Town of Farmington
Zoning Board of Adjustment Meeting Minutes
Thursday, June 2, 2022
356 Main Street-Farmington, NH

**Board Members Present:**
Elmer "Butch" Barron, Chairman
John Aylard, Vice Chairman
Bob Morgan
Bill Fisher
Joe Pitre

**Others Present:**
Brian Boisvert, applicant
Tim D'Apice, applicant
Leah Weyant, Brad Bowden, abutters
Jeffrey Tyler Doherty
Rod Simms, Kevin Weyant, abutters

**BUSINESS BEFORE THE BOARD:**

**Call to Order:**
Chairman Barron called the meeting to order at 7 p.m.

**Pledge of Allegiance:**
All present stood for the Pledge of Allegiance.

**Review of Minutes:**
May 5, 2022- Public Session- No errors or omissions
Motion: (Fisher, second Pitre) to approve the minutes as written passed 5-0.

**CONTINUED CASES:**
**Public Hearing for a Variance by Brian Boisvert, Tax Map R61, Lot 26.** A request has been made for a Variance under Section 2.03 Rural Residential District; Letter (B) Space and Bulk Standards. The applicant is requesting a Variance to encroach into the front setback. The encroachment is for a proposed garage. The property is located on Fox Trot Drive in the Rural Residential District.

Chairman Barron said they received new information from Mr. Boisvert to help clarify his request. He said the pictures he provided don't really give them anything other than the ditch and it doesn't give them the concept of being too close. He said it is good to have the close-up but they needed something a little further back.
Brian Boisvert said the picture with the tape measure in it is a picture of that.
Mr. Barron said that doesn't give them down through the side of the land and the close-ups of the ditch doesn't give them a feel for (what he is trying to do).
Mr. Boisvert said that is not where he is trying to put the garage and there is a picture of the whole ditch.
Mr. Barron said he has to prove a hardship.
Mr. Boisvert said there is. He said it's a runoff that fills up when it rains heavily that's why

there's so many culverts and that 14' x 8' hole in the front of his driveway that he really doesn't want to have to drive around to put a garage in. He said if they look at the survey plan and the hole they can see exactly where that is.
He said the photo with the tape measure is going out to the road from the edge of the garage.
Mr. Morgan asked him on which side of the driveway the culvert is located on.
Mr. Boisvert pointed out its location and said he was trying to avoid when you back straight out you back into it and having to drive around it. He then pointed out the location of the swale.
Mr. Morgan asked if there was any way he could connect the 2 culvert pipes with a continuing culvert pipe.
Mr. Boisvert said they are connected and there's a big hole.
Mr. Morgan said they could connect them with one pipe and then fill it in.
Mr. Barron said they could put in a catch basin there.
Mr. Boisvert said that was beyond his expertise and asked what happens if it clogs up. He said they left it open so they could jet it if it ever clogged. He said it did clog once when one the kids' basketballs went in it and they tried to jet it which ended up blowing through it and he had to put in a new driveway. I would rather have it open for maintenance reasons he said.
Mr. Barron said catch basins have grates on them so a basketball is not going to wind up in it and you can drive on them.
Mr. Boisvert said he is trying to keep it as natural as possible and not make it a city. He said we live in Farmington not Dover.
Mr. Barron said that is not the point and the point is the hardship and they went through this at the last meeting.
Mr. Boisvert said if he puts the garage back further where it's eroding it fills up on a heavy rain and it comes under and he is trying to stay away from the water because he doesn't want to invest in a $25,000 garage and have it undermined by water.
Mr. Barron said he understood his problem on that side and he had no issue with that. He said his issue is he is not looking for a couple of feet but for half of the garage into the setback.
Mr. Boisvert said that is less than a couple 100 sq. ft. and that is not going to obstruct anything that the Town does.
Mr. Barron said it has nothing to do with what the Town does and that the state law is clear and he made that clear to him last time.
Mr. Boisvert said it has been 2 months and asked how many people are here opposed to what he is doing.
Mr. Barron said that it doesn't matter how many people here are opposed and what matters is the ordinance they have in the state law.
Mr. Boisvert said that is a guideline that they go by.
Mr. Fisher said it's not a guideline it's the law.
Mr. Barron said the state law is very rigid and you have to have a hardship....

Mr. Boisvert said that is a hardship sir because if he puts the garage there he can't get into the backyard to maintain his well or the property behind him that he is buying.
Mr. Fisher asked where he parks his construction vehicles and suggested he move them so he could get through there.
Mr. Boisvert said that's not where the garage is going.
Mr. Fisher said he knew that but it can't go where he has it drawn. It's against the law and you don't have a hardship you can move it straight back he said.
Mr. Boisvert said it's not against the law and he can't move it straight back because then you block all the access to the backyard.
Mr. Fisher disagreed and said to move the vehicles.
Mr. Boisvert then asked Mr. Fisher to show him because he's had an engineer and a surveyor come up and that's where they are picking because if you put it on the left side of the house that they wanted he has no access because there's a drain and then they want him to get into a whole wetlands thing and do what with the water.
Mr. Barron said he didn't give them measurements like they asked for and he has the lot measurements nothing else. He said there's no distance between the house, the deck and the container and the container is 8' wide if this is to scale...
Mr. Boisvert said it is to scale and he paid a lot of money to have it done to bring it to them.
Mr. Barron said then he has 24 ft. there.
Mr. Boisvert said it's just under 24 ft. and the water goes under the Conex box as he can see in the pictures so if he put the garage there there's no way to put a road to go around the garage to go to the property he is in the process of purchasing.
Mr. Barron said that doesn't make a hardship for the property. He gave Mr. Boisvert a copy of the court decisions and said that they would give him a minute to read it.
Mr. Boisvert said he didn't need to.
Mr. Barron said then he already knows they can't grant it.
Mr. Boisvert said they can grant it that's why we have a board. He said they have guidelines.
Mr. Barron said that's right and they also have state laws that they cannot violate. He said the state law states that he has to meet all 5 criteria (for a variance).
Mr. Boisvert said he does and asked if he wanted him to back into a ditch when he backs out of his garage. He asked how much he has to pay him to come in and put in a catch basin.
Mr. Barron said he doesn't have to pay him anything because he is not going to do it.
Mr. Boisvert said he wants him to do all this other work for a tiny little garage that is under 200 sq. ft. that's not going to affect anybody.
Mr. Barron said it affects the spirit of the ordinance and does not...
Mr. Boisvert said it's a guideline which he is not affecting.
Mr. Barron then said alright it's a guideline and they have the right to violate their guidelines but they cannot violate the state law. You are missing the entire point he said.

Mr. Boisvert said he is not and he was not going to sit here and argue with him. He said he gave them the information that they asked for.
Mr. Barron said he gave them some of the information they asked for. He said he understood his issue with the water being there.
Mr. Boisvert said he asked him for that last meeting and he brought them the issues. He then asked so what else did he want.
Mr. Barron said he wanted to know what the measurements are like they asked for the distances.
Mr. Boisvert said they are on there and he paid $2,500 for that map.
Mr. Barron said those are lot line distances.
Mr. Boisvert said there's a scale and asked if he wanted him to go have it blown up and come back in 30 days so he could actually measure it out.
Mr. Barron said it's not up to them to scale his drawing he has to provide them with the information they need to make a decision. He said it is not up to them to do it for him.
Mr. Boisvert asked him to hold up a picture and asked if he wanted him to rip all of that out to put his garage in. Thousands of dollars he said.
Mr. Barron said financial hardship is not a consideration.
Mr. Boisvert asked so what did he want.
Mr. Barron said he didn't know because it is not up to him.
Mr. Boisvert replied of course he doesn't because he has made it hard for the last 2 months!
Mr. Barron said they are not making it hard.
Mr. Boisvert said he gave them everything they asked for from the last meeting and he was asking them to continue it and what he wanted-sir.
Mr. Barron said he wants the exact measurements and an alternative.
Mr. Boisvert said there is no alternative!
Mr. Barron said they all see alternatives.
Mr. Boisvert said he wanted him to block the access and asked if his well "shits the bed" how he would get back there to drill a new well.
Mr. Barron said to move the garage a little bit.
Mr. Boisvert asked which way.
Mr. Barron said he didn't know as he is not a surveyor and it looks like he has a heck of a chunk of land out back there.
Mr. Boisvert said there's a pool, there's concrete and everything out there which is in the pictures. He said as his business has grown he can afford to do things that suit his family. I couldn't afford a garage so I put in the deck and all the other stuff. I didn't plan on building a garage because I never thought I could afford now I can afford it and the other stuff is just a waste of money he said.
Mr. Barron asked what the hardship with the land is.

Mr. Boisvert said "the God damn water!"
Mr. Barron said no and they are not denying him the use of his property and maybe he should read this (the Evolution of the Hardship Standard).
Mr. Boisvert said he didn't give a shit about that.
Mr. Barron said that is exactly the problem right there.
Mr. Boisvert said no because he gave them everything they asked for last meeting.
Mr. Barron said he didn't think so.
Mr. Boisvert said then maybe he should watch the tape, sir. He said they asked for the pictures and everything.
Mr. Fisher said they asked for the dimensions on his drawing and that he was not going to sit here with a ruler and draw it out for him. He said he has to give them the dimensions of the house...
Mr. Boisvert asked what the hell you guys are sitting here for. He loudly stated there is the map and they asked for a survey map while emphasizing his words by slapping his hands together.
Mr. Barron said that was enough and that is not a survey map it's a boundary survey.
Mr. Boisvert said everything is to scale.
Mr. Barron said there are no dimensions to any of the buildings and it's not what they asked for. He said he told him he could pull out a tape and he didn't have to hire a surveyor and there is a picture of a tape that ends out in the middle of nowhere.
Mr. Boisvert said it shows where the end of the garage is going to end.
Mr. Barron said that's fine but it doesn't show where he has other options to put his doggone garage.
Mr. Boisvert said there is no other option.
Mr. Barron said yes there is and this is just simply where he wants to put it. He then said he was done arguing with him and asked if there were any other comments from the board.
Mr. Pitre said the Simplex test has 3 items and went through them as follows:
1. the zoning restrictions as applied to the applicant's property interferes with the applicant's reasonable use of the property. He asked if what he is trying to do is reasonable.
Mr. Barron said it doesn't mean just because somebody wants to...
Mr. Boisvert interrupted Mr. Barron and told him to answer the question.
Mr. Barron said he was trying to answer the question and that Mr. Boisvert would be quiet at this point while the board discusses this.
2. Considering the unique setting of the property in its environment;
Mr. Pitre said he does have a water situation which he can't put it in the swale.
Mr. Barron said it's not insurmountable.
Mr. Aylard said lack of planning doesn't make a hardship.
Mr. Pitre said it's not lack of planning and assumed there was a swale down the side and this is obviously a mess.

Mr. Barron said unfortunately the swale is not drawn in on the drawing and there are no dimensions to it, no dimensions to the center line of the swale that they asked for from the property line. He said they have a picture that is a close-up of the swale so it doesn't really give them anything and there is a nice of the culvert in the front but how do you tell anything from that.

Mr. Boisvert said the connex box is on the map, they can see exactly where the swale is and he can come up with a measurement but would they believe him or if they would believe a guy that he paid.

Mr. Barron said they gave him the opportunity to take his drawing and put the measurements on it like they asked him to do.

Mr. Boisvert asked if they wanted to give him 5 minutes to sit here and measure. I'll do the homework since nobody else wants to do it he said.

He said they know the swale is exactly next to the connex box the pictures don't lie and the map doesn't lie. So you put 2 and 2 together-the picture, the map and you know where the swale is. I tried to make it as simple as possible he said.

Mr. Barron said he could move the connex box and put the garage right there.

Mr. Boisvert said and have it keep eroding and he could see where that is eroding.

Mr. Barron said he just told them he has 30 ft. there.

Mr. Boisvert asked how he would drive around the garage to get to the property he is purchasing and if he needs a new well how he would get one when it "shits the bed".

Mr. Barron said he didn't know and maybe he should put it on the drawing and try and see if works. It's not up to us to do it for you he said.

Mr. Boisvert said his well is in the back of the property.

Mr. Barron said it is not located so they can't tell.

Mr. Boisvert said he knows where his septic is and Mr. Barron is a construction guy so he knows you can't put the well next to the septic.

Mr. Barron said it needs to be 75 ft. away from the septic system so he would have to draw a 75 ft. circle.

Mr. Boisvert said it ain't going to be in the center of his house or in the front driveway.

Mr. Barron said it doesn't necessarily mean it's right there as they can't tell where it is.

Mr. Boisvert said to use common sense and that he knows the well is out back as a construction guy and they didn't ask for the well at the last meeting. He said he was not going to lie to them and to make it contingent on that he shows them where the well is.

Mr. Barron said they asked him for dimensions and he didn't give them to them. He said he gave them a scale drawing where everything is property lines.

Mr. Boisvert said he wasn't willing to work with him and at least this guy (pointing to Mr. Pitre) is reasonable.

Mr. Pitre said he doesn't see the swale on the map and he wants to see the swale.

Mr. Boisvert repeated that the swale is next to the connex box which is in the picture.
Mr. Pitre said he can assume that but the plan does not show that.
Mr. Boisvert said the plan shows the connex box and the picture shows the connex box.
Mr. Barron said that is not what they asked for.
Mr. Boisvert said he would come back next month and asked what he wants.
Mr. Barron said they want dimensions and alternatives.
Mr. Boisvert said there is no alternative. He then invited "Mr. Elmer" to draw him up something and asked when he can come up, sir. He said he would like him to assist him and he would pay him for his time.
Mr. Barron said it's not his job and he did not have to pay him for his time.
Mr. Boisvert asked if he would come up and help him as a Farmington citizen and he donates his time here. He asked if he was willing to come up and help him figure this out.
Mr. Barron said he cannot do that and he cannot meet with him about his project outside of this meeting.
Mr. Pitre said that would be like asking the court judge to assist him.
Mr. Boisvert said Mr. Barron is trying to tell him and he hasn't seen his damn property to tell him he has an alternative option and maybe these meetings should be at the property not sitting here looking at pictures. I will get your information and come back he said.
Mr. Pitre said this is a mini-court and the judge does not go out and look for evidence you bring evidence to the court. He said the information he provided is not clear and if he would like, if the board agrees, he can come back next month and have all the dimensions on that map and make sure that they understand what he is trying to do.
Mr. Boisvert said he would even mark every basketball in his yard. He said he'd have everything for them right to scale. You want everything measured right to the damn centimeter he said.
Mr. Fisher asked Mr. Boisvert to show where he parks his construction vehicles on the drawing.
Mr. Boisvert said that is in one of the pictures and agreed to put that on the drawing.
Mr. Fisher said the dimensions of his house, the deck, the space between the deck and the connex box, from the edge of the connex box to the edge of his property, where he parks his vehicles and how much area that takes up, the location of the swale, the distance from the corner of his house to the swale, the distance from the property line to the swale, the measurements of his leach field and the driveway size should all be on the drawing.
Chairman Barron called for a motion to continue this hearing.
**Motion**: (Pitre, second Morgan) to continue the hearing to July 7 passed 5-0.

**NEW CASES:**

**Public Hearing for a Variance by Timothy D'Apice, Tax Map R50, Lot 2.**

A request has been made for a Variance under Section 2.01 Agricultural Residential District; Letter (B) Space and Bulk Standards. The applicant is requesting a Variance to the minimum

street frontage of 250 feet to utilize the rear lot subdivision provision in the ordinance. The property is located on River Road in the Agricultural Residential District.

Mr. Barron said Mr. D'Apice is requesting a variance from Section 2.01 (B) because he doesn't have enough road frontage.
Mr. D'Apice said that is correct and he is missing about 8 feet. He said he recently purchased almost 80 acres on River Road and to keep most of it and to keep it conserved but live on it he would have to sell a chunk of it to help finance this purchase that's already done.
He said he talked with Planning Director Kyle Pimental and staff and told them he wanted to make 2 lots out of it so they said the back lot provision is what he should be going for however he has 272 ft. of frontage on River Road and he needs 280 ft. to put a second right-of-way or access for the back lot provision to work.
He said Mr. Pimental recommended that he come before the ZBA and ask for a variance for the 8 ft. and if it's approved then he could survey it and come back to the ZBA and say this is the one lot he would like to subdivide.
Mr. Barron clarified that it he would come back to the Planning Board not to the ZBA. He said the Planning Board grants subdivisions and the ZBA only alters the regulations if it's permissible.
Mr. D'Apice said Mr. Pimental gave him a bunch of documentation to read especially the spirit of the ordinance and the 5 key points (facts supporting this request). He said they were not going to change the characteristics of River Road and it's just going to be 2 lots out of 80 acres so that most of it is going to be kept the way it is.
Mr. Barron asked if he realized that River Road is a Scenic Road.
Mr. D'Apice said he did not know that.
Mr. Barron said cutting trees in the r-o-w takes permission from the Planning Board if they're over 4 inches and even the Town is supposed to ask for permission to do that.
He said Mr. D'Apice's problem is the same as the previous applicant and the hardship is always the hardest thing for everybody to prove. He said a hardship means they are denying him reasonable use of his property not the fact that he needs to sell it for financial considerations.
Co-owner Jeffrey Tyler Doherty came forward and said the main hardship with the land is because of the shape of it and if this was a regular lot shaped like this and with similar acreage there wouldn't be an issue. He said the hardship comes from this narrow stretch and the shape of it because of the way it's been carved up. He said they talked about the hardship part because they knew it would be the hardest question to answer.
Mr. Barron said it's not really a hardship and they bought the land knowing that it had that frontage. He said it is a residential area and nothing is stopping them from putting a residence on it and asked what the hardship is with the property. The hardship for you is the fact that you want to subdivide it and that's not a hardship with the land he said.
Mr. Doherty asked if they need to put a second r-o-w in they would need this 8 feet.

Mr. Barron said they would need permission from the Planning Board to cut those trees to put a second entrance in and they would need this variance.
Mr. Doherty said if they can't get to certain parts of their property because they only have a r-o-w that stops here and it's too steep to get down this way which is what this map shows them then this is an easier way to get to this part of the property so they would need that 8 ft. anyway just to gain access to certain parts of the property because of the steepness.
He said the r-o-w can't go through the marsh area and they couldn't physically get to this corner of the property any other way. That is where the land itself creates a hardship we're not allowed to build through that marsh he said.
Mr. Barron said it's suitable for a single family dwelling right now. He said there's no hardship because they want to build someplace else on the property that's inaccessible.
Mr. Doherty said when they talked to everyone at the Town office they said not being able to access parts of their property would be considered a hardship. He said not being able to access this part of it because of the steepness and they can't build through the marsh would be their hardship because without the 8 ft. they can't make another way to get to it.
Mr. Barron said his folks own 100 acres that they've had for 60 years as a farm and there are pieces they can't get to and there's no hardship with the property they still have the farm. He said just because they want to get to a particular spot doesn't make that a hardship. The hardship has to deny you the use prescribed in the zoning ordinance for that property he said. He then asked if they could get the 8 ft. or if the neighbors don't have enough frontage either.
Mr. D'Apice said the nearest neighbor has a very small lot and that was something they discussed but they felt it was too small to do that.
Mr. Barron said that would make them non-conforming as well so they couldn't give them that land.
Mr. Doherty said if it's zoned residential/agricultural and its mixed use the whole point of them going this route is because they were told that the heart of the ordinance is not to go commercial. He asked if they had different square footage and they wanted to put a business in and put a huge parking lot there they would need to...
Mr. Barron said it's not zoned for business.
Mr. Doherty said it is zoned commercial they're close enough to Rt. 11 and he is just trying to figure out the rules because everyone is saying if you're residential that's the easiest way to go and they shouldn't have any issues where they're trying to gain access to their land.
Mr. Fisher read from the sheet on the Evolution of the Hardship Standard (RSA 674:33, I (b) (5)) that "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". He said it seems to him that subdividing it is a reasonable use and they can't make it wider because the

surrounding properties would then become non-conforming.
Mr. Barron said he thought Mr. Fisher was stretching that and it means the property without subdivision can be reasonably used.
Mr. Fisher said a reasonable use would be to subdivide the property it's 80 acres and people subdivide property all the time.
Mr. Barron asked then why do they have frontage requirements and you set them on the Planning Board.
Mr. Fisher said and as the Zoning Board they have also approved in the past less frontage on the roads due to the shape of the property and the surrounding properties.
Mr. Barron said not with subdivisions.
Mr. Fisher said they subdivided land up on Ten Rod Road.
Mr. Barron said they had the 30 ft. for the back lot exception. He said they gave people that exit if they had the frontage.
Mr. Fisher said in Mr. D'Apice's case there's no way he can get 30 ft. out of there.
Mr. Barron said he is not denied reasonable use of his property.
Mr. Fisher said in his opinion that requirement would deny him reasonable use of the land. He said there is nothing else he can do and he can't make the property grow wider and he cannot get another 8 ft. from the surrounding properties.
Mr. Barron said that's a pretty big brush and that means every piece of property in town can be subdivided.
Mr. Fisher said maybe that's true.
Mr. Barron asked if that's true then why have a Planning Board and why have an ordinance.
Mr. Fisher said maybe when they made the frontage requirement they didn't take everything into account. I believe we would be denying reasonable use of the land if we deny this he said.
Mr. Pitre said he agreed.
Mr. Aylard said there is nothing here that prevents him from doing what he wants to do and there's nothing here that prevents him from building a house where he wants to build other than the fact that he needs money to make this happen and make his dream come true. He said he had a hard problem with this is what the ordinance says. He said he hasn't looked at the property and asked if it's due to something with the property like a big swamp.
Mr. Doherty said there's a marsh right there and they can't get from the end of their r-o-w down to this 15 acre chunk. He said all they have is a r-o-w and if this were an issue...
Mr. Barron noted the r-o-w is through a neighbor's property.
Mr. Doherty asked if they wanted to put their house there (pointing to the location on the map) and they can't get there because of the r-o-w going through the marsh what would be their way of putting the house down here if they wanted to. He said they wouldn't have a way to get there now because they aren't going to be to put a r-o-w down that way.
Mr. Aylard asked if the whole frontage is swamp.

Mr. Barron said he is saying that they want to keep the frontage to sell and put a r-o-w up the other side with a 30 ft. piece to connect to the back where they can build another house. He said it's a totally financial consideration and then asked if they intended to subdivide this property when they bought it.
Mr. D'Apice said they thought just one lot so there'd be two lots total and keep the majority for themselves in conservation and then sell off a small chunk.
Mr. Barron said but they didn't bother to look into the ordinances or anything.
Mr. Doherty said he had e-mails back and forth with the Planning Director and the good faith of the ordinance and he made it seem like they brought 4 of them to the board, 4 of them have been approved and there's no reason to think that it wouldn't. That was before we bought the land. I was thinking we weren't going to be the one that gets denied out of 5 he said.
He said if they decided to use the lower corner of the property they physically couldn't get to it without putting something in there because they can't cut through the marsh and it keeps them from building a house on the bottom 2/3's of the property.
Mr. Barron said no matter what they do in order to subdivide it they have to have the frontage.
Mr. Doherty said if they didn't subdivide and only wanted to put up one house and wanted to put it down there they couldn't because they can't get to it because the r-o-w stops up here.
Mr. Barron said just because he wants to put something in a particular place doesn't make it a hardship if there's someplace else on the property that you can build.
Mr. Doherty said Mr. Fisher read something about it being a hardship if the property causes unique problems.
Mr. Barron said there is no unique problem here to put one house on this.
He then opened the hearing to any abutters that wished to speak to this issue.
Leah Weyant said she owns 58 River Road said her main concern along with most of them on this road is they don't want to see it developed. She said River Road is a Scenic Road and is not a commercial road and is a very scenic, very quiet dirt road with dogs, kids, etc. especially now that the bridge is closed. She said they bought on the road to see the woods, see the trees not picket fences and neighbors. She said their main concern is if they give them a variance now when they sell that acreage what's to stop that guy coming in and trying to divide that lot. She said they don't mind seeing 1 or 2 but if he sells that 20 acres it's out of their hands.
Mr. Doherty said they were told with the 30 ft. back thing they can't subdivide the lot again.
Ms. Weyant asked if that is true.
Mr. Barron said when they had 280 ft. the impression was it couldn't be subdivided as well.
Mr. Doherty said if somebody got the 20 acres and wanted to do something they'd have to come here.
Ms. Weyant asked if they would still be notified as abutters.
Mr. Barron said absolutely.
Mr. Fisher said he didn't believe it could be subdivided again.

Ms. Weyant said she didn't mind a house or 2 but didn't want to look out her window and instead of seeing the deer and the fox see salt box houses all down her road.
Mr. Barron said years ago the Planning Board made it a Scenic Road to try to keep the character of it.
Ms. Weyant said they wanted to make sure if they get a variance now it's not going to open the book for people later on.
Mr. Fisher said once a back lot is subdivided off of the parent lot he didn't believe it could be subdivided any further because it is a back lot and the only way to get to it would be through this 30 ft. that would become an easement to that property.
Ms. Weyant asked if the applicants would be keeping the front lot or the back lot.
Mr. Doherty showed Ms. Weyant which portions they would be keeping and selling on the map.
Mr. Barron asked where they planned to put the driveway and if they planned on a shared driveway.
Mr. D'Apice they hoped to put 2 driveways in.
Mr. Doherty said they plan to use the existing r-o-w and pointed out the location of the proposed second driveway on the map.
Abutters Rod Simms and Kevin Weyant came forward to take a look at the map.
Mr. D'Apice pointed out River Road, the stakes to old logging road which is the r-o-w and the narrow strip they planned to sell and the 20 acres there would be for 1 house.
Mr. Barron said everyone keeps talking about a r-o-w either you have frontage or you have a r-o-w. After some discussion between some of the abutters and the applicant Mr. Barron halted the discussion and said it's a road at their frontage of the property. He said it does cut through the neighbor's corner of the parcel right here and it is not a r-o-w down here. It's part of the property so we don't give a dog-gone about the r-o-w so stop with the r-o-w it makes no difference to us. All we care about and all you're here to ask us for is the road frontage he said.
Mr. Simms asked if it's a sticking point if he is going to put in a second driveway and if there's any reason he can't come off the existing driveway and put a new driveway going over to the lower property.
Mr. Barron said that's a sticking point for him as well and that he can have a shared driveway.
Mr. Simms said it seems the solution would be to use the road that already exists.
Mr. Fisher said he didn't recommend shared driveways because that can cause problems in the future but in this case that may be the way he wants to go if he can put a driveway all the way back to the back portion without going through wetlands and it would also depend on how much of the wetlands he would disturb.
Mr. Simms asked if there was any reason they couldn't come off the existing road or driveway.
Mr. Barron said there is no existing road and it's just raw frontage right now.
Ms. Weyant said that is just a logging path.
Mr. Simms said so they are going to have to put in a road. He said they wouldn't really be

altering the frontage so the scenic value of the road wouldn't be altered because it would be just one lane going in and if you get back in out of sight and branch off that to serve the other property he didn't see where that would...
Mr. Barron said usually with a shared driveway what you try to do is put the property pin in the center of the driveway and put 15-20 ft. on either side and branch out immediately to both lots so the only quarrel is the first couple hundred feet if there is one.
Mr. Simms said that's the way his property is serviced and he has a r-o-w going through his property that serves the back lot and it was made clear to everybody when they bought the property that this is the existing agreement and that him and the guy that use it are equally responsible for maintaining it and have to share the costs for maintaining it.
Mr. Fisher said it would solve a lot of their issues if they make it a common road going to the back of their property.
Mr. Barron said the whole road doesn't have to be common just at the River Road and split off immediately there and its individuals property on either side if you do this. We still have the issue of frontage he said.
Chairman Barron then asked the board to review the facts supporting this request.
Mr. Pitre said unless they want to pull the application because of possibly examining the dual driveways.
Mr. Barron said the whole bottom line here is they want to subdivide it. He said they bought the property and now they want to split it in two. He asked if there was anybody else that wanted to speak to this. There were no additional comments or questions from the public and Mr. Barron said he would leave the public hearing open so if someone wants to talk later they are welcome to raise their hand.
Mr. Simms said Mr. Fisher mentioned a subparagraph a regulation and the woman with him asked what regulation that was.
Mr. Fisher gave him a copy of the Evolution of the Hardship Standard and said he was reading from the top of the right hand column (RSA 674:33, I (b) (5).
Mr. Barron said that is a short version of the court decisions that brought about the criteria for the hardship standard.

**1). The Variance will not be contrary to the public interest**:

Applicant response: Adding one household will not go against public interest. Putting unused land to use will allow for the land to be worked and thus improved. One example would be fallen trees will be removed instead of left to block trails.
Board response: consensus of the board was it will not be contrary to the public interest.

**2). The spirit of the ordinance is observed:**

Applicant response: The Variance would not be used to put in a subdivision or any commercial purposes. The lot would stay residential.
Board response: Mr. Barron said he may want to reword this because he is asking for a variance

so he can do a subdivision.
Mr. Aylard said they would be adding 2 households, their household plus the one for the land they sell.
Mr. D'Apice said what Mr. Doherty meant was not more than 2 lots not a cul-de-sac full of homes.
Mr. Barron said once he requests it this way he would not be subdividing the property because it says it "would not be used" (to put in a subdivision).
Mr. Fisher suggested he meant to say the variance would be used to put in a subdivision and not for any commercial purposes.
Chairman Barron asked that the minutes reflect that the applicant was amending his answer to number 2 to correct the fact that the variance would not be used to put in a subdivision and will be used only to put in one subdivision if granted.
Mr. Fisher began to ask to have it read "the variance..." and Mr. Barron interjected that it is not up to the board to change it. He said they can't change his application and they can only reflect it in the minutes.
Mr. Fisher said he didn't believe they would be violating the spirit of the ordinance.
Mr. Barron said he thought it ruffles the spirit of the ordinance a little bit. He said they wanted the frontage on that side of Rt. 11 to be big on purpose to stop this kind of thing and it's a Scenic Road so there are 2 spirits being stepped on.
Mr. Fisher said they wanted it to be big but there was no way to make it big when the ordinance was written. He said if they wanted the frontages to be big then they would have had to re-draw property lines and you can't. That ordinance cannot change what existed and they may have wanted to have larger areas he said.
Mr. Barron said he was totally off base and they did not want to make the frontages smaller they tried to make them bigger. He said 250 ft. on the west side of Rt. 11 is the minimum lot frontage period and then asked if that was so on all of that side of Rt. 11.
Mr. Fisher said no and that the ones going down Hornetown Road towards the Rochester line have lots that are only 150 ft. wide that were put in after the ordinance was written or maybe it was on Ten Rod Road. He said he was sure they had a purpose and it was done in good faith he just didn't think it applies to today.
Mr. Barron said those weren't put in after the ordinance was written and that this was a debate for the Planning Board.
Consensus of the board was 2 members feel the spirit of the ordinance was tromped on (Mr. Barron and Aylard) and 3 members (Morgan, Fisher and Pitre) feel that it's fine.

**3). Substantial justice is done:**

Applicant response: The request is not major as it is less than 10 feet. To follow the letter of the ordinance would penalize all owners of large lots that have narrow frontage.
Board response: Mr. Barron said frontage is there for a reason and it minimizes driveways in

rural areas.
Mr. Fisher said he believed he knew why the frontage was listed as that but in these cases along these properties there's nothing else he can do. He said it's not like the previous case where he had options.
Mr. Barron again said this is not their purview and they need to stop going down this road. He said the ZBA's responsibility is to follow the laws and ordinances and grant a variance for hardships and other things. He asked the board how they felt about substantial justice.
Consensus of the board was 4-1 that substantial justice is done (Pitre, Aylard, Fisher, Morgan-yes; Barron-no).

**4). The value of surrounding properties are not diminished:**

Applicant response: Adding one lot for a single family/condo will provide more value to assessments than undeveloped land.
Mr. Doherty said Mr. D'Apice's brother may want to buy it and he wanted to put in a single family condo.
Mr. Barron said a condo is not one building.
Mr. Doherty said they would amend the answer to number 4 by removing "condo" and changing it to read "single family residence"
Board response: unanimous consensus of the board was the value of surrounding properties would not be diminished.

**5). Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship:**

Applicant response: The 70+ acre property is going to be harder to maintain than 1 lot of 50+ acres and 1 of 20+ acres. The money would go towards improving and paying down property. The lack of a variance would prevent the subdividing all together. Other properties of this size are subdivided multiple times over and allowing one subdivision doesn't pose a threat to integrity the zoning scheme. The size of the property is unique and its boundaries provide unique issues regarding subdivision. At 79.4 acres the narrow frontage prevents many potential uses of the property.
Board response: Mr. Barron said they didn't know if they were going to keep the trails on the property open and maintain them or not and it's not up to the board to force him to or to bring that into this. He said they would never be able to maintain 79 acres nor probably should they. He said this is where they get hung up every time and asked the board about a hardship.
Mr. Pitre challenged him to see the difference between 272 ft. and 280 ft. by just looking at it. He said that's critical enforcement of the ordinance and they've given variances on that before easily. He said another issue as a state legislator they are trying to create affordable housing and to divide it up so we can all live contently. He said they are trying to do something because they realize that there is not affordable housing so by creating one more residence in an esthetically pleasing area that would be a good thing.

Mr. Aylard said it is a unique piece of property but he was not convinced that the person who would have the front lot wouldn't have a chance to subdivide it again and they would have all the frontage.
Mr. Barron said supposedly they can't do it and they can't do it now by the ordinance but they're talking about granting it. He said if you take Mr. Pitre's and Mr. Fisher's outlook right now then yes you could subdivide it in the future again. He asked the board to make a decision on if there's an unnecessary hardship here or not.
Mr. Fisher said he believes it would be a hardship if they prevented him from reasonable use of his property.
Mr. Morgan said to argue over something less than the 2x4 size of plywood it seems when you're talking that much land and that much road frontage 8 feet is minimal. He said he believed it does create a hardship for him to be able to use all of his land.
Mr. Aylard said he will go with the hardship.
Consensus of the board was 4-0-1 (Barron abstained) that literal enforcement of the ordinance would result in an unnecessary hardship.
Chairman Barron called for a motion.
**Motion**: (Pitre, second Fisher) to grant the variance as presented;
**Discussion**: Mr. Barron asked if he was going to put any stipulations on it like a shared driveway.
**Amendment**: by Mr. Pitre to require a shared driveway.
Mr. Fisher said if they grant the variance without the shared driveway that doesn't mean he has to use the variance. He said that gives him the option to use the variance and put in the roadway but if they go with the shared driveway he doesn't need a variance.
Mr. Barron said yes he does.
Mr. Fisher said he has the right to put in a driveway on 272 ft.
Mr. Barron said he is going to subdivide it and sell half a shared driveway means the property line is in the center of the driveway.
Mr. Fisher disagreed and said it could be a shared driveway all the way up to the point where the new property begins and then it becomes that property owner's driveway. He said a shared road if he comes off of it to his house and it goes all the way up that can be a shared driveway. We just went through this on Fox Trot Road he said.
Mr. Barron pointed out the frontage and the portion he wants to subdivide off on the map and said he's going to come in 30 ft. and draw a line for 20 acres-that's a subdivision. He said he put a shared driveway in and it could split and go to both properties but you still have to have a subdivision.
Mr. Pitre withdrew his amendment because that gives them the option to do it now and they're going to have to go to the Planning Board anyway.
Mr. Fisher said they have to go to the Planning Board to get approval for a shared driveway.

Mr. Barron said a Scenic Road and lot frontage requirements don't mean anything anymore that's what everybody is telling him. He said there was an abutter that wanted to speak.
Brad Bowden asked if they are subject to the same restrictive covenants that the rest of River Road signed.
Mr. Barron said if there are restrictive covenants on that property they can't get out from under them. He said he was not a lawyer but if they're not on the deed he didn't think they would be. He said he didn't know what the deed says, what subdivision this came from or anything else so he cannot speak to that and nor can this board because they don't know. He asked if there was one that says they can't subdivide.
Mr. Bowden said no and one of the covenants was that every other lot will share a driveway with the one before it. He said they are all required to share a driveway but when most of the driveways went in they did not go in where they were required to and no one has made an issue of it.
He said they were talking about 2 lots here, 50 acres and 20 acres and the total is 79.4 acres.
Mr. Barron said they were using round numbers as an example of the ratio they want to use. He said that would be up to the Planning Board and the abutters would be notified when they meet.
**Vote**: The motion passed 4-0-1 (Barron abstained).

**Any Other Business to Come before the Board:** None

**Adjournment:**
**Motion:** (Aylard, second Morgan) to adjourn the meeting passed 5-0 at 8:28 p.m.

Respectively submitted
Kathleen Magoon
Recording Secretary

2/7/22
Acting Chairman