

**City of Berlin, NH
Zoning Board of Adjustment
Meeting Minutes
February 26, 2024**

Members Present: Linda Lamirande, Greg Marrer and David J. Lavallee Sr.

Members Excused: Dana Hoyt and Scott Losier

Members Absent:

Others Present: Burke York of York Land Services, LLC, 3 12th Street, Berlin, NH 03570

Others Present at City Hall: Pam Laflamme, Director of Strategic Initiatives, Assistant City Manager; Michel Salek, Building Inspector/Zoning Officer; Jennifer Ouellet, Code Enforcement Administrative Clerk/recorder of minutes

Vote to Designate a Chairperson for the Meeting: Pam Laflamme, staff member, indicated that Dave Lavallee be a voting member for this meeting to make a quorum. Greg Marrer made a motion to designate Linda Lamirande as Chairperson for this meeting. It was seconded by Mr. Lavallee and all members voted in favor.

The meeting was called to order at 6:04 pm.

Roll call was taken:

Dana Hoyt-excused

Greg Marrer-present

Scott Losier-excused

Linda Lamirande-present

Dave J. Lavallee Sr.-present

Approval of November 2023 Minutes:

Dave Lavallee made a motion to approve the minutes as presented. Motion was seconded by Mr. Marrer. A vote was taken of each member by Mrs. Lamirande, appointed chair of the board and all members voted in favor. The motion to approve the November 2023 minutes passed.

Appointed Chair Lamirande then moved to the Reading of Zoning Board of Adjustment Rules:

The Building Inspector and/or Zoning Officer is required to follow the strict letter of the Ordinance while the Board of Adjustment is required to follow the intent and spirit of the Ordinance. Our function is to hear both sides, use judgment within the Ordinance, and render a decision in writing, within a reasonable time. The main purpose of the public hearing is to

allow property owners and anyone concerned with the case to testify how the proposed variance (or special exception) will affect them and their property. The reason for these hearings is not to gauge the sentiment of the public or to hear personal reasons why individuals are for or against the appeal. While the evidence may be in the form of an opinion rather than an established fact; it should support the grounds which the board must consider when making a determination.. During the hearing, all persons wishing to speak will raise their hands, be recognized, give their names, address and interest in the case, then be sworn. If you wish, it is your right to be represented by counsel.

Please address all your questions and statements to the Board and not to any individual in this room. In order to give everyone a chance, no one will be allowed to speak a second time until all persons have been given a chance to speak for the first time...and the petitioner will be given the last word. If you feel any member of this board is prejudiced for or against your case, please let me know and if the facts warrant it, they will abstain from participating or voting in your case. I want you to know that although the board is to be impartial, it must abide by the intent and spirit of the ordinance and cannot rewrite the ordinance to please any particular individual.

Appointed Chair Lamirande asked if there were any questions?

No questions were asked from the members of the board.

Case 01-24 Countryside Development Co., 350 Glen Ave., Map 117, Lot 140
Variance

Mr. Marrer read the request into the record.

Request: Case#01-24. Applicant Burke York, York Land Services, LLC, 3 Twelfth Street, Suite 3, Berlin, NH 03570. Property location: Tax Map 117, Lot 40 (346 & 350 Glen Avenue). Applicant is not property owner. Property owners: Countryside Development Co. (Carl Mercier & David Poulin) address 232 Glen Avenue, Berlin, NH 03570. Description of Property: 4 unit Commercial and separate residential/1 unit Commercial. Existing Use: Commercial/retail. Frontage: 200.26'. Lot Dimensions: 200.26' x 210.17' x 210.66'x 220.39'. No previous application has been filed by this property. The request is seeking relief from 17.103.2 b (minimum 100' frontage), 17-104.2 a (existing building less than 20' front setback), 17-104.2 c (existing buildings less than 6' side setback), 17-105.3 (existing building less than 10' building separation).

Public Hearing Open:

Mrs. Laflamme stated Mr. York is present for the property owners. She was contacted by property owners to separate the lots. In the past the City has used a mechanism called lot configuration but in this case the lots are not evenly spaced. The easiest path mentioned by the City attorney was to seek a Variance from the ZBA.

Mrs. Laflamme mentioned that the legislature passed a finding of facts requirement for each of the five criteria questions. While the board hears the criteria then a finding of the facts can be decided on.

Mrs. Laflamme asked the board to review the map for Map 117-Lot 140 that was provided by Mr. York showing the one parcel lot that needs to be divided by the Planning board if the Variance is granted.

Mrs. Laflamme presented the case to the board.

Mr. Lavalley asked if it changes the tax rate?

1) Mrs. Laflamme read granting the variance would not be contrary to the public interest because once the property is subdivided it shouldn't be less tax revenue than before, they will be charged a land tax per parcel. It is in the public interest.

2) The spirit of the ordinance would be observed due to the entirety of the tax lot being originally four separate lots. The City itself merged the lots in 1992 not the property owners. They are limited by the steep ledge terrain behind the buildings and the City owning front of property.

Mr. York added there is NH RSA that would have owners come forward to request the unmerging of the lots. Also mentioned the City attorney felt that seeking a variance was the easiest way to receive relief.

3) Mrs. Laflamme read granting the variance would do substantial justice because it would correct current issue of lots. The current property will not have to be sold together once this has been corrected.

4) Mrs. Laflamme stated if the variance were granted in theory the values of the surrounding properties wouldn't change. There would only be an increase of value for the property.

5a) Mrs. Laflamme in denial of the variance it would result in unnecessary hardship due to the steep ledgy terrain in the rear of the buildings, the buildings constructed probably pre-zoning or approval thereafter could not have been easily built to conform to current zoning restrictions. The City of Berlin owns the front of property. The proposed use is a reasonable one because it already exists with two individual structures on one parcel. Simply dividing the lot doesn't negatively affect the use.

b) Explain how, if the criteria in subparagraph (a) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

Mrs. Laflamme explained there are unique conditions to this property due to having two buildings on one parcel which is similar in the previous case in 2021. The existing conditions cannot provide a 50/50 split.

Mr. York referenced case 05-2021 being a similar situation that there were 2 houses on an existing lot with difficult terrain. Difference between cases is that one is commercial and the other is residential.

Mrs. Laflamme explained that the terrain is a challenge. The City of Berlin owns front of property and there are abutters on each side.

Mrs. Lamirande asked if the City of Berlin owns up to the door of property?

Mr. York showed the map of property and were the current lot lines exist.

Mr. Marrer asked if Seventh Street Graphics will have a direct street access?

Mrs. Laflamme answered in the future it will be the owner's property.

Mrs. Lamirande stated once parking lot belongs to business owner's it will be a win-win situation.

Mr. Salek asked if the purpose of the variance was for a subdivision of properties to then proceed to the planning board?

Mrs. Laflamme answered it is the purpose to bring to the planning board.

Mrs. Lamirande asked if there were any questions for the board? None were asked.

Mr. Lavallee made a motion to grant the variance.

Mrs. Laflamme explained to the board that they had to go through the checklist and finding of the facts.

Case #01-24 Deliberation

Mrs. Lamirande read the definition of a variance to the board members. She then read each of the following conditions must be found in order for a variance to be legally granted:

- 1) No diminution of the value of surrounding properties would be suffered:
Mr. Lavallee answered it would increase the value. Mrs. Lamirande answered two owners to tax.
- 2) Granting of the variance would be of benefit to the public interest:
Mr. Lavallee answered for the same reasons it would increase the value.
Mrs. Lamirande stated more owners will create more revenue.
- 3) Denial of the variance would result in unnecessary hardship to the owner seeking it;

Mrs. Lamirande answered it wouldn't be sellable. Mr. Lavallee agreed that it would be harder to sell. Mrs. Laflamme mentioned property has unique features including steep terrain and the City owning front of the lot.

- 4) By granting the variance substantial justice would be done, and Mrs. Laflamme stated this would allow property to be subdivided is justice.
- 5) The proposed use must not be contrary to the spirit and intent of this Ordinance.
Mrs. Lamirande answered this a way to clean up the situation.

Case#01-24 Decision

Mrs. Laflamme instructed the board this was the time to make a motion to grant or not to grant the variance.

Mr. Lavallee made a motion to grant the Variance in Case #01-24 for 346 & 350 Glen Avenue, Map 117, Lot 40 which will allow relief from 17-103.2b (minimum 100' frontage), 17-104.2a (existing building less than 20' front setback), 17-104.2c (existing buildings less than 6' side setback), 17-105.3 (existing building less than 10' building separation) in the Business General Zone. Per Article X Section 17-103.2b & 17-104.2 a & c & 17-105.3 of the City of Berlin Zoning Ordinance. Mr. Marrer seconded the motion, the Board took a roll call vote of each member, and all members present voted unanimously in favor of the motion, motion passed 3-0.

Approve Finding of the Facts

Mrs. Laflamme instructed the board to make a motion to approve the finding of the facts. Mr. Marrer made a motion to accept the finding of the facts in Case#01-24 and seconded by Mr. Lavallee.

Member Comments: Mrs. Ouellet read an email from board member, Scott Losier requesting to be Vice-Chair if Mr. Marrer declined. It was discussed and tabled by the board until the next meeting.

Other Business: Mrs. Laflamme mentioned that the board should be having a yearly vote on Chair, Vice-chair & Clerk. Mr. Lavallee questioned being a regular member and not an alternate. Mrs. Laflamme explained that the Mayor receives requests from alternates that want to be regular members. Mrs. Lamirande made a request which was granted by the Mayor. Mr. Lavallee thanked Mrs. Laflamme for the clarification.

Mrs. Lamirande suggested meeting monthly even if there is no case. Mr. Lavallee said it was easy for him to meet monthly. Mrs. Lamirande asked if there was better day in the month to meet? Mrs. Laflamme answered the last Monday of the month is

fine. Mr. Salek mentioned it would have to be adjusted when holidays arrive on that particular day of the month. Mr. Marrer asked if the council uses the Council Chambers on the last Monday of the month? Mrs. Laflamme answered it is available to the ZBA board and agreed it is a great idea for the board to meet monthly. Mr. Lavallee wanted to consider Chair Hoyt before this decision is made. Mrs. Lamirande wants to discuss in the next meeting 1) Meeting on a monthly basis and time 2) Voting on the 5th member 3) Voting on the Vice-Chair Mrs. Lamirande asked the board to meet on Monday, March 25th at 6:30 pm.

Meeting Adjourned: Mr. Marrer made a motion to adjourn, seconded by Mr. Lavallee. The meeting adjourned at 6:40 pm.

Respectfully submitted, Jennifer Ouellet

** Note: These minutes are unofficial until they have been accepted by the Zoning Board of Adjustment by motion.*