

Zoning Board of Adjustment  
August 3, 2021  
Public Meeting

Members Present: Walter Baird, Michelle Cooper, Chris Stafford, John Russo,

Members Via WebEx: Roger Whitehouse (joined the meeting @7:34pm)

Others Present: Gail Turilli, Carsten Springer, Steve Pascoe, Robert Armata, Nicole Latta, Richard Taylor

**Case 2021-3, 5 Red Pine and Colby Road Subdivision:**

Chris explained that there is only a 4 person Board tonight. A WebEx has been set up for a 5<sup>th</sup> member who is out of town but, has not yet joined the meeting. If the applicant decides to move forward with his application, the stipulation is that if a decision is made and he doesn't agree, he cannot appeal the decision due to a 4 member board. The applicant stated he would like to move forward with his application. Chris designated Michelle as a voting member.

The hearing is for a Variance Application submitted by OSP Realty LLC. The location of the property is 5 Red Pine Road and Colby Road, Map and Lot 3-90-11. This Variance has 3 requests: to permit a lot of less than 2 acres, to allow for the existing structure to be less than 30' front setback, and to allow the existing structure/proposed septic system to be within the wetlands buffer and for the lot to contain less than 1 acre of upland. Steve Pascoe is present as the representing applicant.

Chris explained that a Variance has 5 criteria, the Board will discuss and vote on each of the criteria for each request and then, make a decision. There are 7 parts of the Zoning Ordinance that are applicable to this Variance request. Article VI section A which states that the minimum lot size shall be 2 Acres. Article IV – B – 3 – d – 3 Danville Village District, minimal lot area shall be 2 acres. Article VI – B Location of a building on a lot shall be located nearer than 15ft to an abutter's property line and 30ft from the edge of the right of way. Article IV – B – 3 – d – 1, Danville Village District dimensional requirements of all buildings shall be setback a minimum of 15ft from lot lines other than the front lot line and shall have a setback of 30ft from the front lot line. Article VIII – E – 2 Wetland Minimum Lot Size: poorly drained, very poorly drained or combination of soils may be used to fulfill 50% of the minimum lot size requirement. Article VIII – D – 1a & 2a, Wetland Poorly Drained Soils: A buffer zone of at least 75ft shall be maintained between such an area and construction of a permanent structure or waste water treatment system and an area of excavation. No alteration of the surface configuration of the land, and no use which results in the erection of a structure, except as provided for in section D.2(b). Conservation Commission was consulted for advice regarding this Variance application prior to tonight's meeting.

Steve Pascoe gave a brief site history and summary of the proposal for the Variance requests. The Property is located at 5 Red Pine Road which is a 3.82 acre lot with 200ft of frontage, and 321 ft of frontage on Colby Road and has recently been re-zoned to the Danville Village District. Currently supports a 4 bedroom, single family home accessed from the frontage of Red Pine Rd and a converted barn, now a storage building accessed from the frontage of Colby Road. Both structures have driveways, septic systems and wells. A wetland bisects the lot, separating both structures.

The property was once part of a much larger tract of land that was subdivided in 1986 into a 16 lot residential development with the barn as an existing structure. Roger Whitehouse has now joined the meeting via WebEx and will be a participating, voting member. Chris stated now that there is a 5 person board, previous stated stipulations of a 4 person board are nullified.

A lot line adjustment was done in 1993 to allow for the abutting lot to be subdivided into 2 residential lots. The lot was established as 2.93 acres. In 2000, a septic design was approved to construct the residential building on Red Pine Rd. Existing barn, remodeled in 2002, was used as a wrestling school. In 2004, a septic design was approved to support this. The design called for installation of a well and septic to support 30 students for a total sewage flow of 300 gallons per day, allowing the leachfield to be within the 75ft wetland setback. In 2012, a lot line adjustment plan was brought before the planning board and approved, adding .89 acres to the property which brought the total area to 3.82 acres. State subdivision approval was obtained but, required a variance. Request was initiated and discussed, but, subsequently withdrawn. The lot was sold which brings up the current proposal.

The site is now within the Danville Village District. This allows for new opportunities to expand the town's commercial base within new areas to establish businesses that can be blended with the existing residential uses. The Planning Board and Conservation Commission are in support of the current proposal, which is to subdivide the existing barn off from the residential home as a separate commercial business. Mr. Pascoe is looking to establish a professional office space building for real estate. NHDES subdivision approval has been obtained, now seeking local approvals. In order to subdivide, several variances are required. Should the variance be granted, an application will be submitted to the Planning Board for subdivision of the lot and site plan for conversion of the barn.

The footprint of the barn will remain. Improvements for the parking area will be shown on the plan to include swales, and partial paving. Mostly interior work needs to be done. There will be 3 – 5 employees working about 4 – 7 hours a day, Monday – Friday. The proposed septic on the plan is in case of failure in the future, existing septic system is operating and leach field is in the back of the building. There are 2 existing bathrooms,  $\frac{3}{4}$  upstairs and a  $\frac{1}{2}$  bath downstairs. The subdivision will create 2 distinct lots with little to no impact and meets DES requirements.

Chris stated, per Conservation minutes of 5/6/21, that they support this application and for ZBA to work with the property owner to place appropriate limitations on the plan. Carsten mentioned that the one acre upland requirement was put in place for residential purposes. This request is for non-residential use and is much more in line with appropriate use for this location. Previously, there was an issue with delineation of wetlands, driveway and parking for flow and plowing. Conservation had met with the environmental company at the time to check on this and found that the delineation had changed. He feels confident that the current delineations are accurate and pointed out that Mr. Pascoe has already provided for a worse case scenario of a failed septic system.

Chris proposed an option for a site walk in order to assess or deliberate. The board does not feel that this is necessary. Michelle questioned the initial delineation and what changed when Conservation looked into this. Carsten explained that there was no physical change, the delineation was less than originally thought. Steve Pascoe stated that he plans on having the wetlands re-delineated. Walter raises concerns regarding the possibility of selling the property down the road, and converting the structure into a house due to the fact that there is a  $\frac{3}{4}$  bathroom. Chris stated that proper verbiage will need to be put into the decision to limit the bathroom. Steve Pascoe stated that he has no intention of

96 selling the property but, if that is decided 5 or 10 years down the road, and questioned the new owner  
97 coming back before the board for approval for use. At this time, he is seeking approval for use specific  
98 to him. Chris explained that once a use variance is passed that is in the Village District, as long as the  
99 property owner is compliant with any restrictions on the Variance, a different business can be put in  
100 place. A new owner would only have to come back before the Board if there were a change in the  
101 intent of use from Village District to Heavy Commercial, or to add bathrooms and/or make into a  
102 residence. Carsten stated from a Conservation standpoint, the restrictions should be limited to office  
103 use only and cannot be used as a residence.

104  
105 Chris asked if any abutters had any concerns regarding this Variance request. Robert Armata and Nicole  
106 Latta, who reside at the corner of Red Pine Road and Colby Road, both stated that they support Mr.  
107 Pascoe.

108  
109 Carsten commented that there are situations where commercial properties are limited when they have  
110 tight tanks but, this is not the case here. The health department monitors certain discharge amounts  
111 and the amount of water going in. For a future difference in use that would create more water,  
112 limitations on gallidation can be put on the restriction. Chris stated that the application is for a  
113 proposed 300 gallon per day. Michelle stated that if the system fails and the load needed to be  
114 increased, would the property owner have to come back to the Board or bypass coming in as long as it is  
115 state approved. Chris explained that if anything changes, technically they should come back before the  
116 Board and that we need to be specific with the decision and with any restrictions. Michelle stated that  
117 by putting a restriction would force future owners to have to come back for approval. Chris asked the  
118 Board if there are any more questions regarding the wetland setback/upland variance. Nothing more  
119 from the Board.

120  
121 Chris asked the Board if there are any questions for the second Variance for the setback from the Right  
122 of Way. Michelle asked if a driveway permit has been pulled, previously a footpath from the house was  
123 used. Steve stated there was a bridge which is now restricted. Entry access will be at the right side of  
124 the barn. The left side will be proposed gravel with limited paving to the right side for parking. Chris  
125 asked what the 30ft setback from the wetlands is in reference to what structure. Steve stated that the  
126 setback is in reference to the existing barn and parking will be to the right side. There will be no paving  
127 in front of the building. Michelle questioned if the paved area will extend further up Colby Road. Steve  
128 confirmed that it would extend. Michelle then asked if the Road Agent would need to be notified in  
129 regards to the possible affect to Colby Road. Carsten stated that it is a State Road and that the Road  
130 Agent would not need to get involved. Michelle then questioned if a driveway permit was pulled from  
131 the State. Carsten stated that a previous application from 5 or 6 years ago has an existing state  
132 driveway permit, using gravel which would decrease velocity and reduce the area of access. Chris stated  
133 that a driveway permit is not needed for Variance requests unless there is an impact on the wetlands.  
134 Planning Board will review and advise on the necessary permits needed. Carsten also mentioned that  
135 the addition of the swale on the plan would also be an improvement. Steve explained that the paving  
136 will end at the right edge of the building before the bump out and there will be no paving in the front  
137 even though it shows on the plans. Walter stated that per Zoning in the Village District, within 50ft of  
138 the right of way, all parking shall be to the side and/ or rear of the proposed building. Chris asked if the  
139 board had any comments in regards to the parking lot or the Variance of the setback of the right of way.  
140 No comments from the board. There were also no comments from the board in regards to the .76  
141 acres of upland or the 1.82 acre lot.

Walter inquired about fire suppression. Steve stated that the property is not big enough to require that but, plans on meeting with the Fire Department to discuss and will address any permits needed. At this time, the public hearing is closed for deliberation. Per Conservation, this is a better use for the property. Roger stated that he is opposed to the restriction for the size of the septic.

The five criteria for each Variance request were discussed. The only issues are in reference to hardship. Michelle questioned using the structure without subdividing as it was used as a commercial building in the past. She feels that approval could be obtained without subdividing, and as it is located in the Village District, residential and commercial use can be mixed. Carsten explained, from a valuation standpoint, the applicant is removing the area where the house is from the Village District. This will make the property more valuable and he supports this approach. Mr. Pascoe feels it does meet the hardship criteria. He cannot walk from the house to the barn, needs to use the road to access the barn. This proposal will create more of a tax burden for him but, by subdividing, the evaluation will increase dramatically. All board members agree that is a unique property with the exception of Michelle. All agree that the use of the property is a reasonable one.

Chris suggested putting restrictions on the building in regards to the upstairs bathroom having a shower. Commercial buildings shouldn't have showers as it opens up too much possibility in the future for use, and should have nothing more than a half bath. Also, a restriction on washing machine and/or dishwasher should be considered. There is anticipation if sold in the future to turn into a residential property without coming to the town. It would be difficult if there were only a half bath, no shower, washing machine or dishwasher. Amenities are not needed for commercial use.

Walter asked Mr. Pascoe if his intention is just for a real estate office. Mr. Pascoe confirmed, that his intent is for use of a real estate/rental office with 2 admins working 4 hours a day, five days a week. He also made a suggestion to restrict the property to non-residential use. Walter questioned if there were any plans to have a different business upstairs. Mr. Pascoe stated real estate only. Roger noted that the board can restrict to business use only but not as to what type of business. Michelle asked about a legal opinion for recommendations. Roger feels that legal counsel is unnecessary but may be a DES issue in regard to the concern for water discharge. Walter noted that caveats can be placed on the decision. Michelle stated that the plan is approved for a 300 gallon per day discharge. Chris stated that he would like to get a legal opinion regarding non-residential use and once a Variance is approved, it stays with the property. The board has 3 options: 1. Re-iterate that the plan shows 300 gallons per day of discharge, 2. Restrict bathrooms, and 3. Restrict the property to non-residential. Roger feels that the restriction should just be on the bathrooms. Chris then asked the board to vote on getting a legal opinion. All in favor with the exception of Roger. Walter **made** and Michelle 2<sup>nd</sup> a **motion for legal advice** to request to put a restriction on the use of property to light commercial and not become residential. The board needs an opinion on what verbiage can be used.

Deliberation of this Variance request will be continued on Tuesday, August 17 at 7:30pm

#### **Case 2021-4 – Richard Taylor – 122 Kingston Road:**

Chris explained that Mr. Taylor had come in before the board for a Special Exception on May 11. The application was denied as he did not meet the criteria. Mr. Taylor has subsequently applied for a Variance request for storage of 3 tri-axle dump trucks and various construction equipment. Michelle was designated as a voting member in this hearing.

Mr. Taylor gave a brief summary stating he is seeking approval for storage of up to 3 tri-axle dump trucks and various equipment. The equipment moves around, is not always on site. The business is based on outside work, nothing is done on site. He has been doing business on the property since 2008, was unaware of the Variance process, and wants to be legitimate and use the business name when registering vehicles. He is currently registered with the state but, not with the town.

Chris read the Special Exception decision, two of the criteria were not met: 1. Outside storage of equipment and 2. Parking and location of commercial equipment. This application was denied. The five criteria for the Variance application were then discussed. Chris noted he would like to discuss the Hardship criteria first as that is the most difficult to prove. Mr. Taylor explained that the property has been utilized in this way for about 40 years. It was previously owned by John Lancaster who rented to Mr. Taylor and he continued to use the property in the same way with Mr. Lancaster's permission. Michelle stated she is familiar with this property and never saw multiple vehicles or equipment stored on site when Mr. Lancaster owned it. Mr. Taylor stated he has put up fencing as a buffer to the street. He also re-iterated that he was not aware that he needed a Variance to operate his business as there are many others in town doing similar things. Roger questioned if the board says no to this request and shuts him down, is the BOS going to investigate every other home business in town. Michelle stated that this board is only going to discuss approval, not shut the business down. Chris explained that this board will assess the application against the criteria and to determine if it meets the intent of what the town requires. The board was unanimous in voting no for the Hardship criteria, therefore the Variance is denied. Roger noted to bring up the the Planning Board to change the Special Exeption criteria for a Warrant Article in the next town vote.

Roger **made** and Michelle 2<sup>nd</sup> **a motion to adjourn**. All in favor, **motion passess**. Meeting adjourned at 10:30pm

Respectfully,

Gail L Turilli