

PUBLIC HEARING & BUSINESS MEETING
DRAFT

A. CALL TO ORDER: The Chairman called the meeting to order at 7:03 PM.

B. ROLL CALL

Members: John DeLeire, Chair; Steve Bryant, Vice Chair; Mark Call, Member; Larry Job, Member (arrived at 7:10 PM); Alex Dittami, Alternate.

Absent: Scott Almeida, Member; Patricia Young, Alternate.

Non-Member: Rachel Webb, Town Secretary.

C. REVIEW AND APPROVAL OF PREVIOUS MEETING MINUTES (04/22/2021)

While waiting for ZBA Member Larry Job to arrive, J. DeLeire requested the Board consider the administrative function of reviewing the minutes from the previous meeting of April 22, 2021.

MOTION: To approve the minutes of April 22, 2021 as written.

MOTION: S. BRYANT

SECOND: M. CALL

UNANIMOUS

D. PUBLIC HEARINGS:

Case # 21-01: Application from **Christopher E. Gagnon** for a variance to the terms of Article III, Section 4, Table of Uses, D, #2 and asks that said terms be waived to permit a small home office to render services, classified as medical, due to possible coverage by medical insurance, in Zone A, at property located at **1 Avery Ridge Lane, Map 5, Lot 51-11.**

Christopher Gagnon, Avery Ridge Lane, presented his case for a Variance to Article III, Section 4, Table of Uses, D, #2, spoke to the five criteria for granting the variance:

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.
5. Literal enforcement of the provision of the ordinance would result in an unnecessary hardship.

The proposal was made to use of a portion of the existing home as a small home office to evaluate clients, as a Nurse Practitioner, for non-surgical, non-invasive face lifts. The more in-depth explanation was offered that a microcurrent technique is applied with two wands, that exercise and stimulate muscle activation in the neck and face areas, to improve blood flow and provide the result of a face lift. C. Gagnon stated, in terms of zoning, that the proposed use falls under the “medical use” category, which is prohibited, so he is seeking a variance. There will be no physical alterations to the residence nor to the landscape, there will be no signage, and there will be no visible signs of a home office. There will be substantial justice in allowing a small home office to operate, with a goal to generate revenue with

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minimal financial risk. If successful, then his goal is to move his home office to outside the home by leasing office space. The values of the neighboring properties will not be diminished as the proposed use is not adding to traffic, with not more than one client at a time, it would be the same as a visitor to the home. Without the variance the applicant would be at more risk of financial loss, leasing office space, without an established client base.

The Board members asked several questions regarding details of the proposed medical use to include the potential use of anesthetics, or any medical waste generated, and use of any prescription drugs. The applicant responded no to all of those questions. Board members further inquired about intended hours of operation, and the response was during the week only between 9 AM and 5 PM, and there is no intention of weekend hours. A. Dittami asked what is unique about the proposal that creates a hardship to require the ZBA grant the variance. The applicant responded no uniqueness. J. DeLeire inquired if the applicant had considered proposing the use as a “Home Occupation” but after reading the definition in the zoning ordinance concluded that it would not fit that definition.

Chairman J. Deleire opened the meeting to Public Comment.

PUBLIC COMMENT

Tracy Beattie, Drinkwater Road raised two concerns: (1) of the precedent-setting negative aspect of granting a variance that would go against the zoning ordinance prohibitions in the Table of Use regulations, and (2) the danger of a client having an emergency response, such as a cardiac issue, in response to the treatment.

The Chair closed the Public Comment Session.

The ZBA members deliberated that they were trying to find a way to help the petitioner, to make the proposal meet all of the five criteria for granting a variance, but it was extremely difficult, as the only hardship presented was financial, and that is not deemed a hardship of the property. At this point, the Chairman offered the applicant the option of withdrawing his application without prejudice. Given the comments of the Board, the applicant C. Gagnon requested to withdraw his application for a variance, without prejudice.

MOTION: To accept the applicant’s request to Withdraw his application Case # 21-01, without prejudice.

MOTION: J. DELEIRE

SECOND: S. BRYANT

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Chairman J. DeLeire stepped down as Chair, and recused himself for the next application, as it is an application for property that he owns, and for which he is the applicant.

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Vice Chairman S. Bryant substituted as Chairman for the application # 21-02. He explained that because there will be four (4) voting members, that a majority vote of three (3) members is required on all motions.

Case # 21-02: Application from **John DeLeire** for a variance to the terms of Article III, Section 7.6.2 and asks that said terms be waived to permit Lot Frontage on less than 250 feet for access and use for any and all purposes on Wadleigh Lane in Zone A, at property located at **Wadleigh Lane, Map 1, Lot 106.**

J. DeLeire, presented his case for a Variance to Article III, Section 7.6.2, that his project meets the five requirements for granting a variance.

The applicant reviewed some of the background information regarding the history of the property ownership of the parcel, and prior plans that were not implemented. He purchased the 48-acre property in 2007. Prior to his acquisition, the prior owner wanted to develop the parcel as a horse facility, and the prior owner had paid for significant number of test pits and engineering costs with Beals Associates, Inc. engineers, that resulted in an approved Septic plan in the location proximate to Wadleigh Lane. J. DeLeire plans to contract with Beals as his engineer for the septic system for the house he plans to build on the site. He stated that there was access via the “woods road” to the proposed equestrian center, that the Blue-Chip Farm used to access the parcel with a gate off of Wadleigh Lane, in the same location where J. DeLeire wants to locate the driveway for access to his site. He presented information regarding how even though he has sufficient access along Nason Road, that it is improbable to locate access from that road due to the physical constraints of needing to cross Prime Wetlands to get from Nason Road up to the Wadleigh Lane area, where the previously approved septic system was located.

At this point the applicant read into the record, his “narrative” and his specific “responses to the five requirements for granting a variance”, from his Application for Variance form submitted. He summarized his presentation stating that his proposal will not cross wetlands, will not cut trees on Scenic Roads, and will be able to access power lines on Wadleigh Lane for electricity. He wants to eventually build a new home for himself off of Wadleigh Lane (within the building footprint envelope Beals identified), and sell his current home located down the street on Nason Road. He added that the property is currently designated in Current Use status in terms of taxes, so he would pay the fees to remove the property from the Current Use status, when he builds the house. He discussed the ordinance requirement of 7.6.2 that allows if you have frontage on a town road, that you can access from another area, and how there are differences of interpretation and questions on the administrative decision, in his case, which led him to want to pursue the more formal route of obtaining a decision from the ZBA for a variance.

Vice-Chairman S. Bryant opened the meeting to Public Comment.

PUBLIC COMMENT

Karen Ayers, of Nason Road, stated that J. DeLeire’s proposal was very different than what she had expected, in a good way. She questioned whether he, in fact, actually needed the variance, given the

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discussion regarding 7.6.2. She asked the Board to consider a caveat, or stipulation, of approval of only allowing one house lot with no future subdivisions of the property.

Nicole Crouse, Drinkwater Road, asked to see the plan for clarification of the location of the proposal.

Tracy Beattie, Drinkwater Road, expressed concern with the wording of the request in the application “use for any and all purposes”. J. DeLeire responded saying that his intent is for single-family uses such as house, driveway, and pool.

S. Bryant said that the Planning Board may want to consider more closely examining the 7.6.2 section of the Zoning ordinance to clarify whether frontage needs to be at the location of access to the home or not.

The Chair closed the Public Comment Session.

S. Bryant stated that he thought the applicant presented a thorough application that addressed all five requirements for granting a variance. The Board was in agreement that the applicant spoke, in great detail, to the five criteria for granting a variance.

MOTION: To approve, as presented, the request for a variance for Case # 21-02, to the terms of Article III, Section 7.6.2 to waive the Lot Frontage on less than 250 feet for access and use for any and all purposes on Wadleigh Lane in Zone A, at property located at **Wadleigh Lane, Map 1, Lot 106,** and incorporate the five criteria as stated.

MOTION: S. BRYANT

SECOND: A. DITTAMI

UNANIMOUS

E. OTHER BUSINESS

All five (5) of the Zoning Board members received their copy of the newly printed Zoning Book. Zoning Board members kept the Design Review Guidelines sections only.

F. COMMUNICATIONS TO BOARD MEMBERS

No communications were made to Board members at this time.

G. ADJOURNMENT

MOTION: To adjourn the meeting at 8:35 p.m.

MOTION: S. BRYANT

SECOND: J. DELEIRE

UNANIMOUS

The next meeting of the Zoning Board of Adjustment is scheduled for Thursday, June 24, 2021