

EXPANDED DRAFT MEETING SUMMARY  
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ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING  
February 28, 2023

A public hearing of the Zoning Board of Adjustment was held on Tuesday, February 28, 2023 at 6:30 PM, both in person at City Hall and via Zoom.

Steve Lionel, Vice Chair, asked for a Roll Call:

Steve Lionel, Vice Chair  
Jack Currier, Clerk  
Jay Minkarah  
Josh Nehiley

Carter Falk, Deputy Planning Manager/Zoning  
Kate Poirier, Planning Coordinator

Mr. Lionel explained the Board's procedures, saying that real-time public comment can be addressed using Zoom, or by telephone, or in person. Mr. Lionel said that real-time comments via audio will be addressed at the conclusion of the public hearing, and the public is encouraged to submit their comments for future meetings via email to the Planning Department, which is [Planningdepartment@nashuanh.gov](mailto:Planningdepartment@nashuanh.gov), or by mail, at P.O. Box 2019, Nashua, NH, 03061. Mr. Lionel identified the points of law required for applicants to address relative to variances and special exceptions. Mr. Lionel explained how testimony will be given by applicants, those speaking in favor or in opposition to each request, as stated in the Zoning Board of Adjustment (ZBA) By-laws.

- 1. Saddleback Estates, LLC (Owner) 7 Saddleback Drive (Sheet 3 Lot 137) requesting Equitable Waiver pursuant to RSA 674:33-a relative to Land Use Code Section 190-16, Table 16-3, to maintain a foundation encroaching 10 inches into the 20 foot required front yard setback to a future street (not yet named) on a corner lot. R9 Zone, Ward 7.**

Voting on this case:

Steve Lionel  
Jack Currier  
Josh Nehiley  
Jay Minkarah

Austin DeSantis, 7 Saddleback Drive, Nashua, NH. Mr. DeSantis said that they poured the foundation, which is on the corner of a future unnamed street and Saddleback Drive, and when they had the as-built done for the foundation, it was noticed that it encroaches in the front yard setback to the future unnamed street. He said that they believe that they meet the equitable waiver requirements.

Mr. Currier asked what the future street would connect to.

Mr. DeSantis said that it would be Mr. Whitney's house, there is a proposed subdivision where his house sits.

**SPEAKING IN FAVOR:**

No one.

**SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:**

No one.

**END OF PUBLIC HEARING, BEGINNING OF PUBLIC MEETING:**

Mr. Minkarah said he is in support, it was a minor measurement error, and the cost to remove the foundation or cutting it off would be prohibitive.

Mr. Nehiley said that he is appreciative of the applicant coming in and going through this process. He said that he is in favor of the application, the cost to remediate this would be prohibitive.

Mr. Currier said that he is in favor as well.

Mr. Lionel said that he is in favor.

**MOTION** by Mr. Nehiley to grant the Equitable Waiver as advertised

on behalf of the applicant. He said that the violation was not noticed or discovered by any owner, former owner, owners agent or representative or official until the structure in violation had been substantially completed, it is a minor encroachment and will not impact the future street, and the cost would be prohibitive to eliminate the foundation.

SECONDED BY Mr. Minkarah.

MOTION CARRIED UNANIMOUSLY 4-0 PER VERBAL ROLL CALL OF THE VOTING MEMBERS.

2. Paul & Jose Dudley (Owners) 73 Musket Drive (Sheet C Lot 1607) requesting special exception from Land Use Code Section 190-111 through 190-117 for after-the-fact tree removal within a 40-ft "other" wetland buffer and wetland. R30 Zone, Ward 5.

Voting on this case:

Steve Lionel  
Jack Currier  
Jay Minkarah  
Josh Nehiley

Paul Dudley, 73 Musket Drive, Nashua, NH. Mr. Dudley said that he bought the property in May, 2020. He said that they recently cut some trees because one tree had rotted and was falling over onto another tree, so they believed that it was a safety concern. He said that he talked to his neighbors. He said that they have been asked to plant some bushes to replace where the trees were, and they've been asked to put up some signs, and they're willing to do that also.

Mr. Nehiley said it's apparent from reading the documentation that the owners have been frustrated. He asked where they ended up with the final sign in the middle of the lawn, as there was some back and forth with the signs every fifty feet.

Mr. Dudley said that he agreed to do it, because at this point, he felt that the wetland would be clearly marked, however, the middle marker is right in the middle of a fire pit. He said that they'll just make it work.

Mr. Nehiley said that the Conservation Commission had three bullet points of approval, and asked if they are in approval of those, and will be in compliance of them.

Mr. Dudley said yes.

Mr. Lionel said that there are nine special conditions for wetlands, and asked if he agrees with them.

Mr. Dudley said that he agrees to them.

Mr. Currier asked if there is a proposal for the signs for the left, right and middle.

Mr. Dudley said that currently, there is nothing, but said that he found a wire that would be in the right spot where the signs would go. He said that they just want to do the right thing, he appreciates the Conservation land.

Mr. Currier said that what he thinks the agreement was, with the Conservation Commission, was that there would be a total of three posts, left, right and middle.

Mr. Dudley said yes, and doesn't know who provides that signage yet.

Ms. Poirier said that the Planning Department can help with that.

**SPEAKING IN FAVOR:**

No one.

**SPEAKING IN OPPOSITION OR WITH QUESTIONS, COMMENTS OR CONCERNS:**

No one.

**END OF PUBLIC HEARING, BEGINNING OF PUBLIC HEARING:**

Mr. Currier said that he is favorable to the application, but is struggling with the sign in the center of the lawn. He said that the idea of a sign every fifty feet, the McCarthy Middle School comes to mind, there is a field on the edge of the wetland, so the 4x4 posts, with a little placard on it, are there, and sometimes you see a series of these signs and they identify where a wetland begins. He said that he's struggling with the Conservation Commission wanting one in the center of their lawn, this property was developed before the Wetlands regulations were in place. He said that one sign on the left and one on the right is a pretty good indicator that there is a line, even though the wetland buffer comes out a little more in the middle, but the other situation where the homeowner has agreed to put the flag survey. He said that they've gone a long

way to memorialize the wetlands in the back. He said that he's in favor of it, but prefers to not have the stipulation of the sign in the center of the lawn. He said that the owners are agreeable to do it, but said that he is not enthusiastic about the sign in the middle.

Mr. Nehiley said that he's in favor of the application, this was a well over-the-top conversation with the Conservation Commission, and is fully in favor of this, they will follow everything that the Conservation Commission says, which is great, and they're not affecting any of their neighbors, there's no reason to deny this. He said that for the signage in the middle of the lawn, if the Board has the ability to say that it is not necessary, he would agree with that.

Mr. Minkarah said that he supports the application, and thinks that this was an error, unintentionally, and agrees, having a wetland buffer sign in the middle of the yard is a little over-the-top, and supports the application with the stipulation that either of the buffer markers are required with the homeowners having their best efforts to reasonably mark the buffer that works the best.

Mr. Lionel said that he is in support of the application, and would support some relief in terms of the center sign. He asked if the Board is able to do that.

Mr. Falk said that the Board can. He said that if the Board does not agree with one of the stips that the Conservation Commission has provided, the Board can say that they support stipulations two and three, and number one, perhaps only the left and right signs. He said that the Conservation Commission may question the decision.

Mr. Lionel said that he agrees with other Board members in that the sign in the middle is unreasonable.

Mr. Falk said that the Conservation Commission is a recommending body, the Board does not have to agree with all of their stipulations, but the Board should give valid reasons why they don't think the conservation post in the center is required, or necessary.

**MOTION** by Mr. Currier to approve the special exception application on behalf of the owner as advertised. Mr. Currier

stated that the use is listed in the Table of Uses, Section 190-111 through 190-117.

Mr. Currier said that the use will not create undue traffic congestion or unduly impair pedestrian safety, this request has no impact on those two.

Mr. Currier stated that the use will not overload public water, drainage, sewer or other municipal systems.

Mr. Currier said that the nine special regulations have been fulfilled per testimony, and this was approved by the Conservation Commission on January 3, 2023.

Mr. Currier said that this will not impair the integrity or be out of character with the neighborhood, or be detrimental to health, morals or welfare of the residents.

Mr. Currier said that for special conditions, that for Conservation Commissions stipulation number one, stated that the applicant has agreed to abide by all three stipulations, but the only ones needed are the ones on the left and right, to waive the requirement for the center marker, so that the wetland markers would only be on the left and right side, not in the center.

**SECONDED** by Mr. Lionel.

**MOTION CARRIED UNANIMOUSLY 4-0 PER VERBAL ROLL CALL OF THE VOTING MEMBERS.**

**MISCELLANEOUS:**

**REHEARING REQUESTS:**

1. Steven Fritz (Owner) 105 Vermont Avenue (Sheet 4 Lot 25) requesting variance from Land Use Code Section 190-17 (E)(1) to exceed maximum driveway width, 24 feet permitted, 40 feet existing - requesting to maintain an additional 16 feet of recently added driveway width. R9 Zone, Ward 7.

**Date of original hearing: 1-10-2023**

**Requestor of rehearing: Attorney Robert Shepard**

Mr. Lionel asked if there was any procedural error, including

improper notice, denying someone the right to be heard, etc.

Mr. Currier said that he did not believe that there were any procedural errors, there was proper notice.

Mr. Minkarah said that it does not appear that any errors were alleged.

Mr. Nehiley said that he does not believe that there were any procedural errors.

Mr. Lionel said that he also does not believe that there were any procedural errors.

The Board voted 4-0 that there were no procedural errors, per verbal roll call of the voting members.

Mr. Lionel asked if it was an illegal decision, in other words, did the Board fail to completely address each of the points of law required for the special exception and/or variance.

Mr. Minkarah said that he disagrees with the assertion that an improper standard was used. He said that he recalls this case, and one of the factors that really jumped out was that this property wasn't distinguishable from surrounding properties, the setback of the house was consistent, the lot size was consistent, and there was nothing unusual about it, nor was there anything unusual about it that was presented.

Mr. Nehiley said that he does not believe that the decision was illegal, he said that he clearly remembers a spirited conversation about this property, it was an after-the-fact application, and he significantly widened his driveway, and there was a very long discussion on how we would have voted if he had come ahead of time, the Board discussed on how many of us looked at the neighborhood to look for alternatives, or other folks who paved around the sides of their house to stay within code, and this gentlemen didn't have any good answers for the Board, and the Board did ask him who paved it, to see if he was led astray, and the question was not answered by the owner. He said that the Board had a very long conversation about this, and the Board clearly thought that the driveway should not stay at 40 feet, but this request would be able to park six vehicles in the driveway. He said that in his short tenure on the Board, the Board has been very consistent about looking at the width of

driveways, and have turned down some other folks.

Mr. Currier said that he concurs, that this was not an illegal decision, the Board did consider if this was an unnecessary hardship, especially to grant a significant driveway relief, and that he could increase the parking amount on asphalt by not having a wider driveway, by going around the garage, we spoke about that, and some neighbors have done that. He said that for the spirit and intent of the ordinance, the Board spoke about that, in that the Board concurred in that there may be some legal, or illegal driveways that are wider in the neighborhood, but that doesn't mean that the Board dismisses exceeding the 24 foot requirement. He said that in terms of the public interest and substantial justice, the Board spoke on them as well.

Mr. Lionel said that he has nothing further to add, and believes that it was a legal decision.

The Board voted 4-0 that the decision was not an illegal decision per verbal roll call of the voting members.

Mr. Lionel asked if the request for rehearing contains any new information not presented or available to the Board. He said that the attorney says that there was not any new information.

Mr. Currier said that there is no new information.

The Board voted 4-0 per verbal roll call of the voting members that there is no new information presented or available.

Mr. Lionel asked if there is anything that would/could cause the Board to make a different decision.

Mr. Minkarah said nothing that he can see.

Mr. Nehiley said there is nothing, the 40 foot wide driveway is not a reasonable use.

Mr. Currier said that the 40 foot driveway is not a reasonable use, the legislative body has decided that a 24 foot driveway is reasonable, it is the law.

Mr. Lionel said that there isn't anything that would change his decision.



The Board voted 4-0 per verbal roll call of the voting members that there is nothing that would or could cause them to make a different decision.

**MOTION** by Mr. Lionel to deny the rehearing request on behalf of the owner and applicant, as discussed.

**SECONDED** by Mr. Currier.

**MOTION CARRIED UNANIMOUSLY 4-0 PER VERBAL ROLL CALL OF THE VOTING MEMBERS.**

**REGIONAL IMPACT:**

The Board did not see any cases of Regional Impact for the March 14, 2023 meeting.

**MINUTES:**

February 14, 2023:

**MOTION** by Mr. Minkarah to approve the minutes as presented, waive the reading, and place the minutes in the file.

**SECONDED** by Mr. Nehiley.

**MOTION CARRIED UNANIMOUSLY 4-0 PER ROLL CALL OF THE VOTING MEMBERS.**

**ADJOURNMENT:**

**MOTION** by Mr. Currier to adjourn the meeting at 7:08 p.m.

Submitted by: Mr. Currier, Clerk.

CF - Taped Hearing