Although four members present is enough to constitute a quorum, the petitioners would have the option of postponing discussion until a full Board can be present. If the applicant wishes to proceed, they are advised that the lack of a five-member Board cannot be cited as grounds for a rehearing in the event that the application is denied. After a brief discussion, Nathan Gagne advised the Board that he wished to go forward.

The Vice-Chairman read the summary notice for the application and invited the applicant to make his presentation. Mr. Gagne advised that a mortgage plan had shown that his two new foundations violated the setback lines. He then applied to the Board for an Equitable Waiver and hired a surveyor to investigate and has recently received the survey, which shows the garage foundation as coming within 6.53 feet and the barn foundation as coming within 12.31 feet of the side boundary with Lot 95-2-1. He said that his understanding of the property line was mistaken and that he had thought that the tree line was his property line. There is an existing barn on the property that they plan to convert into their home. He said that he thought that the bank was verifying all the setbacks, and he realized after the fact that this was the wrong order. He did not understand that a verified plot plan and the mortgage plan were different. Both new foundations encroach into the setback. He has spoken to the abutter, and they have no objection. They are requesting the Equitable Waiver so that they can continue building.

Board members then reviewed the application. Terry Hyland asked about the encroachment. Mr. Gagne said that the neighbor had said that the area is not visible from his house so he does not care. Alison Brisson said that she would like additional information on how things were misinterpreted. Mr. Gagne said that he had spoken with Dave Copeland; he thought that the bank was already paying for the plot plan he needed because they said that they release the money after they have the certified mortgage plot plan. Ms. Brisson asked Mr. Gagne if he knew the required setbacks. He said that he did, and he thought he was well away from the boundary until he saw the mortgage plot plan. Ms. Brisson asked the status of the project. Mr. Gagne said that the footings and stem walls are in place. They did not want to move forward once the error was discovered. Terry Hyland asked if there was a stone wall along the boundary, and there is not. Mr. Gagne said that the tree line is about 80 feet away but it is not really the property line. Lynn Sweet asked about the dimensions of the two structures. The proposed garage would be 26 by 26 feet; the barn would be 24 by 30 feet. The gable end of the barn would be in the setback; about 60% of the garage would be in the setback. Ms. Sweet asked how close they are to wetlands. Mr. Gagne said that he thinks that the wetlands are down the hill. Ms. Sweet said that she would like additional information on the wetlands, noting the required wetlands setbacks. She then asked if there are other buildings on the property, and asked about the chicken coop, which appears to be totally on the abutter's lot. Mr. Gagne said that there are no other buildings, and that he planned to move the chicken coop the coming weekend.

Lynn Sweet then turned to abutters, asking if there are any letters from abutters. None have been received. Jean Ewen asked if a building permit had been issued prior to the construction of the foundations and if the permit was contingent upon getting a certifiable survey. Mr. Gagne answered yes to both. Lynn Sweet asked the Building Inspector to comment. David Copeland said that he had met with Nathan Gagne on site, and that Mr. Gagne had indicated the tree line as the property line. Mr. Copeland said that he had told Mr. Gagne that he would need a certified plot plan. Jean Ewen then read out from the RSA governing Equitable Waivers, stating that it stands out that the first section states that the structures must be substantially completed. In the spirit of the RSA, she suggested that substantial completion would mean more than just the frost walls, and said that she does have a concern about the wetlands, noting that this wetlands complex feeds into the Spruce Ponds. She said that when Herman Groth first subdivided this land, this middle lot was so big because of the water. She then said that she has concern that any approval here would set a precedent regarding the meaning of "substantial completion". She said that she does not think that the proposal here is in the spirit of the RSA. Nathan Gagne said that there is a brook running under the driveway and a wetlands area behind the barn and a swampy area toward the rear. He said that he has not owned the property long enough to really know but that he had not noticed additional spring runoff this season, also mentioning the geothermal wells they had dug. He then said that for them, the foundation work was substantial because of the cost. Lynn Sweet asked for details on the work completed so far. He said

that they have the 4-foot stem walls in space with footings, but they have not yet poured the slab. Lynn Sweet again said that she wants to see information on the wetlands before making a final decision.

Lynn Sweet then turned to Board members and said that she wants to turn to Board deliberations and then come back to Nathan Gagne for a response. Terry Hyland said that a wetlands overlay would be helpful and that he would like something from the neighbor most affected by the encroachment. Alison Brisson said that she feels for Nathan Gagne, but that she has to agree regarding the RSA language regarding substantial completion. She said that in her opinion, the structures are not substantially complete at this stage; the neighbor is okay now but might not be down the road. She asked if there are other alternatives such as lot line adjustment. She also noted that if there are wetlands issues, that would complicate things. She noted that there is other language in the statute and that it is difficult to determine. Lynn Sweet read out the statute, noting that unfortunately, the RSA does not cover not having an understanding of the lot line. Section (d) speaks to the cost of the remedy and whether that outweighs, but she also noted that she shares the concern about precedent. Jeffrey Sanita and Terry Hyland both said that they would like to hear from the abutter and asked about other options to resolve the situation, as well as the wetlands. Lynn Sweet then turned back to Nathan Gagne. Mr. Gagne has requested that his neighbor join the call; Richard Viens, the owner of Lot 95-2-1, was now in attendance. Mr. Viens said that he has no objections.

Lynn Sweet then read through the ordinance paragraph by paragraph, inviting Board comment for each section in lieu of a decision worksheet. Paragraph (a) requires that the violation not be noticed until after construction is substantially complete. Alison Brisson asked what the Building Inspector considers as substantial completion. Mr. Copeland responded that these structures seem to be 20 to 25% complete. Mr. Gagnon said that the work done so far, including site work, is about one-third of the estimated cost. Paragraph (b) says that the violation must not be an outcome of ignorance or obfuscation, and instead must be a good faith error. Terry Hyland and Ms. Brisson both agreed with this. Paragraph (c) says that the violation must not be a nuisance or diminish the value of other properties or be a detriment to future users. Lynn Sweet noted that the site is off the road and that the abutter most impacted says that he has no issues, although she noted that she still has concerns with wetlands. Jean Ewen said that her primary concern is for the town and precedent, as well as with the wetlands. Paragraph (d) addresses the cost of correction if it so far outweighs the benefit gained so that it is inequitable to require correction. Several Board members noted that this applicant had said that the investment was substantial for their personal circumstances. Ms. Brisson noted that she is also concerned about the wetlands question. It was asked if the Board should consider looking at each structure separately. Terry Hyland said that he feels that it is an all-inclusive application and asked if the applicant could come back with more information on the wetlands. Lynn Sweet said that she would like to have the surveyor show the edge of wetlands on this plan; she suggested that the delineations could be taken from the reference plans and/or the septic plan, which she noted shows the proposed septic as located 102 feet from poorly drained soils. She said that it would be helpful to have this for the next meeting and that it would also be helpful to show the surface water/brooks. Mr. Gagne asked for clarification on what is being requested. Ms. Sweet explained again and noted that it would be helpful if the plans were finished in time to allow Mr. Gagne to apply for a variance to the wetland setback is one is needed. Mr. Gagne asked if the Board could approve the garage, as the barn is closer to the wetlands area. Lynn Sweet agreed that she also wants to look at both structures together.

There was no further discussion. Ms. Sweet asked for a motion to continue discussion forward to the next regular meeting of the Board, based on the request for a wetlands overlay showing the setbacks to wetlands. Alison Brisson then made a motion to continue discussion to the next regular meeting for information on wetlands and setbacks. Terry Hyland seconded the motion; there was no further discussion. The vote went as follows: Lynn Sweet—aye, Terry Hyland—aye, Alison Brisson—aye, Jeffrey Sanita—aye. The motion passed by unanimous vote. Lynn Sweet announced that the application is continued forward to the next meeting, scheduled for May 20, 2021 and she asked Mr. Gagne to have his surveyor show the wetlands lines on the plan. She advised Mr. Gagne to request an additional continuance if he cannot get the plan in time, so that new notices will not be required. There was no additional business before the Board and Terry Hyland moved to adjourn the meeting. Alison Brisson seconded the motion and there was no further discussion. The vote went as follows: Lynn Sweet—aye, Terry Hyland—aye, Alison Brisson—aye, Jeffrey Sanita—aye. The motion passed by unanimous vote. The meeting adjourned at 8:03 PM.

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