

DRAFT – NO LEGAL VALUE

Zoning Board of Adjustment Meeting Minutes

Location: Strafford Town Hall Conference Room

Date & Time: June 19, 2025 6:30PM

Board Members Present:

Ashley Rowe – Chairman
Aaron Leff
Jean Chartrand-Ewen
Alan Williams

Alternate Board Members Present:

Steve Smith

Others Present:

Robert Fletcher, Minutes Recorder

The Chairman called the meeting to order at 6:30PM and indicated the closing date for new applications to be filed for the agenda for the regular July 17, 2025 meeting is Thursday, June 26, 2025. He recognized Board members Aaron Leff, Jean Ewen, Alan Williams, and Steve Smith as present.

New Business

Case #473, 8 Fire Road 268 (Tax Map 6, Lot 4): James Anderson is requesting a Special Exception under Article 1.7.1 (*Non-Conforming Use, Lot, or Structure*) of the Zoning and Land Use Ordinances in order to demolish an existing garage that is non-conforming to the side yard setback requirements, and construct a new replacement 36' by 24' expanded footprint garage that comes no closer to the property boundary than the existing garage.

Tobin Farwell of Farewell Engineering Services, representing the applicant, presented the case. Mr. Farwell indicated that Mr. Anderson was present, briefly described the property and the proposal, and stated that he submitted with the application letters from two abutters who support the proposal. He addressed the Special Exception criteria as follows:

1. The use, lot, or structure has not been made more non-conforming because:
The proposed garage is no closer to the property line than the existing garage.
2. The change or expansion of the use is not detrimental or offensive to the owners of adjoining property or to the Town, does not adversely affect nearby property values, does not cause any hazard to health or safety, and does not adversely affect the character of the area in which the use will be located because:
The abutters have written a letter of support for this project. No additional trees will be cut for this project.
3. The use conforms to all other applicable regulations governing the district:
The use conforms to the agricultural-residential district.
4. The use has an adequate water supply and sewerage system and meets all other applicable requirements of the State of New Hampshire because:

No water or sewer will be provided to the garage, but will have electricity.

The Chairman stated that the Board was familiar with the proposal and opened the meeting for a public hearing at 6:33PM. There being no comments, he closed the public hearing at 6:33PM. He called for a motion regarding the Special Exception request. Aaron Leff made a motion to approve the Special Exception, which was seconded by Alan Williams and voted upon verbally in the affirmative by all voting Board members. The motion passed.

Case #474, 24 Crown Point Road (Tax Map 20, Lot 54): Blaine Glidden is requesting a Special Exception under Article 1.4.1, Section K (*Accessory Dwelling Units*) of the Zoning and Land Use Ordinances in order to construct a two-bedroom Accessory Dwelling Unit (ADU) on the left side of a newly reconstructed detached garage.

Blaine Glidden, builder for property owners Dwayne and Michell Wojtysiak, stated that the proposed Accessory Dwelling Unit (ADU) location meets all setbacks and they've applied for a new septic system with the State. The Chairman confirmed with Mr. Glidden that the septic has been approved by the State and reviewed the response to the Special Exception criteria as follows:

1. The primary structure is a single-family dwelling with no existing ADU and the proposal is for only one ADU.
2. The ADU will be no greater than 750 square feet with no more than two bedrooms.
3. The primary dwelling unit (PDU) and the proposed ADU will meet all municipal regulations regarding lot and building dimensional requirements, including residential setback requirements under Article 1.4.1.
4. An interior door between the PDU and ADU is not applicable.
5. The PDU and ADU have an adequate water supply and sewerage system. The well pump has been upgraded and a new septic system will be installed.
6. Six parking spaces are available on the existing paved driveway and there are two more spaces in the garage.
7. The ADU will have the same siding and windows as the existing PDU.
8. The PDU is owner occupied.
9. The ADU is strictly residential and will be occupied by family, not rented.

The Board did not have any questions and the Chairman opened the meeting for a public hearing at 6:37PM. Peter Horne of 210 First Crown Point Road, an abutter, had no objection to the addition of an ADU on the Wojtysiak property. There being no further comments, the Chairman closed the public hearing at 6:38PM and called for a motion regarding the Special Exception request. Aaron Leff made a motion to approve the Special Exception, which was seconded by Jean Ewen and voted upon verbally in the affirmative by all voting Board members. The motion passed.

Case #475 Province and Waldron Roads (Tax Map 1, Lot 20B): Mark and Judith Whitcher are requesting a Variance to Article 1.4.1, Section A (*Frontage*) of the Zoning and Land Use Ordinances in order to allow the creation of a new lot by subdivision with less than the required frontage.

Chris Berry of Berry Surveying and Engineering, representing the applicants, provided a brief history of lots owned by the Whitcher family but separated by Waldron Road. At some point in the past, the lots were merged for tax purposes. However, property deeds clearly indicate separate ownership of the lots and a demerger/lot restoration process with the Select Board has been completed. Thus, Lot 20B is a separate and distinct parcel of land being 9.88 acres with 385.7-foot frontage on Province Road, a Class V roadway, and an eastern boundary on Waldron Road, a Class VI roadway. The applicant proposes a two-lot subdivision of the current lot into two lots using the frontage on Province Road. One lot of 2.27 acres will have 200-feet of frontage on Province Road. However, the remaining frontage on Province Road is not sufficient to meet the 200-foot lot frontage minimum. A variance to the frontage requirement is needed to allow creation of a 7.62-acre lot with 185.7-feet of frontage on Province Road. Driveway access to a buildable location on the lot is proposed to be from Waldron Road.

Mr. Berry stated that the minimum lot frontage is intended to preserve the town's rural character and prevent homes from being too close to each other. However, town regulation allows for lot subdivision through a "back lot" ordinance with a minimum of 50-foot frontage and 20 acres. The proposal does not meet the lot size requirement but has more than three times the minimum frontage under this section of the ordinance. Creating a back lot allows a property owner reasonable use of land without impacting the surrounding rural character. The alternative to eliminate the need for a variance would be to bring 200-feet of Waldron Road up to Class V roadway standards to provide 200-feet of frontage for the lot.

Mr. Berry addressed the criteria for granting a Variance as follows:

1. Granting of the Variance would not be contrary to the public interest.

The public interest, with respect to these sections are to ensure frontages are as conforming as possible while maintaining a reasonable use of the site. Given the proposed upgrades to Waldron Road for use as a driveway, the reduced Class V roadway frontage on one of the lots is a reasonable use of the property in this case and does not create any adverse impact on the surrounding properties. There is no detriment to health, wealth or safety of others by having the larger of the two lots with a reduced road frontage. The rural nature of the town that the zoning regulations aim to protect is secure in the fact that the parcel still maintains vast land areas and setback requirements.

2. Granting the Variance would be consistent with the spirit of the Ordinance.

The spirit of the ordinance is to ensure a reasonable use of the property which includes a reasonable frontage to access the property. The proposed reduced frontage provides reasonable use of the property and still allows access to the larger lot since it will be accessed via its Class VI roadway frontage. The reduction in frontage is minimal, does not affect others in the neighborhood, nor does it change the essential character of the land in a marked way. The proposed home site is not able to be seen from Province Road, and therefore a change in the neighborhood will not be easily noticed from those utilizing the road or abutting the parcel. In fact, the ordinance allows for reduced frontages on lots, of certain sizes, demonstrating the fact that the frontage requirement is a construct aimed at maintaining a rural space and bulk standard.

3. Granting of the Variance would do substantial justice.

The benefit to the applicant is that a 9.88-acre parcel can be subdivided without requiring frontage to be built on Waldon Road. There is no detriment to the general public or the ordinance itself with the minimal reduction of frontage for the larger lot and the long frontage along and access from Waldron Road. Substantial justice is served when the gain to the applicant outweighs the detriment to the public. Mr. Berry cited a letter from an abutter who when subdividing an abutting property chose not to upgrade Waldron Road to Class V standards in order to preserve the character of the neighborhood.

4. Granting the Variance will not result in diminution of surrounding property values.

The surrounding properties will not be diminished in value by the proposed reduced frontage, whereas the lot is of larger size compared to the adjacent lot and allows for flexibility in future residential structure placement. This is for a residential use in a residential zone, and thus creates no greater nuisance than is found in the congruent zone.

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

In this case the special condition of this parcel is the existing frontage of the lot being less than four hundred (400) feet while still containing more than enough upland area to support conventional subdivision and yet not enough acreage to qualify for a backlot subdivision. There also exists the special condition of the 310.39' of Waldron Road frontage which is proposed to be utilized as the access for the lot. Dividing this lot as designed provides the subdivision which would otherwise have been allowed under the ordinance. The reduced frontage is proposed be on the larger of the two lots. This proposal will not adversely impact other parcels as the impact of the building area on the larger lot will not be seen from abutting parcels or by those traversing on Province Road. Denial of this request would impose a hardship on the applicant that is unnecessary in the form of not allowing for a subdivision on a lot which is 9.88 acres in size. Denial of the variance would require the construction of additional Class V Roadway which is unnecessary, largely burdensome and is likely not overtly welcomed by the local governing body due to future cost considerations.

Before opening the meeting for a public hearing, the Chairman read for the record a letter from an abutter, Alison Brisson:

"Unfortunately, I will not be able to attend the public meeting this Thursday in reference the variance application from Mark and Judy Whitcher due to prior commitments. I have reviewed the application materials sent to me and offer the following comments: I am in support of the variance request. My rationale for support includes the strong desire to limit the upgrade of Waldron Road to a suitable driveway and not to a Class VI road. In fact, my original house plan included this very same type of action to my property which was approved at the time by the Planning Board. Ultimately, I opted to have my driveway come off of Province Road. I'm adamantly opposed to upgrading the Waldron Road to a Class V road as that would have an impact on my property as an abutter. Further, a Class V road would have a much greater and lasting impact on the environment and the wildlife in the area. A properly constructed driveway would meet the needs to support emergency vehicles access and owner access and will be significantly less impact for all. In my opinion, granting the variance request will not be contrary to the public interest, maintains the spirit of the ordinance, and ensure substantial justice and provides recognition of the special conditions of the property. Thank you for considering inclusion of my comments. Sincerely, Alison Brisson.

There being no comments or question from the Board, the Chairman opened the meeting for a public hearing at 6:53PM.

Don Clifford, Tasker Hill Road, stated that Waldron Road, a Class VI roadway, is a public right-of-way that is subject to damage throughout the year and difficult to maintain. An owner of a home on the proposed backlot using Waldron Road to access a driveway to their residence needs to be aware of the possible adverse conditions associated with Class VI roadways. He would recommend access to a backlot residence be via a driveway from Province Road. The Chairman stated that the driveway location is at the owner's discretion, and the Board does not have the authority to specify a location.

Tim Oljey, 1605 Province Road, confirmed that the 185.7 feet of frontage for the backlot was not on Waldron Road but the driveway to the backlot was off of Waldron Road. He asked if the portion of Waldron Road to the driveway would become a private property. The Chairman indicated that all of Waldron Road would remain a public right-of-way. Mr. Olje asked if an alternate location for the driveway near the cemetery on the adjacent property had been considered. The Chairman indicated that applicant would have to pursue an alternative with the owner of that property.

Carole Oljey, 1605 Province Road, asked if both of the proposed lots would have less than 200 feet of frontage. The Chairman stated that one lot would have 200-foot frontage and the back lot would have 185.7-foot frontage; however, the Board was not considering approval of a subdivision but determining if a variance should be granted.

Tim Oljey, 1605 Province Road, questioned whether dividing the current lot into two lots created the lack of required lot frontage. The Chairman indicated that the Planning Board has jurisdiction over the subdivision but that Board cannot approve the creation of a lot with less than the required frontage. If the Zoning Board grants the variance for lot frontage of less than 200-feet, the subdivision proposal will be presented to the Planning Board.

Donald Coker, 1283 Parker Mountain Road, stated that he is an alternate member of the Strafford Planning Board. He is offering comments as a resident of Strafford, not a Planning Board member, that is trying to protect the integrity of the land use process in the community. He referred to the town subdivision regulations which require the subdivider to apply in writing to the Board for placement on the agenda for consideration. He believes all are in agreement that the Zoning Board of Adjustment (ZBA) does not do property subdivision. The ZBA handbook indicates that ZBA has the authority to adjudicate appeals to administrative positions, approval of Special Exceptions, and granting of Variances and Equitable Waivers. Mr. Coker cited an opinion by an attorney at the New Hampshire Municipal Association that the ZBA by design is an appellate body to provide relief when an applicant has been denied what they are trying to accomplish. He contends that the applicant seeking a subdivision of property should go before the Planning Board first, be denied or conditionally approved pending resolution of an issue under a zoning ordinance, and then appeal to the ZBA for a variance or other relief. He believes a variance for frontage relief is being requested for a lot that does not exist, and the Planning Board must address the lot creation first.

The Chairman stated that the applicant is not seeking a variance for a specific lot that has not been created. They are requesting a variance to permit them to request creation of a lot by subdivision under Planning Board authority. The Planning Board cannot approve creation of a lot with less than required frontage without the granting of a variance by the ZBA. Mr. Coker asserted that an applicant should initially discuss a subdivision proposal with the Planning Board which would identify an issue that would need to be addressed by the Zoning Board. The Chairman pointed out that if this were the case no lot would have been created which contradicts Mr. Coker's initial statement indicating a lot

must be created before the Zoning Board could address the case. Mr. Coker believes that the Zoning Board granting a variance for a lot that does not exist puts unfair pressure on the land use process and the Planning Board. He suggested the proper way to address this issue would be to have the Planning Board conditionally approve the subdivision to create the lots pending the granting of a variance. The Chairman stated that the lots would not be created until the Planning Board signs the plans and they are recorded. Mr. Coker reaffirmed the attorney's position that the Zoning Board can only provide relief when someone has been denied what they are trying to accomplish.

Mr. Berry asked and was granted the opportunity to provide an opinion based on his experience. He indicated that an applicant can choose to apply initially to either Board. However, in Strafford, the Planning Board cannot preside over or accept an application as complete that does not conform to town regulations. Many municipalities require building inspector or code enforcement officer denial of a building permit prior to a request for a variance, special exception, or equitable waiver. This is not how Strafford operates. If an applicant cannot meet zoning requirements, they request relief through the ZBA first. Mr. Berry questioned if a member of the public is permitted to reach out to an attorney for legal advice. The Chairman asked Mr. Coker to clarify in what capacity he reached out to the attorney. Mr. Coker stated that he did so as an alternate member of Strafford Planning Board, that the attorney was not a town attorney, and the any fees are paid by the New Hampshire Municipal Association. The Chairman confirmed with Mr. Coker that was no application for subdivision of this property before the Planning Board. Mr. Coker believes the process is backwards; however, he conceded that he and the Chairman would agree to disagree. The Chairman asked if anyone else needed to speak.

Tim Oljey, 1605 Province Road, questioned why the applicant couldn't go to the Planning Board to create just the small lot with 200 feet of frontage. The Chairman indicated that the Planning Board could not do that because the remaining property does not meet the minimum frontage requirement to allow the creation of a lot.

Don Clifford, Tasker Hill Road, asked when the lot demerger/lot restoration process took place. Mr. Berry stated that it was during a meeting with the Selectboard within the last few months, however, Mr. Clifford did not believe it had taken place. Mr. Berry indicated he was in possession of a letter from the Selectboard indicating that the demerger was complete. The Chairman indicated that he had received correspondence that the demerger was complete. Mr. Clifford continued to express his belief that the Selectboard meeting had never taken place.

Josh Riley, 1654 Province Road, expressed concern regarding access to the backlot via a driveway off Waldron Road. He believes it would be much better to access the lot from Province Road.

Carole Oljey, 1605 Province Road, did not believe it would be a hardship for the applicant if the subdivision was planned differently. She also did not favor a driveway access on Waldron Road which would allow vehicle headlights to shine directly into her residence.

Donald Coker, 1283 Parker Mountain Road, made reference to an October 1983 court case that is used as part of the Simplex Decision. Mr. Berry stated that the Simplex Decision is no longer used, and Mr. Coker withdrew his comment.

The Chairman asked if there were any other comment, and hearing none, closed the public hearing at 7:29PM. He asked the Board if there were any comments or concerns. Alan Williams asked if there was anything preventing the applicant from upgrading 1,300 feet of Waldron Road and subdividing the property into five or six separate lots. The Chairman indicated that it would be at the applicant's

discretion to do so. Steve Smith asked if 200 feet of Waldron Road was upgraded to provide lot frontage, would driveway access need to be from the upgraded portion. The Chairman indicated that the applicant could locate the driveway any where the lot borders a roadway, either Class V or Class VI. Mr. Smith questioned the hardship that would be created by literal enforcement of the frontage ordinance. The Chairman asked Mr. Berry to go over the response to the hardship criteria again. Mr. Berry stated that determination of a hardship is based on the special conditions that exist on this specific piece of property that creates the unnecessary hardship but for the granting of a variance. The lot is special; it has nearly enough Class V roadway frontage for a stand-alone lot, a large amount of Class VI roadway frontage, and a unique history of ownership. Therefore, it is an unnecessary hardship to force the applicant to upgrade a portion of Waldron Road when granting of the variance allows reasonable use of the property. Mr. Smith questioned whether it would be equally unnecessary to divide the property into two lots for financial gain. Mr. Berry stated that it is not a financial hardship but the opportunity for reasonable use of a piece of property of this size and shape which is the third part of the hardship criteria to meet. Additionally, town ordinance allows for less frontage than required on larger parcels of land. Mr. Smith noted that the proposed lot is less than 10 acres while the ordinance indicates 20 acres. Mr. Berry indicated that each individual case stands on its own merit and special conditions, such as the shape of the parcel and the width of the frontage to the lot, which in this case is more than three times the 50-foot minimum frontage for creation of a back lot. Mr. Smith expressed concern about the Board being consistent when determining if a proposal meets the criteria to grant a variance. Jean Ewen asked Mr. Berry what regulation allows an applicant to chose which board will address a proposal. Mr. Berry stated that no RSA specifically addresses this but in his experience many municipalities including Strafford allow this process.

There being no more questions or comments from the Board, the Chairman opened the meeting again for a public hearing at 7:45PM.

Donald Coker, 1283 Parker Mountain Road, referred to the Zoning Board of Adjustment handbook dated 2024 which stated that an unnecessary hardship shall be deemed to exist only if the applicant meets the standards prevailing prior to the Simplex Decision as exemplified by cases such as Governor's Island Club, Inc versus the Town of Gilford. The Chairman noted that the handbook bylaws were out dated and the Supreme Court has ruled that the Simplex Decision is no longer used.

There being no further comments, the Chairman closed the public hearing at 7:47PM and asked for a motion regarding the request for a variance. Alan Williams made a motion to approve the variance, which was seconded by Aaron Leff and voted upon verbally in the affirmative by all voting Board members except Jean Ewen who abstained. The motion passed.

Other Business

The Chairman asked the Board to review the minutes from the May 15, 2025 meeting. Jean Ewen made a motion to accept the minutes as written, which was seconded by Steve Smith and voted upon verbally in the affirmative by all Board members in attendance at the May 15th meeting.

There being no further business before the Board, the Chairman called for a motion to adjourn. Aaron Leff moved to adjourn, which was seconded by Jean Ewen and voted on in the affirmative by all Board members. The motion passed and the meeting adjourned at 7:49PM.