



**Zoning Board of Adjustment
Town of Eaton
Evans Memorial Building
Eaton, NH 03832
603-447-2840**

February 7, 2022

The Zoning Board of Adjustment met on Monday, February 7, 2022 in the Town Hall. Present were Chairman Steve Larson, Robert Malvesta, Alternates John Border and Stan Dudrick. The meeting was called to order at 7:16 pm. Chairman Larson appointed Alternates John Border and Stan Dudrick to act as regular members for this meeting.

Chairman Larson read the Public Notice and explained that there are only four members present and that the applicant needs three votes in the affirmative for an approval. Chairman Larson indicated that the applicant has the choice as to whether they want to proceed or postpone for a meeting with a full Board.

Case # 202201 – Emily Bridgham – Special Exception

Steve Larson opened the Public Hearing on an application from Emily Bridgham for a Special Exception under Article V, Section A.2(e) for a Short-Term Rental/Transient Lodging at 2620 Eaton Road (R04-018). Emily Bridgham stated that she would like to proceed with the four-member Board. Chairman Larson read a letter to the Board from Tim Ostendorf and Robert Barker.

All notices required by statute had been posted and abutters notified. There were no conflicts of interest.

Emily Bridgham gave an overview of her property and indicated that she was unaware of the regulations governing the use of her property for short-term rentals until she was notified by the Selectmen. Emily Bridgham explained that she has not had any issues with the rental and that neighbors are aware of this use. Robert Malvesta questioned whether any neighbors have complained for raised any issues and Emily Bridgham stated that there have been no complaints. Stan Dudrick questioned whether the property is rented year round and Emily Bridgham stated that they do rent year round.

Chairman Larson noted that there are three questions to be addressed for the Special Exception to be approved.

1. Is the proposed use prohibited under Eaton's Zoning Ordinances? It was noted that this use is permitted by Special Exception
2. Is the proposed use permitted by Special Exception? Chairman Larson noted that the use is permitted by Special Exception if the property is 4 acres plus an additional 2000 square feet per bedroom. Emily Bridgham stated that the property is 12.75 acres and that there are three bedrooms rented. John Border noted that the existing septic system is scheduled for inspection in the spring and that a condition of

approval should be that the septic system is adequate for the proposed use. Chairman Larson noted that the property has a private well and Emily Bridgham stated that they have not had any issues with the well or water supply.

3. Have all specified conditions been met to grant the Special Exception? It was noted that no conditions are set forth in the Zoning Ordinance.

Chairman Larson opened the Public Hearing for public comment. Tom Costello questioned whether granting this Special Exception would set a precedence. Chairman Larson explained that the use is permitted under the Ordinance and that the Board considers each application on its own merit. There being no further comment, Chairman Larson closed the Public Hearing.

Chairman Larson made a motion, seconded by Robert Malvesta, to approve this application conditional upon an inspection of the septic system in the spring that proves the system is functional and adequate for the proposed use. Motion unanimously carried by roll call vote. Chairman Larson explained the appeal process for this approval.

Case # 202202 – Holly & Michael Henault – Variance

At 7:45 pm, Chairman Larson opened the Public Hearing on an application from Holly & Michael Henault for a Variance to Article V, Sections C.4 (b) and (c) for relief from the minimum septic tank and leach field setback for property on Youngs Road (R04-028-B). Burke York stated that he would like to proceed with the four-member Board.

All notices required by statute had been posted and abutters notified. There were no conflicts of interest.

Burke York gave an overview of the proposed subdivision and noted that the brook naturally subdivides this parcel from the farm. Burke York noted that the Henaults would like to create a house lot away from the existing farm. Burke York gave an overview of the soil types on the property. Soil Scientist Greg Howard explained that the intermittent stream on the right side of the property shows that there is an erosional feature but that the water runs intermittent during snow melt or high rain events. Greg Howard noted that this stream typically dries quickly in the spring.

Burke York explained the required setbacks from poorly and very poorly drained soil types. John Border question the soil types and specific requirements for determining the soil type. Greg Howard explained the differences in materials and soil layers for poorly and very poorly drained soils. John Border questioned whether this site has been tested. Greg Howard stated that he has been on site twice, once for the wetland delineation and then for the soil mapping.

John Border questioned the 4000 square feet shown on the plan. Burke York explained that for State Subdivision approval, the 4000 square feet area must be shown to have acceptable soils. Burke York explained that State setback requirements are 50 feet from poorly drained and 75 feet from very poorly drained soils. Robert Malvesta questioned whether the system could meet Town setback requirements if the well is removed. Burke York stated that it would not because of the Town's more restrictive setback requirements.

Greg Howard explained that the State has less restrictive setbacks that are based on more scientific evidence and that a more restrictive requirement does not make a system safer. Greg Howard stated that the State has changed their regulations based on science and that the setbacks have been proven to protect the groundwater. Robert Malvesta noted that the Planning Board should review the regulations and comply with State requirements. John Border noted that if the intent of the Ordinance is to protect the groundwater and wetlands, than the Zoning Board can grant relief as it meets State requirements that are based on science.

Chairman Larson opened the Public Hearing for public comments. Dick Fortin suggested that the Zoning Board rely on science and the expertise of the Soil Scientist. Tom Costello noted that his property across the street could not meet the required setbacks. Burke York noted that the Henault lot is unique and that the stream naturally subdivides the property. Chairman Larson questioned whether there have been any runoff issues from the streams. Tom Costello stated that there has not been any runoff from the streams onto his property.

1. Granting the variance would/would not be contrary to the public interest. Burke York stated that approval of the Variance would add an additional residence, thereby reducing the tax burden.
2. The spirit of the ordinance would/would not be observed. Burke York explained that the setbacks meet the standards for safe development in New Hampshire based on NHDES standards. The Board noted that the intent of State Regulations is to protect safe drinking water. Stan Dudrick stated that the Planning Board could not grant a waiver of the 125-foot setback, nor could they explain why they adopted the setback.
3. Granting the variance would/would not do substantial justice. Burke York stated that approval of the Variance would allow development of a residential structure on land that would otherwise be precluded from development due to Town setbacks that are more than twice the NHDES requirements, which have been deemed more than adequate for safety and protection of groundwater.
4. For the following reasons, the values of the surrounding properties would/would not be diminished. The proposed use is "normal" for the property and development of a residential unit may actually increase value.
5. Denial of the variance would result in unnecessary hardship. As shown on the submitted plan, the parcel is bisected by a perennial stream. Burke York noted that the stricter than standard zoning is a hardship and could be justified as a "taking" by the Town. Burke York stated that the proposed use is reasonable as the setbacks meet all NHDES requirements.

Chairman Larson stated that the applicant is within the spirit of the ordinance as they are meeting State requirements, which are based on science to protect groundwater. Chairman Larson stated that the application is based on the uniqueness of each lot.

Chairman Larson made a motion, seconded by Robert Malvesta, that based on the above findings of fact, that the Variance be granted. Motion unanimously carried by roll call vote.

Review of Minutes

Robert Malvesta made a motion, seconded by Stan Dudrick, to waive the reading of the Minutes and to adopt the Minutes of March 2, 2020 as written. Motion unanimously carried.

Steve Larson made a motion, seconded by Robert Malvesta, to waive the reading of the Minutes and to adopt the Minutes of September 20, 2021 as written. Motion unanimously carried.

Robert Malvesta made a motion, seconded by Stan Dudrick, to waive the reading of the Minutes and to adopt the Minutes of September 23, 2021 as written. Motion unanimously carried.

Robert Malvesta made a motion, seconded by Stan Dudrick, to adjourn the meeting. Motion unanimously carried. The meeting was adjourned at 8:50 pm.

Respectfully submitted

Lianne M. Boelzner

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