



**ZONING BOARD of ADJUSTMENT**  
**Town of Hollis**  
Seven Monument Square  
Hollis, New Hampshire 03049  
Tel. 465-2209 FAX 465-3701

**Minutes of March 25, 2021**

The ZBA Meeting was held in the Community Room, Hollis Town Hall, and was called to order by Chairman Brian Major at 7:05 pm.

**MEMBERS OF ZONING BOARD OF ADJUSTMENT:** Brian Major, Chairman; Jim Belanger, Vice Chairman; Regular Member –Drew Mason; Alternate Members – Kat McGhee, Bill Moseley, Meredith West and Stan Swerchesky.

Major explained the policies and procedures.

Major said the voting members for this evening cases were as follows:

Case ZBA 2020-015 and ZBA 2020-016: Major, Belanger, Mason, McGhee and West.

Case ZBA 2021-003 and ZBA 2021-004: Major, Belanger, Mason, Moseley and West.

Moseley recused himself from Case ZBA 2020-015 and ZBA 2020-016

**Case ZBA 2020-015**

The application was tabled at the January 28, 2021 meeting - The application of Contractor Storage Solutions LLC, property owner, for a Variance to Section X, Zoning District, Paragraph G.1, Permitted Uses of the Zoning Ordinance to modify conditions from past approvals (ZBA2018-021 &022), to remove condition #5 no exterior storage of heavy equipment, to allow outside storage, modify hours of operations, located at 143+145 Runnells Bridge Rd. (Map 004, Lot 064) in the Residential Agricultural Zone.

**Case ZBA 2020-016**

The application was tabled at the January 28, 2021 meeting - The application of Contractor Storage Solutions LLC, property owner, for a Variance to Section XI, Overlay Zoning District, Paragraph A.5, Permitted Uses in the Aquifer Protection Overlay Zone of the Zoning Ordinance to modify conditions from past approvals (ZBA2018-021 &022), to remove condition #5 no exterior storage of heavy equipment, to allow outside storage, modify hours of operations, located at 143+145 Runnells Bridge Rd. (Map 004, Lot 064) in the Residential Agricultural Zone.

Major said the Zoning Board of Adjustment (ZBA) would hear both case 2020-015 and 2020-016 together however, each case would be voted on individually.

Andrew Prolman, Prunier and Prolman of Nashua, presented Case 2020-015 and 2020-016 on behalf of Contractors Storage Solutions LLC. Prolman said with him this evening was Michael Coulombe, owner of Contractors Storage Solutions and Doug Brodeur project engineer from Meridian. Prolman also agreed to combine the testimony for both cases (2020-15, 2020-016)

The application was before the ZBA in December of 2020. At that time, it was explained that the application was seeking modifications from the conditions of the previously approved 2018 variance. At the time of the original approval the conditions set forth were acceptable. The business has been running for two years and with the types of tenants, use of the property, customers coming and going and the hours of operations the conditions set forth prior do not fit the actual use of the property. In December 2020 an application was submitted and the ZBA had two areas of concern; environmental concerns for the storage of heavy equipment due to the aquifer and the hours of operations. The case was continued to allow additional time to work on the issues raised during the last meeting. On January 7, 2021 a meeting was held with William Condra and Donna Setaro where the issues raised were discussed. After the in-house meeting Doug Brodeur, Meridian Land Services, was hired to evaluate the site and has prepared the plan which will be evaluated this evening.

The proposed request is as follows;

1. Hours of operations shall be Monday-Saturday 5 am to 9 pm, with the following exception:
  - Hours of operation are not applicable to plowing and/or tenants who provide plowing services.
2. Allow outside/exterior storage of equipment or heavy equipment as follows:
  - In the area designated hereon.
  - For a maximum of four (4) days per piece of equipment.
  - The applicant shall construct and maintain the outdoor equipment storage pad as show hereon.

(See submitted plan in the file)

Since the last application, the hours of operation have been reduced and the area for heavy equipment storage has been re-located limiting the view from the abutters. Prolman showed the site plan showing the new location of the heavy equipment pad and the requested proposal for the modifications to the conditions. The plan also showed the size of the pad and details on its construction.

Prolman said the applicant is perfectly aware that the property is in between residential developments. At the same time the site is a contractors' work site, the contractors come and go at different times during the day and have different types of equipment being stored. The applicant wants to respect the neighbors but also allow the contractors to make a living and conduct their business. The request being sought is to allow some flexibility from the conditions previously set forth. The ZBA had concerns with spillage since the property is located within the aquifer. Doug Brodeur, Meridian Land Services, had proposed a 40' x 60' area for a pad which includes a polyethylene membrane to be placed underneath. Prolman turned the presentation over to Doug Brodeur so he could discuss the pad and entertain any questions the ZBA may have.

Brodeur showed the location of the pad, behind Building #1, which has a fair amount of vegetation and screening to limit the visibility from abutters. The construction of the pad is as follows; 10 mil. polyethylene membrane, 3-inch sand blanket and a 6-inch gravel/reclaimed asphalt top. If a spill occurred the spill would be soaked up by the sand and could not vertically penetrate through the polyethylene barrier. The spill would have to move horizontally. There would have to be a significant spill to overtake the absorptive capacity of the sand blanket in addition to the 6 inch of reclaimed asphalt that would be on top. The reclaimed asphalt is aliphatic in nature so any hydro carbons which attach to it, including hydraulic fluid or diesel fluid, would break down the asphalt as a solvent, harden and can be removed. There would be less propensity for a large spill to run off of reclaimed asphalt than even hard packed gravel. If a spill were to occur, the spill would be contained within the pad so the owner can respond and clean the spill up and dispose of it. Major asked how large of a spill can the barrier contain. Brodeur replied based on a 40' x 60' area and the equipment in the middle of the pad the spill could be well over 100 gallons. Major asked if there was a spill over 100 gallons could the aquifer be compromised. Brodeur replied that the situation needs to be taken into context. Most likely, you will probably have only one piece with a spill. It would be highly unlikely to have a catastrophic spill with several pieces of equipment at one time. The tanks on the equipment are structural steel vs. a vehicle tank which is thin wall.

McGhee asked what type of equipment is available on site that could manage a spill. Brodeur replied a backhoe is onsite for cleanup however, most likely the spill would be small and an individual could clean it up with a shovel and a bucket. If there was a large spill, there would be significant time to address the issue. McGhee asked was there some type of material available on site to soak a spill up. Brodeur replied speedy dry is available and absorption pads are used frequently. It would be a good idea to have a spill containment kit on site along with a portable limited barrier which is a small plastic curb to put around the spill to contain it from spreading any further. Major asked if Brodeur visited the site and if the abutting residents could see up to 4 pieces of heavy equipment. If so, why couldn't the pad be re-located 15 to 20 feet to the east. Brodeur replied there is a fence on the along the southern properties and the building would eliminate most visibility. However, depending on the vantage point someone may be able to see part of the equipment but not in their entirety.

Belanger asked if it was the assumption that all of the spills would be on the pad area and no spills would be outside of that area. Brodeur replied yes. Belanger asked could there be a vehicle stored outside of the pad area without any protection. Brodeur replied yes however, the condition of approval was for the outside storage of heavy equipment only. Brodeur believes there is not a restriction to park vehicles within the aquifer. Belanger believes the heavy equipment would be stored elsewhere on the property prior to being placed on the pad and could potentially leak and if outside storage was not allowed there would be no issue. Major said if a spill happened on the pad it could be quite some time before anyone is aware of it. Brodeur agreed but the idea was when the equipment was brought to the site it would immediately be placed on the pad and then moved inside.

West asked would the containment area be sufficient if a spill occurred early in the morning and was not discovered several hours later. Brodeur replied yes. Mason asked what would be the weight capacity of the pad. Brodeur replied any large heavy equipment can be put on the pad. Mason asked is there any physical barrier around the pad to prevent lateral seepage. Brodeur replied no, the reason the pad has no barrier is so the area can be plowed. Mason asked if something could be added

to the edges of the pad to prevent lateral seepage. Brodeur replied the polyethylene membrane could be extended upwards. However, one thing to consider is that the material is porous and when it rains there will be runoff. You would not want to create a pond or standing water underground which would totally saturate the sand that needed to be absorbent. Major asked what would happen if there was a leak during a rain storm would the fluids run off the pad. Brodeur replied there would be a higher possibility for the leak to spread outside of the containment area depending on the intensity of the storm. Reclaimed asphalt is fairly impervious, there would be fairly the same runoff if you used typical hot mix asphalt. Major asked would there be advantages to a concrete pad opposed to this construction method. Would concrete retain the run-off? Brodeur replied concrete would retain runoff on the surface but concrete does not have the ability to absorb the fluids. The pad could have positive limited barriers installed around the edge which are grooves added to contain the fluids and then you can absorb it up with speedy dry then remove the spill.

Prolman responded to the concern of visibility of the equipment. Prolman said there would be a possibility that the neighbors located extremely to the left could see the equipment. The pad could be adjusted roughly 10 – 15 feet to eliminate most of the visibility. Hours of operation are being driven by the tenants; some start work early in the morning. The current start hours are 6 am. Some tenants come to the site at 5:45 am and then the town gets a phone call. The intent of the application is not to start up a large operation with loud noise, backup beepers or coming and going at all hours. Prolman felt expanding the hours to 5am to 9pm are reasonable for a contractors site. Major asked how was the decision made to extend the hours to 9 pm, apart from snow plowing, landscapers are not working until 9 pm. Prolman replied landscapers work sun up to sun down, leave the job site, come back to drop off equipment and prepare for the next day and they might even have to repair a piece of equipment. The hours are tenant specific such as snowplowing and the 9pm was designed for the landscapers in the summer time. Major asked was the operation viable with the present imposed conditions. Prolman replied yes however, the success of the tenants some of which have longer hours. The current hours and conditions imposed have created a consent amount of phone calls to town reporting a violation of operating hours and heavy equipment being outside. The application is to allow asking for some flexibility for a large contractor's site.

Belanger said the original application had a purpose and the ZBA set the appropriate conditions for that purpose. Since the approval, it seems to Belanger the operation has grown and is changing from the original approval. Prolman replied the request being sought is a slight change from the original approval. The business has been on site for 2 years and the application is only seeking adjustments to accommodate the tenants.

Swerchesky asked does the landscaping operation have equipment with back-up beepers. Coulombe replied some trucks have back-up beepers which are required by the State and the beepers are also an OSHA regulation. Swerchesky asked if there was a crane company on site. Coulombe replied yes however, the crane is stored inside. There is a tenant that has 2 loaders that may get dropped off at night prior to him getting there in the morning. They need a place to put the equipment prior to being placed inside the next morning. The storage would be short term only so the neighbors do not call the town to complain. Coulombe said he has no intentions of storing heavy equipment on site meaning anything over 26 thousand pounds. As far as spills the lot is plowed with heavy equipment and there is a possibility for a spill but the construction of the pad would contain the spill and if the material needed to be removed it could be and new material could be added. Major asked if the pad will be constructed with the intent of temporary short-term storage. Coulombe replied yes and further said the fuel and hydrologic oil capacities of the equipment is not over 50 gallons. Major said would the equipment be removed within 24 hours. Coulombe replied yes. Mason would entertain, if approved, a condition that the equipment must be moved inside or off site by 8am the next business day. The condition would allow time in case a piece of equipment was dropped off over the weekend or later in the evening. Prolman replied the proposed condition would be acceptable.

West said if the deadline of 8 am is carved in stone, a hard start and stop times would probably cause more calls to the town. West said she agrees a time should be set however; a reasonable amount of time to move the equipment should be considered. Coulombe agreed and stated the submitted plans shows 3 or 4 days. West said the plan states 4 days and West felt that was a reasonable amount of time. Major said the limitation to 4 vehicles would eliminate some concerns and added if the pad was moved 10 – 15 feet to the east it would eliminate the visibility of the equipment for lots 6-11 to 6-19 in Pepperell, MA. Coulombe replied if the pad was moved the furthest lot may see part of the equipment however, in the spring and summer with the tree buffer Coulombe felt the visibility would be substantially less. Prolman said there is a possibility that the pad could be moved elsewhere so the equipment is not visible at all. Major asked if the application would be required to seek approval from the Planning Board. (PB) Prolman replied yes.

Swerchesky said the application states the applicant is also seeking approval for outside storage. How is outside storage defined? Prolman replied the additional request was added under the suggestion of the town. The site was already approved for outside storage of small items such as; snow plows some small piles of top soil things of that nature. The outside storage existing on site is for small items and does not feel it was appropriate to be placed on the application. Coulombe said there is

not storage of soil, mulch or salt. There is some bricks, vehicles, pallets, a flatbed trailer and a rental dumpster. Swerchesky asked if rack storage is being considered. Coulombe replied one tenant has rack storage on one side of the building towards the Hollis side. Swerchesky asked what types of items. Coulombe replied chains, wood blocks and a cantilever lift items of that nature.

Swerchesky stated within the application was a letter from town staff noting continued site plan violations. Prolman asked if the letter was from Even Clemens, Assistant Planner. Swerchesky replied yes. Prolman replied in short it was decided that the site plan violation would be put on hold until the case was heard by the ZBA. Coulombe said the process has taken a lot of time due to unforeseen issues. The only violation that is still pending is the possible expanded gravel area.

### **No one spoke in-favor of the application**

### **Spoke against the application**

#### **Jeffrey Kalchbrenner, 48 Emerson Circle, Pepperell MA**

Kalchbrenner said during the last few meetings Mr. Coulombe has referred to me as a harasser and in December, he said I bullied the Town Administrator. During the December meeting Coulombe stated "have I broken any of the rules, technically I guess yes." The ZBA placed conditions on the approval which Coulombe has ignored or defied. Yet, Coulombe comes before the ZBA to modify the conditions pro-actively because I complained. Coulombe also said tenants are not on site at 4am. Two verifiable instances which the Hollis Police Department were called and both times woke my 3 and 5 years old children;

- August 25, 2020 at 4:46 am where a diesel engine was idling and the banging of the equipment which was being loaded.
- November 20, 2020 at 5:20 am a tenant was using a fork lift outside.

The tenants are occupying the facility early in the morning. Coulombe also stated if the tenants are not there 10 minutes early, they would be late. Based on the requested 5am start and Coulombe's believes, tenants could be there at 4:50am. Regarding the outside storage of heavy equipment, there is a Mack truck with a gross weight of 55,000 lbs. the truck has been there permanently. Should that vehicle be placed on the pad or will be removed. A tenant fit-up form is filled out for each tenant which states no outside storage so why are they storing items outside. Kalchbrenner understands the business has changed however, the tenants signed the lease knowing what the conditions were. The noise from the facility is unbearable and starting at 5am is unacceptable. If the hours are changed to 5am and that is not acceptable, will another application be sought to change them again. Other neighbors are also against the application and unfortunately, they could not attend this evening. They have been at prior meetings but this meeting has been re-scheduled so many times, they could not attend. Major asked Kalchbrenner what was the distance from his home to the facility. Kalchbrenner replied roughly 10 feet from the property line. Another issue is when the last tenant in the building comes in early in the morning and park directly against the fence their headlights shine through the fence into his house. The PB should address the screening issue since there is none on that side of the property line. Major asked which house lot Kalchbrenner was referring to the site map. Kalchbrenner replied the 7<sup>th</sup> house lot.

#### **Max Koehler, 46 Emerson Circle, Pepperell MA**

Koehler said he was not in-favor or against the application however, Kalchbrenner has valid concerns especially screening there should be more year round screening installed to reduce the visibility, noise, and headlight issues.

### **Rebuttal**

Prolman said additional screening could be added with no opposition. There was much more screening on site but due to a winter storm 1 year ago lot of the screening was lost. The request for a 5am start is necessary with the types and nature of tenants on site. The request is not for a 4:50am start time. That would be a tenant management issue that would be addressed. The operation hours are being request to allow some flexibility for the tenants since the site is a contractor's yard.

Coulombe said the Mack truck is a ramp truck which will be leaving the site. The truck is registered and inspected and a container was put under truck in case of a spill. Coulombe said there will be no further application presented to the ZBA to modify the hours of operation. Some trees were removed so the LP tank could be installed I did work with one of the neighbors which I planted 3 trees and they planted 3 trees which seemed to elevate the screening issues at that location. There is an 8 foot stockade fence between the abutting properties and there is no truck over 8 feet that there headlight would

shine over. Also all of the outside lighting is downcast on motion sensors requested by the PB approval. Coulombe was not opposed to added more screening however, there needs to be some effort on both sides. Kalchbrenner has done nothing to obscure his property from ours. McGhee asked when the Mack truck was leaving the property. Coulombe replied a definite time has not been given. Condra did see the vehicle and said since it was registered and inspected there was no problem.

Brodeur, Meridian Land Services, said motor vehicles with permanent fuel tanks with fuel lines attached to them are exempt from the aquifer protection district requirements. Major said the approval granted was with the condition of no outside storage of heavy equipment. Major felt the Mack truck was in fact a piece of heavy equipment and should not be stored outside. Coulombe agreed and the truck will be removed.

Mason asked would it be possible to have the tenants park elsewhere to avoid the headlight issue from the abutter. Coulombe said they could have them drive in towards the LP tanks to avoid the issue but where they are parking is two houses down from Kalchbrenner. Major felt Coulombe and Condra are getting annoyed with the constant phone calls. Coulombe agreed and said he is only trying to run a business which he pays taxes for. The issue of coming to the site early is not an everyday event.

Mason asked since the application is a variance, does the issue of hardship need to be considered. Major replied since the application is for the modification to the existing conditions of approval, all the ZBA needs to do is vote on whether or not to grant the modified conditions from the approval granted in 2018. Prolman agreed.

West asked if the 40' x 60' pad was exactly what they want and if they were limiting themselves in regards to flexibility. Major said he believes the application is to allow temporary storage of 4 vehicles not to exceed 24 hours on the next business day. The limiting factor is 4 vehicles. West agreed. Major asked Prolman if his understanding of the application is correct. Prolman replied yes the application is to allow temporary storage the 40' x 60' pad is to allow movability of the equipment.

**No further questions from the Board and none from the floor – Hearing portion closed**

**Case ZBA 2021-003**

The application of John Halvatzes, Jr., for a Variance to Section XG, Zoning District, Paragraph 4.b, Minimum Frontage on a public road of the Zoning Ordinance to permit the construction of a Single Family Home with 128.51 feet of frontage (required 200 feet) located on Broad Street (Map 026, Lot 048) in the Residential/Agricultural Zone.

**Case ZBA 2021-004**

The application of John Halvatzes, Jr., for a Variance to Section XG, Zoning District, Paragraph 4.g, Building Area, Section VIII Definitions, Building Area of the Zoning Ordinance to permit the construction of a Single Family Home where the building box encroaches on both side setback and encroaches on the wetland buffer (where no encroachment of the building area may be located within the building setbacks or wetland buffer), located on Broad Street (Map 026, Lot 048) in the Residential/Agricultural Zone.

Major said the cases 2021-003 and 2021-004 would be heard together however, each case would be voted on individually.

Major said the cases have preliminary items to determine prior to testimony. The ZBA needs to have a statement from Morgan Hollis on how the cases, under the Fisher doctrine (Fisher vs. Dover), are substantially different from the prior applications and have the ZBA vote on that issue. Major would also like Hollis's comments on how acting on these application effect the pending Superior court order to define the findings from is the previous case.

Morgan Hollis said the prior application were requesting two variances; one for lot area and the other for frontage. The lot consist of 1.69 acres were 2 acres are required, the lot also has 112 feet of frontage were 200 feet is required. The two variances were requested in late December 2018 and early in January 2019. The ZBA denied those applications. The matters went to court and prior to court there was a mediation process where a hearing took place and the cases was remanded back to the ZBA. The ZBA is required to reconsider and clarify the decision. The case is pending and will have to act on the remand.

To meet the Fisher doctrine an application needs to be substantially different either in the facts or the ordinance. These cases differ due to the facts. Last year, a new application was submitted which acquires property from a neighbor making the lot 2 acres which meets the ordinance. As a result the lot area variance was not required. The other variance was requesting a frontage variance since even with the proposed purchase of land the frontage still did not meet the ordinance. When this application was presented, the ZBA agreed the application was substantially different than the prior one. Upon the discussion

it was found that the building box area encroached the setback requirements and buffer requirements. The application was tabled until the encroachments were verified, and ultimately the application was withdrawn last year. The current application is for a new variance for the encroachment to the building box area. The court remanded case would be dismissed if the variances this evening were to be granted.

Mason said the building box variance is new however, the frontage variance has been applied for twice. Major said the second frontage application was withdrawn. Major felt the since the second application was withdrawn, this application would be the same determination made previously. Belanger said he agrees however, if the ZBA acts on these requests, no matter the outcome, the remand case should be dismissed. Major agreed however, town counsel should be consulted to determine the proper process concerning the remanded cases.

By unanimous vote, the Zoning Board of Adjustment (ZBA) would hear the cases since they were substantially different.

By unanimous vote, the ZBA found no regional impact for case 2021-003 and case 2021-004.

Morgan Hollis, Gottesman & Hollis, presented the cases on behalf of the applicant John Halvatzes. Hollis said he is also representing John Halvates as an option holder for a parcel of land which is owned by the Gisetto Revocable Trust. The parcel is under an agreement conditional of variance approval and of obtaining Planning Board (PB) approval for a subdivision. If the PB does not approve the subdivision all variances granted would be null and void.

The property is located on Broad St. Map 026, Lot 048 consisting of 1.69 acres and Map 026, Lot 040 consisting of .32 acres both in the Residential Agricultural zone. Prior applications were before the ZBA for Map 026, Lot 048 one for frontage and one for lot area. The lot is 1.69 acres and the required acreage is 2 acres. The frontage currently is 112 feet where 200 feet is required. The variances were denied and was remanded back by the court. In the meantime additional land was placed under agreement eliminating the variance for lot area also at that time an agreement was made to purchase the flag pole (.32 acres) area to increase the frontage. Even with the purchase of additional land the lot still requires variances from the building box area and frontage requirements.

The frontage for the lot after purchase would be 128.51 feet where 200 feet is required. The lot towards the back is wetland and even with a purchase of additional land the house still would have to be placed where proposed.

Hollis showed exhibits for review;

- Exhibit 1– Aerial of site - noting the large property to the rear Gisetto property with their frontage on Ranger Rd.
- Exhibit 2– Tax Map- identifying the flag pole portion of the Gisetto property under agreement to increase the frontage.
- Exhibit 3– ZBA Exhibit Plan – identifying the encroachment areas to the building box.
  - a. Green area 29.8 encroachment to the wetland setback.
  - b. Blue area encroachment to the 35 foot right side yard setback.
  - c. Orange area encroachment to the 35 foot left side yard setback

The area remaining in the building box is 14,550 square feet which is 72.8 % of the total building box where the house, septic and well can be located.

- Exhibit 4– Proposed Sewage Disposal System Plan – The approved septic plan shows the house, septic and well will fit in the remaining building box area, which is the purpose of the building box area. There is no threat to health safety or welfare because the areas that encroach are not the necessary portions of the building box.
- Exhibit 5– Tax Map showing prior subdivision – that reduced the possibility of the applicant to purchase any additional land which would make his lot conform other than the agreement made with the Gisettos.
- Exhibit 6– Abutting Subdivision Plans – this subdivision shows the existing Halvatzes lot which was created by deed with specific meets and bounds in the 60's. In the mid 80's the lot was recognized by the town in an official letter stating the lot was not a building lot because it never had the lawful size. When the lot was created there was no subdivision plan however, some engineer created meets and bounds. Hollis said he has investigated the lot and could not find anything on how the lot was created but it was in-fact created. The lot was taxed as a buildable lot until the then owner asked the town about its value. At that time the town discovered the lot was created unlawful and it lost its standing for acreage or area since the lot never had standing for frontage.
- Exhibit 7– 1975 sub-division Plan – shows a sub-division the area with shared driveways

- Exhibit 8– Historic Deeds – shows the legal description of the lot with meets and bound being discussed. The deeds shows this is the most unique property in the area. Additional deed shows the original deed for the large lot prior to the smaller lots being created.
- Exhibit 9– Keller Williams Letter re: valuation – Hollis said he did not get another valuation completed since the property has not changed significantly and still would not adversely affect the values of surrounding properties. The variances being requested make the lot more conforming.
- Exhibit 10– NH DOT Driveway Permit – shows the approval from DOT for a driveway issued to the applicant for agricultural use.
- Exhibit 11– Traffic Safety Report – Hollis requested a study and analysis be conducted by Stephen G. Pernaw & Company concerning the proposed use as a residential lot dealing with safety and all other issues pertaining to a driveway being located on the site. It was Stephen Pernaw’s professional opinion that the proposed residential driveway, shown on the ZBA exhibit cited, is capable of providing reasonably safe and efficient vehicular access to/from the proposed residence with implementation of the following recommendations:
  1. Said driveway should be constructed with a pavement width of 12-24 feet, with appropriate corner radii.
  2. The centerline of the proposed driveway should intersect Broad Street with an approach angle of 75-90 degrees.
  3. Given the proximity of the nearest residential driveway on the south side of Broad Street, the proposed residential driveway should include a hammerhead “turn around” area on the subject property to enable outbound vehicles to exit in the forward direction (prohibit backing maneuvers onto Broad Street).
  4. The site frontage along Broad Street should be kept clear of any roadside vegetation, private walls, signs and plantings to ensure that the driver’s view looking left and right from the subject driveway is not restricted.

If the variance is granted the applicant has no issues with imposing the above conditions of approval. Attached to the engineer’s report is a picture showing the current location of existing driveways in the area.

Hollis said next he would be addressing the legal arguments for the building area variance and why the variance meets the requirements. Granting the variance can’t be contrary to the public interest. The variance can’t significantly alter the character of the neighborhood. The character of the neighborhood is residential and contains lots of 2 acres, the lot will have two acres. The lot will have only 1 driveway in fact we will be eliminating the potential of having 2 driveways. The proposed use is in the interest of the public with the reduction of 1 driveway. In addition the ZBA must way the intent of the ordinance in criteria #2. Is the variance contrary to the spirit and intent of the ordinance? The purpose of the building box ordinance is to make sure there is sufficient land to accommodate a septic system, house and a well with space in-between all. The proposed plan can accommodate all required necessities for a home within a portion of the building box area which does not encroach. If granted, the plan would be restricted to a 3 bedroom home, 3 bedroom septic, driveway and well location as noted on the plan. The locations are fixed locations and can’t be moved. Allowing a single family house would not alter the neighborhood since the area is a being used residentially. There is no threat to public health, safety or welfare because we do, in fact, have an approved septic design. Substantial justice is done by allowing a smaller building box because it will allow a reasonable use for the property. There is no other reasonable uses for the property without granting a variance. You could possibly put a small agricultural use on the property with vehicles going in and out for that use. It is not a large lot for agricultural use by today’s standards and that use in Hollis’s opinion is not a reasonable use for a smaller lot. There is no harm if the variance is approved since the area is used residentially. In fact, the proposed home is actually smaller than ones in the area. The home will be limited in size due to the building box. There is no harm to the public which outweighs the harm to the applicant if the variance is granted. If denied there would be substantial harm to the applicant.

The variance for the building area would not have any adverse effect on the property values in the area. The proposed building box area is sufficient to accommodate the home, septic and the well. In all respects the lot is a standard lot with short frontage. The only thing that is stopping the house from being built is the 100’ x 200’ building box requirement. We have proven that the house, septic and well can be placed within 72.8 % building box area.

The lot has unusual circumstances it is the last lot in the area which is not built on. The lot was created apparently illegally. It was in existence for 20 years before someone recognized that there was a problem with the lot. The lot has sat there for an additional 40 years. The applicant would like to do something with the lot and he feels a reasonable use is a residence. Is there any fair and substantial relationship in enforcing the building box requirement of 100’ x 200’ to the property? The purpose of the ordinance is quite clear to make sure a lot has adequate soils, an adequate size area to accommodate a house, septic and a well. That has been demonstrated it is somewhat arbitrary to say you need to have 100’ x 200’ even though you

can meet in intent of the ordinance and satisfy the requirements you just do not meet the 100' x 200' area. What is the real purpose in enforcing the building box area? The purpose and intent was to make sure the lot can accommodate the requirements. The ordinance demands the 100' x 200' area however, there is no legitimate reason in this case. Hollis felt the 72.8% area satisfies the concern and intent of the ordinance. There is no fair and substantial relationship between the purpose of the ordinance as it is enforced against this lot. The use is reasonable, a single family 3 bedroom home is reasonable for this lot. If the ZBA does not find a hardship under criteria 5a the ZBA could find a hardship under criteria 5b. The applicant cannot find any additional land so the frontage requirement can be met. Nothing else can be accomplished to allow a reasonable use for the property. A variance is required to allow a reasonable use for the property.

Hollis asked Major if the ZBA would like to discuss the first variance prior to him making his argument on the second variance. The arguments are similar however, the variance is seeking relief from the frontage requirements. The ZBA decided to hear both variances prior to the discussion.

Hollis said the variance seeking relief from the frontage requirement where the lot has 128.5 feet and 200 feet is required. The variance is not contrary to the public interest. The number one public interest is safety along the road providing adequate entry and exiting, not having a driveway and house too close to the road. Hollis believes the Pernaw's letter answers these concerns and offered his opinion. The DOT approval for a driveway for the property has also answered the concerns. There is no health and safety issues for allowing a house and a driveway on the property. It does in fact, eliminate the possibility for a second driveway due to the fact the flag pole lot will be purchased from the Gisettos. Granting the variance would be in-keeping with the public interest, not contrary to it.

While seeking a variance, the proposal can't alter the character of the neighborhood. If the variance is granted, it will allow a single-family home on a lot with reduced frontage. The back and the middle of the proposed lot is as wide as any other lot in the area there is adequate width to construct a home. The lot is oddly shaped with reduced frontage. This use will not change the character of the neighborhood since the character of the neighborhood is residential single family homes. There is no threat to public health, safety or welfare since there is an approved septic, driveway and the proposal can fit within the reduced size of the building box.

In-keeping with the spirit of the ordinance the proposal allows for proper distance between driveways. Substantial justice will be done as indicated if the variance is granted. The building box and frontage already exist. We are not creating a new lot for the use. There are some variances brought to the ZBA that wish to create a substandard lot, this proposal is different. The lot can't get any bigger and we have acquired as much property as we can. Setbacks from the road are achieved and the distance of the house is almost the same as the neighboring homes. There is no other use for the property if denied. There will be substantial harm to the applicant if not granted. There is no harm to the public. If granted the proposed use of a single family home will not adversely affect the property values in the neighborhood as state in the Keller Williams letter submitted as evidence.

The hardship to the property is its unique shape. The lot was carved out of a larger parcel and was allowed to be conveyed and has been recognized by multiple subdivisions plans. It has and is being taxed by the town. The lot was not self-imposed, the applicant inherited the property from his family. The application of this particular requirement for frontage has no fair and substantial relationship to the purpose for the protection of distance between driveways and houses. There is a significant area from the side yard setback, in fact, the house does not encroach the setback at all. The encroachment is only the building box area. No essentials required, such as septic and well and the home, will or would encroach on any setbacks. If approved, as condition of an approval the ZBA could impose the trees along the side yard remain and there will be no further clearing towards the back of the lot. The applicant has agreed to the condition if granted. The proposed use is reasonable given the area, uniqueness of the property, how the lot was created and the reduced frontage will do no harm.

Mason asked was the property owner and further property transfers within the same Family. Halvatzes replied yes. Moseley asked what percentage of the building box does the proposal not comply with. Ken Clinton, Meridian Land Service replied roughly 27% of the building box is noncompliant with 73% in compliance. The compliant area is more than capable to accommodate the house, septic and well. Swerchesky said he has no issues with the frontage or building box area however, the wetland encroachment is an issue. Swerchesky had visited the site a few times including today. The concern is the portion of the wetlands that runs east and west is less than 100 feet away. There is a significant amount of standing water and while looking at the surrounding area, the area is relatively dry. Could the wet area be considered a vernal pool? If so, there may be an environmental concern. Clinton replied our wetland and soil scientist has been on sight delineating wetland and observing conditions. When flagging wetlands the scientist looks at the functions of each wetland and flags them with the appropriate setbacks and buffers. The area of concern was not identified as a vernal pool by our scientist and does not have the characteristics of a vernal pool. Swerchesky said while doing research he had found that the Conservation Commission



has, in the past, allowed a decrease to the wetland buffer. Does the Conservation Commission have jurisdiction? Clinton replied square footage of the area of concern is not subject to the 100 foot buffer requirement. West questioned on whether are not the Conservation Commission would be reviewing the proposal. West felt it was not her expertise to comment on vernal pools or wetland impacts. Who would approve the wetland impact if any? Clinton replied if the variances are approved, the lot line relocation/subdivision would have to be presented to the PB. Beyond the PB approval there would be a secondary septic approval for residential use. The septic approval granted was for agricultural use. There are two more approvals required to make sure the proposal meets the town and state regulations.

Major said the variances are not asking for any wetlands encroachments. The variances are for the intrusion of the theoretical building box, the house, and well and septic does not intrude on any setbacks. Mason asked was the well outside of the wetland buffer. Clinton replied the septic design provided shows the well outside of the buffers. Mason asked was there any evidence that the applicant would not find water. Clinton replied there was no evidence that water would not be found. However, there are other areas the well could be located outside of the buffers. Mason said his concern is granting frontage variance. Hypothetical speaking, if an applicant had a 25-acre lot created by deed, which did not have the required frontage and they wanted to subdivide the lot into several lots. How is the hypothetical different than the current application? Hollis replied at the time the lot was created there was no subdivision regulations. Currently, if you have a 25 acre lot you would need to comply with the regulations or seek a variance for good reasons. What happened with this proposal is there were no approvals required, no one looking over what was being done it just happened. Hollis said he has never seen a lot like the proposal it is a very unique circumstance which would not happen today. Hollis said an investigation was also completed to find out if a back lot (4 acres) could be created but with the back portion of the lot being wetlands you could not put on house there either. Where the house is currently located is, in fact, the only place you could put a building box on the lot. Mason said the lot was created as a non-conforming lot. Hollis replied yes, but he believes it was not done intentionally where the lot could have been able to be created and complied with zoning, it just wasn't. It may have just been a mistake which has happened in the past especially in those days where there was no formal approval process.

Major said the ZBA could infer that the predecessor in title would have made a conforming lot if they could have. We don't know if there was 2 acres zoning then. Hollis replied a letter sent by the town confirmed the acreage was 1 acre requirement and 200 feet of frontage. The frontage requirement was 150 feet and was changed to 200 feet a few months prior to the creation of this lot. Either way the frontage is short and can't comply with the regulations. Hollis added the land was conveyed from Mother to Daughter as a gift and Hollis does not understand why you would gift a piece of useless land. Major said the property was taxed as a buildable lot for 20 years. West said maybe it was created to have a permanent buffer because you can't build on the lot. That makes no sense because the town would have known about it and would not have taxed it as a buildable lot. Hollis agreed. Major said there is no reason for the predecessor to create a non-buildable lot. The town admitted to the mistake to a degree. The intent of the building box area is to make sure the septic, well and house could be placed on high dry land and not to allow the creation of oddly shaped lots. The proposed lot is shape normally and there are others lots in the area without 200 feet of frontage. Hollis agreed there are a few properties on the same side of the street and one directly across from the property.

**No further questions from the Board and none from the floor – Hearing portion closed**

The ZBA recessed at 9:35 pm.  
The ZBA reconvened at 9:40 pm.

**DELIBERATIONS**

The ZBA decided to deliberate both 2020-015 and 2020-016 together and vote on each case individually.

**Case ZBA 2020-015**

The discussion of the application was tabled at the January 28, 2021 meeting - The application of Contractor Storage Solutions LLC, property owner, for a Variance to Section X, Zoning District, Paragraph G.1, Permitted Uses of the Zoning Ordinance to modify conditions from past approvals (ZBA2018-021 & 022), to remove condition #5 no exterior storage of heavy equipment, to allow outside storage, modify hours of operations, located at 143+145 Runnells Bridge Rd. (Map 004, Lot 064) in the Residential Agricultural Zone.

It was Majors' opinion the only action the ZBA needs to decide is whether or not to grant the modifications to the conditions from the previous granted variance. There would be no need to go through the individual criteria for the variances. Major asked the members if they agreed. West asked if the conditions assist in the decision process. If so, West feels we should make a case that changing those conditions does not change the vote previously. Major said the applicant had proven his

case for substantial justice due to the fact, the property was used commercially in the past and had existing buildings that were suitable for industrial or commercial uses. The hours of operation had no bearing on the outcome of the case. The conditions were placed on the application to control the use since the property abuts residential uses. West agreed. Mason said most of the conditions were imposed to satisfy the concerns of the Pepperell water source and the abutters. The members agreed they would be voting on amending the conditions and not the full variance requirements.

Belanger said he has five issues that the ZBA may want to consider as finding-of-fact;

1. The initial approval by the ZBA for use of this property met the requests of the applicant. The requested modifications to the initial conditions of approval would considerably expand the use beyond the initial request and would not be conducive to aquifer protection and residential use by abutting property owners.
2. Expanding operating hours would be disruptive to the adjacent residential neighborhood especially the homes within hearing distance.
3. The purpose of the original condition was meant to protect the aquifer serving the town of Pepperell, MA and keep the equipment over impermeable surfaces, like a concrete floor of a building. Allowing exterior storage might result in unwanted liquid material eventually migrating to the underlying ground and affecting the aquifer.
4. The board finds that the original conditions of approval by the ZBA and Hollis Planning Board were necessary, reasonable and continue to be needed.
5. The board finds the hours of operation allowed by the Planning Board were reasonable for a Storage Facility and the Board now upholds that Planning Board decision.

Major asked if the original approval was granted for a storage facility. Belanger replied yes, the original approval was for contractors to store equipment at night to be used off-site. The current request wants outside storage, the business has expanded. Belanger said he had run a business in the town for years and he was restricted. While Belanger understands the plight of the applicant, the ordinance is the ordinance and the neighborhood is the neighborhood. Major said there is some case law that is a so-called natural expansion of a use. Should the ZBA consider natural expansion? Belanger would agree only if the ZBA did not set conditions over the concerns of the aquifer and neighborhood. The conditions were set to limit the expansion and address the aquifer and the neighbor concerns. McGhee said the conditions were done in an effort to balance the concerns of the abutters. The recent application included several letters from abutters with concerns of potential expansion. The letter from Pepperell reiterates their concerns with any expansion because of the location of their well. The letters were not discussed by the applicant however, they did have an impact.

Major asked should there be an individual vote on each modification.

West said the request for the outside storage. It is not a concern. They really are not storing heavy equipment outside it seems to be more of a timing issue. The applicant is just asking for some flexibility in case the equipment can't be put inside promptly. West felt expanding the hours of operation is in fact, an expansion of use. If tenants needed 24 hours access and the applicant was aware of this condition, that tenant should have not been accepted. The ZBA does need to set conditions to protect the aquifer.

The ZBA agreed to vote on the hours and outside storage modifications separately.

Mason said while referring to the minutes from the meeting when the application was originally approved. Kalchbrenner had expressed his concerns about the hours of operations and the lighting. Kalchbrenner also expressed the same concerns with these applications. Mason was not in-favor with modifying the hours of operation. West agreed.

McGhee said testimony was the site was not in compliance with the approval. Were the hours of operation not in compliance? Is the applicant requesting modifications due to the fact they were violating the conditions of approval. West said there is evidence of site plan violations and the complaints are also on file.

Mason said the original approved application was for a storage facility. The use the applicant requested was to use the property as a storage rental facility geared to contractors and small business to provide a safe, weather proof and clean solution to their storage needs. Belanger said his impression was the operation was a storage facility and not running businesses. Swerchesky opinion was there may be some business operation that crept into the site. West said if you need 24 hour access it seems there running a business. Belanger and Swerchesky agreed.

West said as far as the outside storage of equipment, they are not storing equipment outside. If a piece of equipment comes in off hours, they want a place to put it prior to storing it inside. Belanger said application ZBA2020-016, states the applicant

is seeking approval to modify the hours of operations, remove condition #5 the exterior storage of heavy equipment and to allow outside storage. Belanger felt outside storage was not allowed. West agreed it did not feel like it was going back to the original hours. Belanger stated if 100 gallons were spilled on the pad and it rains, the spill will go off of the pad and enter the aquifer. Mason asked did the applicant submit another application? Major said the plan was adjusted, the new plan shows the pad area and what the applicant is asking for is noted on the top corner. The application changed somewhat from when the case was tabled. Belanger said if a piece of equipment was taken outside and waiting for someone to move it inside that would be allowed. However, if the equipment stays outside overnight or for a few days waiting for someone to move that would be storage.

Belanger said the business is viable based on the testimony the conditions were set to protect the aquifer and the abutters. Major agreed the testimony was there was full occupancy and they have been operating primarily in compliance.

Most of the ZBA members came to a consensus that the expanded hours of operation were not appropriate the area.

**No further discussion.**

The voting results for the modification to the operating hours were as follows:

Board Member	Yes	No
Major		No
Belanger		No
Mason		No
McGhee	Yes	
West	Yes	

**Application failed 3-2 with McGhee and West voting in-favor.**

**Therefore, the request for modifying the hours of operations was denied with the following findings-of-fact;**

*Belanger moves for the following finding of fact;*

- 1. The initial approval by the ZBA for use of this property met the requests of the applicant. The requested modifications to the initial conditions of approval would considerably expand the use beyond the initial request and would not be conducive to aquifer protection and residential use by abutting property owners.*

*Seconded by Mason.*

*The motion passed 4 to 1 with West voting against.*

*Belanger moves for the following finding of fact;*

- 2. Expanding operating hours would be disruptive to the adjacent residential neighborhood especially the homes within hearing distance.*

*Seconded by West.*

*Motion passed unanimously.*

*Belanger moves for the following finding of fact;*

- 3. The purpose of the original condition was meant to protect the aquifer serving the town of Pepperell Mass and keep the equipment over impermeable surfaces like a concrete floor of a building. Allowing exterior storage might result in unwanted liquid material to eventually migrate to the underlying ground and affect the aquifer.*

*Seconded by McGhee.*

*Motion passed unanimously.*

*Belanger moves for the following finding of fact;*

- 4. The board finds that the original conditions of approval by the ZBA and Hollis Planning Board were necessary, reasonable and continue to be needed.*

*Seconded by West.*

*The motion passed 4 to 1 with West voting against.*

*Belanger moves for the following finding of fact;*

*5. The board finds the hours of operation allowed by the Planning Board were reasonable for a Storage Facility and the Board agrees with that Planning Board decision.*

*Seconded by McGhee.*

*Motion passed unanimously.*

#### **Case ZBA 2020-016**

The discussion of the application was tabled at the January 28, 2021 meeting - The application of Contractor Storage Solutions LLC, property owner, for a Variance to Section XI, Overlay Zoning District, Paragraph A.5, Permitted Uses in the Aquifer Protection Overlay Zone of the Zoning Ordinance to modify conditions from past approvals (ZBA2018-021 &022), to remove condition #5 no exterior storage of heavy equipment, to allow outside storage, modify hours of operations, located at 143+145 Runnells Bridge Rd. (Map 004, Lot 064) in the Residential Agricultural Zone.

See Case 2020-015 for discussion.

The voting result were as follows for the removal of condition #5 no outside storage of heavy equipment.

Board Member	Yes	No
Major		No
Belanger		No
Mason		No
McGhee		No
West	Yes	

**The application failed 4-1 with West voting in-favor.**

*Belanger moves to impose the same 5 findings-of-fact from case ZBA 2020-015.*

*Seconded by Major.*

*Motion passed unanimously*

**Therefore, the request for removing the condition for outside storage of heavy equipment was denied with the same 5 findings-of- fact as Case ZBA 2020-015;**

#### **Case ZBA 2021-003**

The application of John Halvatzes, Jr., for a Variance to Section XG, Zoning District, Paragraph 4.b, Minimum Frontage on a public road of the Zoning Ordinance to permit the construction of a Single Family Home with 128.51 feet of frontage (required 200 feet) located on Broad Street (Map 026, Lot 048) in the Residential/Agricultural Zone.

Moseley said the building box was established for a number of reasons. One of which is that the lot has enough dry space to accommodate a house, septic and well. It also takes into consideration if the septic system fails there would be enough room to install a new. Secondly, in the past we have discussed the building box and how far someone could encroach into the building box area. A de minimis area of 2% was discussed and applied to an application which was granted. (2015-002) another case in 2017 (ZBA2017-001) we used the same 2% and denied the application because it exceeded that amount. This application is requesting over 25% encroachment to the building box. It was Moseley opinion the encroachment was substantial. Major asked if Moseley remembered that case. Moseley replied it was a lot on Federal Hill which used the circle method for the building box which they had 98% compliance.

Major said the building box is kind of arbitrary; the notion of putting something into a dimensional square or circle. Swerchesky said with todays' technology if the septic system fails, it could be engineered to be replaced in the same location. The box should be a reference and not an ordinance. Major said there are a lot of good arguments for encroachment of the building box such as diminished property values in the area since the building box is somewhat arbitrary. West asked who else would be approving the request. West felt uncomfortable with approving it without other approvals especially since it is a variance. McGhee said the conversation should be that the applicant has lot that is non-conforming. The applicant has tried

to figure out ways to make it less non-conforming such as buying property to make the lot 2 acres and land to increase the frontage. The 78% area of the building box is a good point however, the applicant has proven that the house, well and septic fits within the 78% and all items do not encroach on any setback. Only the building box would encroach. McGhee agrees with Major the box is somewhat arbitrary. Swerchesky said the request is reasonable and there is no other use for the property. McGhee said the property was inherited and the applicant is trying to find a reasonable use for the property.

Belanger said the property violates the ordinance. Belanger has 17 acres that he can't build on due to the zoning ordinance in Hollis. Belanger said he wrote some finding-of-fact which may allow the variance to be approved.

1. The granting of a variance for lot size and road frontage will not diminish the values of abutting properties and will be in harmony with the immediate area.
2. The lot was in existence since 1928 or at least 1965 and could well have had a residence built on it at any time prior to the zoning amendment requiring a 2 acre lot with 200 feet of frontage. This would have been consistent with current surrounding residences.
3. The NH DOT has issued a Driveway permit, with conditions, to allow access to NH Route 130. Said conditions should be applied to this variance request if granted.

The findings were completed in an attempt to sway the members to vote yes.

After more consideration with the zoning ordinance and what it means and why we have the ordinance. The board's decision on January 3, 2019 states the applicants' lot was created in 1965, 9 months after the zoning ordinance changed. The lot has been taxed as an unbuildable wood lot for decades according to the Hollis accessing office. The lot is unremarkable as the accessing office provided 10 more examples of wood lots which are unbuildable, some with more frontage and area than the applicants. These examples were provided to the board during the January 3, 2019 ZBA meeting.

If a lot is sub-divided to provide more area to create a building lot (Lot 26-40 sub-divided and added to Lot 26-48) the new larger lot (the applicant's lot 26-48), in accordance with Page 8 of the Zoning Ordinance describing a building area. The applicant shall demonstrate that the driveway access from the lot's frontage can be provided to the Building Area without any waivers. The word "shall" is very clear and not ambiguous.

The spirit of the ordinance, as regards to this application, is not observed for the following reasons. Even with the additional sub-division of Lot 46-40 into Lot 46-48, the building area box is deficient on a number accounts. The proposed Building Area Box, as required, violates the wetlands setback by over 13%, the setbacks on both sides of the Building Box violate the Building Box 12 1/2 %. Over 25% of the Building Box is not in compliance with the ordinance. On the Meridian plot plan dated January 26, 2021 clearly states that the boundaries for lot 46-48 are approximate.

On page 8 of the Zoning ordinance, in the definition of a Building Area, the ordinance states "No portion of the Building Area may be located within a building setback or wetland buffer". "No portion" is not ambiguous and cannot be disregarded. The definition goes on to state "The applicant shall demonstrate that driveway access from the lot's frontage can be provided to the building area without waivers". A variance for the driveway has been applied for, ZBA 2021-3.

As to "Hardship", numerous wood lot plots were provided at the January 3, 2019 meeting that possessed greater area and more frontage and deemed unbuildable. Lot 26-48 is not remarkable and is burdened with the same requirements, under the ordinance, as the lots presented at that meeting. The applicant's lot has been taxed as an unbuildable wood lot for decades.

If findings are required, Belanger said he has a few that would be defended in court. Mason asked why the driveway needs a variance. Mason thought the driveway was approved. Belanger said the driveway was approved by DOT for agricultural use with conditions, not for residential use. It was Major's opinion there was no major problem with the driveway other than the fact it was tied into the lack of frontage. The applicant argued why a lot needed the required frontage was to allow safe distances between driveways. His point was the applicant is already entitled to one driveway by right; potentially two with the flag pole lot. The proposal actually removes the second driveway with the purchase of the flag pole lot. Belanger said he initially thought the request was reasonable. Now looking at the ordinance and the reasons behind the ordinance, he reconsidered and would not support the application. Major asked Belanger if his opinion would change due to the facts, the applicant has completed engineering and shows that the house, septic and well can be placed within the building box with no encroachments and an agreement has been made to purchase more land to increase the lot size to 2 acres and increase the frontage to 128.5 feet. Belanger replied if granted, the decision would set a precedent for all other non-buildable lots in Hollis. Major said the ZBA has the authority to grant variances under certain circumstances. Moseley asked where would the line be drawn. Major replied for something un-reasonable. Swerchesky said the request is not un-reasonable, there is

nothing the applicant can do with the property. Belanger disagreed; you could use it for agricultural. Belanger stated there is plenty of land in Hollis that you could say there is nothing else you can do with the land, except for what an applicant wants.

Major said the lot has 80% of the frontage requirement and 72 % of the building box requirement. The lot is 230 feet wide towards the back with 128 feet of frontage. Belanger said if the lot violates 1 part of the ordinance, the lot is violating several requirements of the ordinance such as, wetlands buffer, road frontage and the building box requirements. Major said the lot was taxed as a buildable lot for 20 years. Major felt the lot was not created neglectfully. The lot was drawn up as a lot and is a separate lot with 1.8 acres currently. We are shown it could be a lot with 2 acres with the 2 required variances. This type of case would be one the ZBA should grant since the proposal is reasonable. The building box area is sufficient to allow another septic system if needed. Testimony was that technologies have changed. The applicant has demonstrated that a septic system, well and house can be placed reasonably within the building box area which has no encroachments to either the setback and buffer requirements. It was Major's opinion each case needs to be determined individually under their own merits and individual circumstances.

Mosely and Belanger both agreed if there was only 1 variance required they would be more in-favor however, with the multiple variances required they could not agree with the proposal.

Mason said this was not a lot that was left over from a subdivision. The deeds on record show this lot was created prior to the larger lot being subdivided. For whatever reason, the lot was created as is. Mason felt the lot was not created with the intention of being a non-buildable wood lot. Swerchesky said the mistake could have happened due to the fact the stone walls may have been thought to be the natural boundary of the lot at the time of its creation. Mason said the lot does violate several points of the ordinance, and was created after the requirements changed. If substantial justice is considered, there are other lots in the immediate area which are considerably smaller with less frontage. The spirit of the ordinance regarding the building box could be claimed as stated in the definitions of a building area "the building area is intended to show that the lot is capable in meeting all of the zoning ordinances requirements." On the other hand the definitions per RSA "to prevent the overcrowding of land and to avoid undue concentration of population." The lot is tiny in between other lots and dense in terms of what the ordinances envisions. Mason has an issue with the frontage.

McGhee said based on testimony given, the building box was outside of the wetland buffers. Mason said the building box encroaches but not the house or septic. Major said if the lot had enough frontage you could put the house closer to the wetlands than is proposed. The house could be placed 100 feet from the wetlands. The intrusion of the building box into the wetland buffer is less than it would be if the foundation was placed 100 feet from the wetlands. McGhee said the building box is not going to hurt the wetlands the house might but the house septic and well are within the building box with no intrusion to the setbacks. Swerchesky said the purpose of the ZBA is to determine if the proposal is reasonable under the specify set of circumstances. McGhee thought the proposal is a reasonable request for the variance and the spirit of the ordinance is observed.

Major questioned if the proposed 3-bedroom single family home a reasonable use. There is an argument that the lot has some pre-obtained right because of the way it was created. The town is not complete or naive in the matter. Belanger agrees the proposal is reasonable however, the proposal violates the ordinance in several ways. McGhee said the wetland buffer encroachment is located at the top of the building box, the arbitrary line, the rest of the necessities fit within the reduced area. Moseley said the building box is not arbitrary the building box was created for a reason and is within the ordinance. West said she was in-favor of the request and would be in-favor of subsequent applications as long as the wetlands are safe and it is proven the house, well and septic can be placed within the area of a building box. Mason said the ordinance depicts a building box which the residents voted on and a 28% encroachment into the building box is significant. Major said if the building box is applied to an existing lot of record you need to determine the reasons in which the ZBA would protect the building box. Does the proposal protect the wetlands? Can the house, septic and well fit within the area without encroachment? Does site allow for proper distance between homes? It was Major's opinion all of the intended requirements for a building box have been met.

**No further discussion.**

#### Questions - Variance

- Question 1. The variance will not be contrary to the public interest.
- Question 2. The spirit of the ordinance is observed.
- Question 3. Substantial justice is done.

Question 4. The values of surrounding properties are not diminished.

Question 5a (1). No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property.

Question 5a (2). And, the proposed use is a reasonable one.

Board Member	Question #1	Question #2	Question #3	Question #4	Question #5a(1)	Question #5a(2)	Total Yes	Total No
Major	Yes	Yes	Yes	Yes	Yes	Yes	6	0
Belanger	No	No	No	Yes	No	Yes	2	4
Mason	Yes	No	Yes	Yes	No	No	3	3
West	Yes	Yes	Yes	Yes	Yes	Yes	6	0
Moseley	Yes	No	No	Yes	No	Yes	2	4

**Therefore, the application was denied.**

#### **Case ZBA 2021-004**

The application of John Halvatzes, Jr., for a Variance to Section XG, Zoning District, Paragraph 4.g, Building Area, Section VIII Definitions, Building Area of the Zoning Ordinance to permit the construction of a Single Family Home where the building box encroaches on both side setback and encroaches on the wetland buffer (where no encroachment of the building area may be located within the building setbacks or wetland buffer), located on Broad Street (Map 026, Lot 048) in the Residential/Agricultural Zone.

See case ZBA 2021-003 for discussion.

#### **Questions – Variance**

Question 1. The variance will not be contrary to the public interest.

Question 2. The spirit of the ordinance is observed.

Question 3. Substantial justice is done.

Question 4. The values of surrounding properties are not diminished.

Question 5a (1). No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property.

Question 5a (2). And, the proposed use is a reasonable one.

Question 5b. 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.

Board Member	Question #1	Question #2	Question #3	Question #4	Question #5a(1)	Question #5a(2)	Question #5b	Total Yes	Total No
Major	Yes	Yes	Yes	Yes	Yes	Yes	Yes	7	0
Belanger	No	No	No	Yes	No	Yes	No	2	5
Mason	Yes	Yes	Yes	Yes	No	No	Yes	5	2
West	Yes	Yes	Yes	Yes	Yes	Yes	Yes	7	0
Moseley	No	No	No	Yes	No	Yes	No	2	5

**Therefore, the application was denied.**

Due to the lateness of the meeting the ZBA decided to continue the deliberative session to discuss the potential findings-of-fact.

*Moseley moves to continue the deliberative session of ZBA case 2021-003 and 2021-004 to discuss potential findings-of-fact only to April 6, 2021 at 7:00pm.*

*Belanger seconded.*

*Motion approved unanimously*

Major asked the members to draft findings-of-fact to be consideration and circulate them amongst the members prior to the meeting any documents circulate should not be discussed outside of the April 6, 2021 meeting.

**Review of Minutes**

*Belanger moved to approve the minutes of February 25 2021.*

*Seconded by McGhee.*

*Motion unanimously approved.*

**Meeting Adjourned**

The ZBA meeting adjourned at 11:30 pm.

Respectfully submitted by;

Donna Lee Setaro, Building and Land Use Coordinator