

TOWN OF BUXTON
Appeals Board Meeting Minutes
February 1, 2024

Members present: Peter Leavitt, Gemma Baldinelli, John Bartlett.

Attendees: Diane Friedlander, Bruce Douglas, Jerome Williams, Bert Genest, Austin Gregory, Aaron Gregory, Michael Robinson (who did not sign the sign in sheet), CEO Patti McKenna.

Meeting Minutes prepared by Patti McKenna

Public Hearing: Chairman Peter Leavitt made the motion to call the meeting to order at 7 p.m. Gemma Baldinelli seconded. The motion passed with a vote of 3-0 in favor.

First application heard was for **Diane Friedlander – Map 11 Lot 37 at 17 Union Falls Rd for a variance from the lot size in the Rural zone pursuant to section 6.2.B** of the zoning ordinance.

Diane spoke to explain her request. She would like to break off a lot with her existing house and sell that. That lot would have 200,000 square feet. The remaining land would have less than 200,000 square feet. She is lacking a quarter of an acre to meet the minimum lot size in that zone of 200,000 square feet. The lot currently has two areas of development with two driveways. She proposes to sell the upper portion where the house is with 200,000 square feet and keep the lower portion where the Quonset hut is. The Quonset hut is 40 x 60 and already has a well and power to it.

Peter Leavitt spoke and asked if she is seeking a variance from the 200,000 square foot lot size. Diane responded yes. She is asking for a reduction of 11,356 square feet from the 200,000 minimum lot size.

Peter Leavitt states that he believes this type of application has to meet the hardship criteria. If this is proposed to be her primary residence, he is pretty sure they can bypass the first hardship for that reason. She will still have to meet the three other hardships.

The board discussed the second hardship at this time. The need for the variance is due to the unique circumstances of the property and not to the general condition of the neighborhood. Diane spoke to that, stating she is missing a quarter of an acre. This was once part of a 1700 acre wilderness. Part of this lot is underwater for 15 acres including land abutting hers. Even if she could buy some acreage to have 200,000 square feet it would not change

where she could build because that abutting land is under water. She is the only triangle lot in the neighborhood. The other lots are all rectangles.

The Board discussed the third hardship. The granting of the variance will not alter the essential character of the neighborhood. Diane's response was that the Union Falls Road is already divided into 5 acre lots on both sides of the road to the dam.

The Board discussed the fourth hardship. The hardship is not the result of action taken by the applicant or prior owner. Peter Leavitt stated that he feels this is the hardest to meet because she is asking for a variance. This is the action. Diane responded that she did not split the lot. She is coming to the board before anything was created.

Gemma Baldinelli asked if Diane intended to sell the other piece of land. Diane responded yes.

John Barlett asked what is the size of the total parcel. Diane responded that she owns 388,644 square feet of land and she needs 400,000 square feet to split the lot.

Peter Leavitt opened the floor to the attendees at this time.

Jerome Williams an abutter across the street to the property spoke. He states he sold off 15 lots on that road and knows how this procedure goes. He asks the board if they are aware that this has been tried before and the previous board denied the request. He states that if this board allows a smaller lot, they are setting precedence, and they would be hard pressed to deny anyone else. Peter Leavitt asks Jerome if he is in opposition of this request. Jerome responds that yes he is in opposition.

Diane responds to this, stating that she did look at the previous variance. They applied 20 years ago and it appeared to her that the person didn't do their research on the hardship criteria. Regardless of that, there is no precedence setting. Each person asking for a variance would have to come to the board and state their case.

Michael Robinson, abutter on the other side spoke. He stated that he has been on the Saco River Corridor Commission for 18 years. He has reviewed hardships and they are hard to get. He asked the Board where they stand on this variance. He apologized as he stepped in a few minutes after the meeting started and missed the very beginning of the meeting.

Peter Leavitt stated that they are just discussing the application and hardships at this point. Peter asked Michael if he was in opposition. Michael stated that he is opposed.

Peter Leavitt closed the public portion of the meeting at this time for the Board to talk amongst themselves.

Peter stated that he believes the first hardship doesn't apply for a primary residence.

The Board went on to discuss the unique circumstances hardship. Peter stated that some of the land is under water and not buildable. Splitting the lot with one lot being at 200,000 square feet and the other 12,000 square feet short certainly qualifies for a reduction in lot size variance. He believes it is not due to the unique circumstances of the property. John Bartlett stated that he thinks if we do this we will have a barrage of more people asking for the same thing. Gemma Baldinelli stated that the property is small and thinks it is unique because of its size.

Peter Leavitt went on to the next hardship. It will not alter the essential character of the neighborhood. He states that there is already a building on the property and houses are in the neighborhood. There is no further discussion.

The Board moved on to the fourth hardship. That this is not a result of action taken by the owner. Peter Leavitt feels that it is due to an action taken by the owner. Gemma Baldinelli states, that she is curious if other alternatives were looked at. Diane responded that to build a smaller home she needs money, and she did try to buy land.

At this time the meeting is opened back up to the public. Diane responded to the statements that this is due to an action that she is taking. She states that this criteria is for people who have for example constructed something and needs relief from requirements after the fact. She hasn't done anything yet. There has been no action other than asking for a variance. If she had already built the house and now wants to split the land, that is an action. She is coming here first before she does anything.

Michael Robinson stated that he heard the comment to have money to build a smaller house. Section 6.2.B states that a financial hardship shall not be grounds to grant a variance. Gemma Baldinelli stated that she did research other options. What other research had been done.

Diane responded that she did research variances. She did not bring financial reasons into this application at all. She could build an Accessory Dwelling for herself and rent her house but she doesn't want to rent.

At this time the public portion of the meeting is closed.

Peter Leavitt stated that the Board would now go over the four hardship criteria. The first one is waived if this is intended to be for a primary residence. The applicant has to meet all three of the remaining criteria.

Peter asked for a show of hands if the applicant has met #2. The need for a variance is due to the unique circumstances of the property and not to the general conditions of the neighborhood. The vote was 3-0 in favor that she has met this hardship.

Peter asked for a show of hands if the applicant has met #3. The granting of the variance will not alter the essential character of the locality. The vote was 3-0 in favor this criteria was met.

Peter asked for a show of hands if the applicant has met #4. The hardship is not the result of action taken by the applicant or a prior owner. The vote was 0 in favor and 3 against.

Peter Leavitt stated that because the applicant must have met all three criteria and did not, this application is denied.

The second applicant, **Austin and Aaron Gregory – Map 12 Lots 44-45 at 14 Depot Street for reconstruction / replacement of structure and change of use pursuant to sections 4.2.C.3 and 4.2.D.3 of the Buxton zoning ordinance.**

Austin Gregory spoke explaining what they would like to do. Initially they purchased the property to use for storage. Much of the larger building is becoming unsafe and is not structurally sound. They had a meeting with Saco River Corridor Commission and the commission would not allow industrial use of this property. The Commission did grant a permit to construct a single family house . The property is in the Village zone and the current use is industrial. They are applying to this board for a change of use to allow a single family home. They have received a permit from the State for the septic permit. Austin reviewed the setbacks proposed. They will be setback 80 feet from the river. The current structure is 8 feet off the road and they

would maintain that setback. They reviewed the septic location, and the well location.

John Bartlett stated that the neighbor's septic is right next to the property line beside where the proposed well is to be located. It was discussed that the well would be cased to get depth and distance it required from any septic systems. Possible ground water contamination was discussed also. Austin stated if they had to, they would install a reverse osmosis water filtration system to purify the water.

Peter Leavitt stated we are here to review and decide upon a change of use.

Austin stated that when they bought the property they removed 4 dumpsters of glass. They used lead with old glass. By removing all of that they feel a single family house is safer. Tearing down the larger of the two buildings would open up 50 feet of sight distance. It will open up the view of the river with the removal of the buildings. The septic system has been approved by the State of Maine and the septic won't just be going out onto the ground.

Peter Leavitt asks if all around this property are homes? Austin responded yes.

Bert Genest an abutter spoke at this time. Stating it is nice to see something being done. He questioned the location of the well and stated it should be 100 feet from the leachfield. That area used to be a dumping ground for engines. He has a reverse osmosis system that cleans his water. He thinks a new home is great. The trees around it should be gone. He suggests there was a well for Roger's Fiber building and maybe they can tap into that well. Austin responds that the well is contaminated. John Bartlett asks how they know their new well won't be contaminated. Austin responded that the Saco River Corridor Commission made them test the soils on site as a condition of their approval. The soil tests came back within approved standards. If they have to install water treatment on the well water, they will do that.

Bert Genest stated that he would like to see them put up a fence. Austin stated that they plan to plant a row of arborvitaes between the properties. Bert asked about parking. There will be two spaces for off street parking to the left of the house where the building used to be. Bert asked what will happen to the pillars that are currently there. Austin responds that they will be used as clean fill. Any dirty material will be removed.

At this time, Kelli Keliehor's concerns sent by email were read into the record as follows:

I have serious concerns regarding a septic system being installed at 14 Depot St. That property floods regularly. There are some blue flags to the right of the property (in between the buildings and the public parking) which I am assuming is the proposed site for the septic system. The second flag from the street as well as the tree with the blue ribbon on it were under water for several days this past December. This is not an anomaly. I have witnessed flooding worse than this at that location. It is a regular occurrence. I do not see how a septic could be safely installed without affecting the health of the Saco River, which is my primary concern. I have submitted a picture for review. If you zoom in, you can see the blue flag completely submerged. The tree marked with the blue ribbon is not visible in this picture, but it is even further back and more deeply submerged than the blue flag.

This building has historically been a day use only building without a well or septic. If it is going to be allowed to be repaired/rebuilt, it should continue as a day use only/commercial type facility until the time a safe alternative to a septic system and/or well can be found. Digging/drilling for such things will potentially disturb dangerous elements in the soil from when there was a mill in close proximity. There is also a hazardous buried gas storage tank nearby that could be damaged due to excavation which could also prove extremely hazardous to the river. On the off chance both systems could be installed safely, I do not see how the ongoing use of a septic system could be safe for the river. I understand the property may technically be above the 100-year flood mark, but that data is sorely inaccurate. As stated previously, I have witnessed flooding multiple times a year with the picture I provided being considered minor flooding compared to other flooding events I have witnessed. The water level has lapped the sides of both buildings on numerous occasions with flooding almost reaching street level. This continued flooding is what finally caused the building to the left to give way and partially collapse.

Parking is also a potential concern. There is no overnight parking allowed anywhere in this area, including the parking lot next door. With plans being for only 2 cars, where will overflow parking go? There is ample daytime parking available for the current commercial use of this building but changing the use to a 2 bedroom residence with onsite parking allotting for only 2 cars is a potential concern.

Austin responded about the blue flags shown in the picture. Those flags were a site looked at for the septic system but they realized that would not work. The system was moved up further away from the water.

Peter Leavitt states they will be reducing the footprint of structures on the property. He thinks they have done all they can. When the dam is removed the setback to the river will be increased. The well is not our concern. The trees are not our concern. In his opinion he doesn't think they should have to

do anything more than what the state is making them do. Gemma Baldinelli stated her only concern is the maintenance of the septic system.

Peter Leavitt states that there are no other businesses around. Everything around this property is homes. They will be altering the character of the building, and it will improve it. Putting the entry door on the side makes sense. Gemma Baldinelli states, in this regard she feels this is correct. John Bartlett is in agreement.

The question about the setback meeting the greatest practical extent from the river is put to a vote. The vote was 3-0 in favor that the applicant has met the requirements and the setback location of the proposed house is approved.

The question about the change of use is put to a vote. The Board voted 3-0 in favor of allowing the change of use from industrial to a single-family home.

Hearing no other comments, Peter Leavitt made the motion to adjourn at 7:19 p.m. Gemma Baldinelli seconded the motion. The vote was 3-0 in favor.

Peter Leavitt, Chairman

Date