

Zoning Board of Adjustment  
March 2, 2022  
Public Hearing

Members Present: Walter Baird, Roger Whitehouse, Chris Stafford, John Russo

Others Present: Gail Turilli, Charlie Zilch, Leslie Coughlin, Margaret Gillespie, Patrick Gillespie, Andrea Delahunty, David Cunningham, Karen Cunningham, Kim Farah, Robert Griffin, Stephanie Merrill

**Case 2022-2 – 582 Main Street, Map and Lot 2-28 – Variance Application for relief from 200 ft required frontage for a proposed subdivision lot:**

Chris explained that there was a letter received from S.E.C. & Associates stating that they will represent the applicant. Meeting minutes and Rules of Procedure will be reviewed after the Variance application is discussed. A few procedures were addressed prior to opening the public hearing. There is only a 4 member board tonight as one of our board members was unexpectedly unavailable. We have a quorum and can continue but, there will be 4 votes, not 5 and the dynamics will change a little bit. The applicant has the option to decide if he wants to continue or reschedule until a time when there is a 5 person board. This may or may not make a difference. If we do go forward with a 4 person board, a re-hearing request will not be accepted just because of a 4 person board. If there are other reasons that are valid, the board would consider them. Charlie Zilch stated he has spoken with Mr. Cunningham, and they would like to proceed with the hearing this evening. Chris stated the public hearing will be opened, S.E.C. will present the plan, application and discuss the variance criteria that needs to be met. The public hearing will then be opened to the abutters and other interested parties for questions. He will then ask that those in support of the variance speak first and those that are opposed speak next. The Board will then ask questions to clarify the application in order to go through the criteria required. Once all the information is obtained, and we hear all public testimony, the public hearing will then be closed, and the board will go into the deliberation phase to make a decision.

Charlie Zilch of S.E.C. & Associates explains the variance request. He is here on behalf of the applicant/owner of the property, David Cunningham of C&L Estates, LLC. The Variance request is for the relief from the frontage requirement on one of the proposed lots in a proposed 3 lot subdivision at 582 Main Street. The property is identified as tax map 2 lot 68. It is a 6.08 acre lot with 572.59' of frontage on the east side of Main Street. It is an old existing lot of record that was subject to one subdivision in May of 1953. This subdivision created one 1.25 acre lot with approximately 162' of frontage on the north end of the parcel resulting in the current configuration as described. There is a single family 3 bedroom dwelling near the northerly end of the site and close to Main Street. This is a residential dwelling that was constructed in 1800. The dwelling is served by it's own onsite water supply located in front and an NHDES approved septic system in the rear. Access is provided by a circular driveway accessing from Main Street. The property is generally wooded with moderate slopes throughout, well drained soils with some wetlands located in the rear at the base of the slope. It is surrounded mostly by existing residential homes of varying lot size and frontage. The site is entirely within the Residential-Agricultural and Danville Village District zone.

Upon completion of an existing conditions plan of the property, the frontage for potential driveway access points were reviewed. This is a State controlled roadway and, a permit is required from NHDOT for access. The State has strict requirements for access where you need to provide 400' all season safe sight distance in either direction for any anticipated driveway entrance and including the existing

driveway entrance. In looking at the frontage on the property, there is a limit to the amount of driveway permits allowed. There is potential for three driveway cuts. You have to be able to see an object from a vehicle at 3'9" to an object 400ft away at 3'9". It has to be unobstructed and allow for snow coverage. The existing circular driveway will have to be limited to just one entrance and that entrance will have to be moved approximately 7' north of where it is now to meet the requirement. As for the additional driveway, there is one other location nearer the southerly property line that meets the sight distance requirement. This potential location can serve as a single driveway and may be used as a shared driveway as noted by NHDOT, who is currently reviewing our conceptual plan submittal. Chris wanted to clarify that moving the southern entrance of the circular driveway 7ft to the South would get the 400ft. Charlie stated it would have to be moved 7ft to the North which would bring it almost at the very crest of the hill. This allows for the additional site distance needed. Charlie stated that the other access point on the Southerly end of the property has 400ft of site distance in both directions. It was originally submitted to the State as 2 single driveways. After looking at the plans, there is a generous land area only limited by a slight shortage in frontage. He has requested that the State consider the proposed driveway as a shared driveway to potentially subdivide as three lots. There are no other restrictions and the permit would be granted upon completion of the subdivision plan to the town. Charlie explained that they went a little bit beyond the house to establish a front corner there to meet the setback around the house, came from the Southerly point, up 200ft, created a lot, leaving the middle lot with 150ft of frontage. Chris questioned the side set back on the existing dwelling as the limiting factor for the 150ft on the middle lot. Charlie noted that if the house is moved to the North, the lot could be 200ft and would only make the middle lot 27ft shy of the requirement. Chris asked about the distance between the house and the lot line. Charlie stated it was about 16-18ft. He also mentioned that there are generous buildable portions for each lot, no wetlands setbacks and no dredge and fill associated with this plan.

The proposal is to simply subdivide the lot into 3 single family residential street frontage lots. Each proposed would support a dwelling with its own onsite, individual septic system and well. The entire tract has 572.59' of total frontage. Per current zoning, 600' would be required as 200' of frontage is to be allotted per proposed lot. With 572.59' of frontage, we are lacking 27.41' in total. This would mean that at least one lot would contain less than 200' of total frontage. In laying out the lots, the location of the existing dwelling had to be considered. The lot supporting the existing dwelling, proposed lot 28, we have provided 222.59' of frontage which places the lot corner just south of the existing dwelling to meet sideline property setbacks. The most southerly lot, 28-2, would contain 2 acres as required. It is this lot that the shared driveway will be located. The remaining lot, proposed 28-1, will be between the two lots and will be provided 150' of frontage(variance required) and the remaining land area, 2.08 acres. The reasoning behind making this middle lot the subject of the variance is so that the two outer lots bordered by existing residential house lots would remain conforming. We believe the Variance request is reasonable and if granted, provides additional housing on an otherwise supportive, qualified tract of land. Charlie also noted that some of the past subdivisions that have been recorded along Main Street, there was a time in Danville that 150ft was the required frontage. There are fairly small lots of record surrounding this property. Chris asked that Charlie explain how the shared driveway was configured. Charlie stated that the access point is where the site distance requirement is met. Both proposed lots would work well with a drive under style arrangement. Chris asked what the driveway setback is from the road ROW. Charlie stated 35ft and when driving by, the driveway wouldn't be noticed. Walter asked for confirmation of the 35ft from the property line to the driveway. Charlie explained that it's 35ft from the frontage, the ROW line to where the driveway is and about 20ft off the lot where it comes in from the property line.

Chris mentioned that Charlie stated that the slope is gradual, but it looks steep. Charlie stated it is anywhere from 10-15%, a couple areas where the slope is 15-20% with plateaued areas. Chris noted that the dwellings will be placed on those plateaued areas and will meet the setbacks. Charlie stated the wells shown are not where they would particularly go but, you have to show the entire well radius on the lot to prove that the lot has a big enough envelope. Things tend to tighten up once houses are built. The septic will be tucked in front or in behind it and the well will wind up in front. It looks like there is more disturbance than what it actually is. John confirmed with Charlie that the three wells on the proposed plan may not be where they are placed currently and also mentioned that the second lot looks wet. Charlie noted that there are wetlands in the back on the middle lot.

Chris explained to the public that the Board goes through five criteria which the applicant has addressed and briefly mentions them. He then asks if the public if they have any questions about the plan and reiterated that the reason for coming before the Board is because the middle lot doesn't meet the frontage requirement. Charlie stated that he did address in the criteria responses that they didn't want to impact the abutters to the greatest extent possible. The outward lots were chosen as conforming so that the grading setback is maintained from the abutting property owners leaving the middle lot as non-conforming.

Patrick Gillespie of 13 Happy Hollow Road questioned the second driveway having a 400ft site line. He also has concerns with grading, re-grading as the slope is steep, drainage and storm water. Charlie stated the driveway site line has been confirmed and State approved. The next step, if the application moves forward is to go before the Planning Board with a prepared plan which will also be reviewed by the town engineer. A single driveway permit is going back to the State for a shared driveway approval.

Leslie Coughlin of 7 Happy Hollow Road is concerned with the proposed driveway, runoff into her property, well and septic system. She was denied a driveway permit on 111A when she built her home. Charlie stated that she was denied because she has access off a town roadway and the State will not issue a driveway permit on a State roadway because of that reason. This proposal would not come before the ZBA if access could be gained off a town roadway. Chris stated that the scope of this Board is to address the zoning request requirements, focusing on the frontage on Main Street and the request for a Variance. If the subdivision is approved, it will then go forward to the Planning Board. Charlie explained that infiltration trenches along driveways will be used on the proposed property for runoff/storm water drainage.

Kim Farah of 189 Beach Plain Road stated she reviewed the Variance request application and questioned why it was not completed. The specific questions for the criteria were not answered. Chris stated that the applicant did provide comments to the five criteria on an attached sheet. Kim stated that when she came to the office, the materials were not made available. The clerk did provide the application and all supporting documentation submitted by the applicant. Walter **made** and John 2<sup>nd</sup> a **motion to take a 10 minute break** so that copies of the materials can be made and given to the public. All in favor, **motion passes**.

Chris explained that the Board will now go through and discuss the required criteria starting with #2 and ending with #1 as that is more of a conclusion to the request.

2. The spirit of the ordinance is observed. Chris commented that the wording states adding one additional dwelling. The Variance is for one dwelling but, the subdivision is proposing a total of 3 dwellings, the existing house and adding 2. Charlie noted if approved there will be 2

145 additional dwellings, if denied, only one additional dwelling will be added. Walter noted even  
146 though the driveway has state approval, he has a concern with the road. The speed limit is  
147 30MPH, there are 2 high points, 1 low point and people tend to speed. There is a potential for  
148 accidents as he feels it would be difficult to see vehicles in either direction. Chris noted that if  
149 the 400ft requirement is met, there is nothing this Board can do about that. The Police  
150 Department can enforce the speed limit. Charlie mentioned that the State site distance  
151 requirement is regardless of speed limit.

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153 3. Granting the Variance would do substantial justice. There were no questions or concerns  
154 from the Board.

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156 4. The Proposal does not diminish surrounding property values. Roger asked about frontage on  
157 lots 227 & 230. Charlie stated there is approximately 125ft on Main Street and close to 200ft on  
158 Happy Hollow Road.

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160 5. Unnecessary hardship. Chris stated the special condition is missing from the submitted  
161 response. There should be a special condition with the property that makes it different from  
162 other properties that would cause hardship. Charlie explained that it's the quality and amount  
163 of land. There is 6.08 acres, only lacking a total of 27ft of frontage which is close to meeting the  
164 requirements. The 50ft variance request is because of the existing house. It is one of the  
165 highest quality pieces of land in town. He feels it supports 3 dwellings without any issues. It will  
166 not create any adverse conditions to the abutting properties and you wouldn't be able to tell if  
167 there is 150ft of frontage when driving by. There are other house lots around this property that  
168 are smaller with less frontage and would be as asset to the community. Walter mentioned that  
169 Charlie noted the current ordinance does not consider the now limited available building lots,  
170 nor does it have provisions for reliving heightened housing demand on what little land remains.  
171 This is not a concern of this Board. Chris stated this is not a special condition. Charlie believes  
172 he is at 150 ft because of the driveway restriction due to the hill and site distance otherwise, he  
173 would be within 25ft of the 200ft frontage requirement. Charlie believes it's because of the  
174 original house placement. When David Cunningham looked at the house, he didn't support this  
175 and considered raising the house. If he had done this, only 27ft of frontage would be lacking.  
176 Chris mentioned if it was leveled and the house was replaced, would gain 25ft. The existing  
177 house was built in 1890.

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179 1. The Variance is not contrary to the public interest. Chris again, opens the hearing to the  
180 abutters for questions regarding the criteria. There are no abutters in favor wishing to  
181 speak. Abutters who are opposed to the Variance expressed their concerns. Leslie Coughlin  
182 of 7 Happy Hollow Road is concerned with the driveway, entrance, and esthetics across the  
183 front. It doesn't have the required frontage and she doesn't feel this is a hardship. Kim  
184 Farah of 189 Beach Plain Road mentioned the storm water best management practices on  
185 the driveway which had been discussed. She pointed out that it is only as good as the  
186 upkeep and homeowners are notorious for not upkeeping on their stormwater. She is  
187 concerned with drainage coming off the lots. She understands that the acreage is there but,  
188 the frontage is not. The impervious pavement with a shared driveway will probably be  
189 greater. She does not feel this is a special condition. The owner knew what the frontage  
190 was when he bought the lot. If ZBA lets this through it sets a precedent for other owners. It  
191 will start a slippery slope and pretty soon we will see lots that have 50-60ft of frontage. The  
192 idea that there are no high- quality pieces of land in Danville is a fality as she states she is on

one right now and the abutter sitting next to her also has a large tract of land. There is certainly a lack of housing right now. She also mentioned that there are many lots of record that have under 200ft of frontage and some that are on ¼ acre. Pat Gillespie of 13 Happy Hollow Road mentioned the justification for why something would not be contrary to the public interest because we have diminishing opportunities to build is not a relevant response to the question.

Chris asked if the Board has any other questions to clarify whether the hardship meets the special condition criteria and if a site walk is needed. If the Board does a site walk, will need to look at ZBA issues for the Variance criteria. The site walk may make the special condition clearer. Roger noted if you look at the surrounding parcels, frontage is not met and wouldn't meet the special condition. Chris stated those other properties are not looking to subdivide. What's being proposed is a 3 parcel subdivision, adding a driveway, and 2 dwellings, one of which is non-conforming. Dave Cunningham, owner of the property, stated that when he decided to do this project he had Charlie get involved because of the 400ft. From one driveway to the other is 400ft and there is a lot of area in between the two. There are at least 8-10 houses from here to the town line in Fremont with the same shared driveway proposal that we are looking at. Walter **made** and Roger 2<sup>nd</sup> a **motion for a site walk**. All in favor, **motion carries**. The Board will then follow up with a continuance of this hearing. Chris mentioned that technically a 5<sup>th</sup> member of the Board who is not present at the hearing may attend the site walk as well as the public. Roger **made** and John 2<sup>nd</sup> a **motion to hold the site walk on Saturday, March 5, 2022 at 11:00am**. All in favor, **motion carries**. Roger **made** and John 2<sup>nd</sup> a **motion to continue this hearing on Wednesday, March 16, 2022 at 7:30pm**. All in favor, **motion carries**.

The meeting minutes from January 11, 2022 were reviewed. Chris has the following corrections: line 16 in the first paragraph, where it states, "3 members who were not present", remove the word "not". Clarification on line 36: The State has recommendations around owner occupancy of one of the units. Cross out "Stating the municipality may require" and "if it does this." Replace with, "municipalities should consider what it means by owner, physical person or LLC. The Town of Danville doesn't differentiate." This will need to be addressed in Rules of Procedure or with Planning Board. Roger stated that the Planning Board talked about that, and it is already specified in Zoning. Walter stated that he thought you had to be a resident and in looking at Zoning it sounds as if you have to be living in the house. He feels this leaves it open for too many rental properties. Chris noted that previously the RSA was that it had to be a family member but, has since relaxed that and the second unit could be unrelated. The owner of the property needs to be living in the house. Roger **made** and Chris 2<sup>nd</sup> a **motion to accept the minutes as amended**. All in favor with John abstaining, **motion carries**.

Chris mentioned the 2 implications of having a 4 member Board:

1. With 4 members, would have a quorum. If there is a vote of 2 in favor and 2 against the request, it would not be approved. It would be the same as a denial as no decision was made.
2. With a 4 member Board and the vote is 2-2, a request for a continuance can be made and a fifth member brought in to break the tie.

This is something to think about and maybe add to the Rules of Procedure. Chris also mentioned that this Board needs another alternate member. Roger **made** and John 2<sup>nd</sup> a **motion to adjourn**. All in favor, **motion carries**. **Meeting adjourned at 9:15am**.

Respectfully,  
Gail L Turilli

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