

**ZONING BOARD OF ADJUSTMENT  
MEETING MINUTES  
June 27, 2022  
(ADOPTED)**

**MEMBERS PRESENT:** Bruce Kudrick, Chairman, Thomas Hebert, Vice Chairman, Dana Carlucci, Paul Paradis, Natalie Glisson

**ALTERNATES PRESENT:** Robert Bourque

**EXCUSED:** Wendy Chase, Blakely Miner III

**STAFF PRESENT:** Paul Bacon, Code Enforcement Officer

Chairman Kudrick called the public hearing to order at 7:02 p.m.

Roll call was taken by the Reporting Secretary. She also read the first case aloud.

**I. Public Hearing**

**Case 22-06-Z** A request has been made for a **Variance under Article V Dimensional and Density Regulations, § 143-21, G, Side Setback**. The applicant, Farwell Engineering Services, LLC (Tobin Farwell) of 265 Wadleigh Falls Rd., Lee, NH, representing Theroux Properties, is requesting a **Variance to construct a 104 ft. x 120 ft. building, where the corner of one side is 20.8 ft. from the side property line and 25 ft. is required**. The property is owned by Theroux Properties of 12 Colby Rd., Litchfield, NH 03052. The property is located at 52 Sheep Davis Rd., Map 632 lot 10, in the C-1 Commercial/Light Industrial Zoning District and in the Aquifer District.

**Applicant:** Tobin Farwell, Farwell Engineering Services, LLC

**Property Owner(s):** Theroux Properties

**Property Address:** 52 Sheep Davis Road  
Tax Map 632, Lot 10, in the C-1 Commercial/Light Industrial Zoning District and in the Aquifer District.

**Included in the Member Packets:** Fee Schedule Worksheet, Area Map, Email from Rene Theroux, Site Plan, Assessing Card, List of Abutters.

**Present:** Tobin Farwell of Farwell Engineering Services, LLC and Sylvain Theroux, an owner of Theroux Properties

Chairman Kudrick read aloud the rules governing the hearing: (1) Applicant will present its case; (2) Those in favor of the application will speak; (3) Those opposed to the application will speak; (4) Rebuttal by the applicant and those in favor of the application will speak; (5) Rebuttal by those in opposition to the application will speak.

He stated that anyone wishing to speak must first give their name, address, and interest in the case. All questions and comments will be directed to the Chairman. The Board will base their decisions on facts presented by the applicant. If any of the presented facts are found to be different than what was presented, the Board reserves the right to reconsider its approval.

Chairman Kudrick noted that the Board received a letter stating that Mr. Farwell has permission to present the case.

Mr. Farwell said that Optimum Building Solutions occupied the site since 2017. They would like to build a 104' x 120' building. He stated that the old plan which was prepared by another engineer showed a 20' buffer to the property line. The new plans for the building was based on that. After speaking to the Town, it was revealed that it is actually a 25' building setback in that area. The front corner of the building closest to Keith Avenue will have a 4.2' encroachment in the side setback. The rear corner is fine. Mr. Farwell said that Keith Avenue is a private access for Red Rock Investments. There are some landscape trees that can be relocated if necessary. There is also a fence which he felt provided an adequate buffer. They can maintain the fence even with one corner of the new building encroachment. The building will be a single story storage building. It will look similar to the one presently on the site.

Chairman Kudrick said that there was an error made on the first page of the application. The statement: "Has this property received a Special Exception or Variance in the past?" was noted as receiving a Special Exception. He said that it was a special use by the Planning Board.

Mr. Farwell said that when he looked at the original plan, he thought that it said "Special Exception". It was his error.

Chairman Kudrick asked the Applicant to read the application aloud:

**Please give a detailed description of your proposal below.** We are requesting an encroachment into the sideline property setbacks of 4.2 ft. We are proposing a 104 ft. x 120 ft. building. The building will be 20.8 ft. from the southern property line along Keith Ave. where 25 ft. is required.

1. **The variance will not be contrary to the public interest.** The public will not be impacted by the proposed diminished sideline setback.
2. **The spirit of the ordinance is observed.** This will allow a commercial storage building in the C1 district. This will still allow a reasonable buffer to Keith Ave. The spirit of the ordinance is to provide a buffer to neighboring property.
3. **Substantial justice is done.** The property setbacks are at an angle to the existing building which we must be square too. This would force the building to be an odd size.

4. **The values of surrounding properties are not diminished.** A new building will not diminish values and the sideline encroachment is minor and to a street only.

5. **Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.** (A) For purposes of this subparagraph, “unnecessary hardship” means that, owing to special conditions of the property that distinguish it from other properties in the area: (i) 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; and (ii) the proposed use is a reasonable one. Due to the configuration of the property and the existing building on the property compliance is difficult. Additionally there is access to Keith Avenue that will be impacted if we try to resize the building.

**(B) If the criteria in subparagraph (A) are not established, and 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 reasonable use of it.** This is a reasonable size building for this C1 zoned lot. The existing building is not square to the side building property line and therefore side building setback. This will cause one side of the proposed building to be out of compliance but the other end of the building will be in compliance.

Member Carlucci asked what type of products would be stored in the building.

Mr. Theroux said that they are storing metal panel extrusions similar to what is on the outside of the Banks Chevrolet building. The material is presently stored outside and should be stored inside so that the colors do not fade and the sun does not affect the product’s core. He said that the product is difficult to get so he would like to purchase larger quantities and store it for future work. They have a machine that will cut the aluminum.

Alternate Member Bourque asked if this project would be going to the Planning Board.

Mr. Farwell said that they will be going to the Planning Board for a site plan review.

Chairman Kudrick said that the plan shows a sewer service coming from inside the building.

Mr. Farwell said that that will be eliminated. There is a bathroom near an office with a sewer line. They have no need for it. If they decide to have sewer in the building, they will create a new line.

Chairman Kudrick said that if they decide to reconnect for a bathroom, they will have to contact the Sewer Department.

He asked if Sewer Manhole #1, near the 25’ setback, was the Town’s and if it has an easement.

Mr. Farwell said that the manhole is outside of their property and was not aware of any easement for it.

Vice Chairman Hebert asked if the building would only be used for storage or if there would be any manufacturing.

Mr. Theroux said that they cut the aluminum and sometimes they screw the panels together (preliminary assembly). They will not be doing any powder coating or chemical treatment.

No one spoke in favor or in opposition to the application. There was no rebuttal by the applicant nor any rebuttal in favor or in opposition of the case.

Mr. Farwell said that they reached out to the abutter, Red Rock Investments. There was no response.

Chairman Kudrick asked if Red Rock was also known as Dirt Doctors.

Mr. Farwell said yes.

There were no further questions by the Board.

Member Glisson summarized the case as follows: **Case 22-06-Z**, a request has been made for a **Variance under Article V Dimensional and Density Regulations, §143-21, G, Side Setback**: The Applicant, Tobin Farwell of Farwell Engineering Services, explained the map and request to build a single-story storage building. He read through the criteria. A note was made that it was a Special Use offered to the property by the Planning Board and not a Special Exception. Member Carlucci asked what would be stored in the building. Mr. Theroux clarified that it would be metal siding. Alternate Member Bourque asked if the case would be going to the Planning Board and Mr. Farwell said yes. Chairman Kudrick asked about sewer services and Mr. Farwell said that the intent is to abandon the sewer line. They are aware that if they decide to connect to the sewer in the future, they will need to contact the Sewer Department. Vice Chairman Hebert asked for clarification that it is only storage and not manufacturing. Mr. Theroux said that there will be some light assembly and storage only. No one spoke in opposition or in favor. Mr. Farwell said that he reached out to abutters and no one responded.

Chairman Kudrick said that although this site is in the Aquifer District, they are not asking for a special exception and they are not using chemicals, so he did not feel that the Board had to be concerned.

Vice Chairman Hebert asked if the Pembroke Water Works inspects the facilities along Route 106 yearly. He asked if there was anything other than a backflow check that the Pembroke Water Works would have any reason to do, such as an inspection or to review best management practices.

Alternate Member Bourque said that if there were test wells installed, then the Water Works would have the wells periodically tested.

Mr. Theroux said that they have been on the site for 4-5 years and no one has ever come by. The property has Town water, Town sewer, and natural gas.

Member Carlucci said that, at the end of the meeting, he would like to discuss, the testing that Pembroke Water Works is responsible for at the businesses along Route 106.

There were no other comments from the public or the Board.

Chairman Kudrick stated that the Board will decide all cases within 30 days. The Notice of Decision will be posted for public inspection within 5 business days of the decision and will be sent to the Applicant. The Board will either approve, deny, or continue deliberation on the case. No comments will be taken from the audience.

Chairman Kudrick officially closed the hearing at 7:22 p.m.

### **ZONING BOARD MEMBER DELIBERATIONS:**

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

- Member Carlucci said that storage is a clean use compared to manufacturing. He did not see anything that would be contrary to the public interest. All Board members agreed.

#### **2. The spirit of the ordinance is observed.**

- Chairman Kudrick said that it is an allowed use.
- Vice Chairman Hebert said that when Yankee Industrial Truck was in that building, Keith Avenue was not in existence. The area around the site has been built up throughout the years through no fault of the applicant. Keith Avenue was built after the building was there.
- Member Carlucci agreed.
- Member Paradis agreed.
- Alternate Member Bourque agreed.
- Member Glisson said that expanding the business would benefit the Town.

#### **3. Substantial justice is done.**

- Alternate Member Bourque said that allowing the variance would be good for the Town and the Applicant. It is only a minor encroachment into the setback -- only a corner.
- Chairman Kudrick agreed.
- Vice Chairman Hebert agreed.
- Member Carlucci agreed. It is a good use.
- Member Paradis agreed
- Member Glisson said that it is a reasonable request.

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

- Chairman Kudrick said that no one came to the meeting with evidence to show that the value would be diminished. All Board members agreed.

**5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. (A) For purposes of this subparagraph, “unnecessary hardship” means that, owing to special conditions of the property that distinguish it from other properties in the area: (i) 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; and (ii) the proposed use is a reasonable one.**

- Chairman Kudrick said that the property line is the hardship.
- Vice Chairman Hebert said that the building already exists.
- Member Carlucci agreed.
- Member Paradis agreed.
- Alternate Member Bourque agreed.
- Member Glisson agreed.

**(B) If the criteria in subparagraph (A) are not established, and 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 reasonable use of it.**

Vice Chairman Hebert said that, in reference to Case 22-06-Z, a request for a variance having been presented to the Board for consideration, a variance is required because the proposed addition is closer to the property line than allowed by code.

**MOTION:** Vice Chairman Hebert moved to approve the application (**Case 22-06-Z A Variance under Article V Dimensional and Density Regulations, §143-21, G, Side Setback**), as presented with the following conditions: (1) The Applicant must follow all state and local regulations; (2) Construction to adhere to the plans submitted except to the extent that such plan is reasonably modified through the Planning Board review process with the plans approved by the Planning Board being the final plans. Seconded by Member Carlucci.

**VOTE:**            B. Kudrick – Y                      T. Hebert – Y                      D. Carlucci – Y  
                      N. Glisson – Y                      P. Paradis – Y

**MOTION TO APPROVE THE APPLICATION (CASE 22-06-Z A VARIANCE UNDER ARTICLE V DIMENSIONAL AND DENSITY REGULATIONS, §143-21, G, SIDE SETBACK), AS PRESENTED WITH THE FOLLOWING CONDITIONS: (1) THE**

**APPLICANT MUST FOLLOW ALL STATE AND LOCAL REGULATIONS; (2) CONSTRUCTION TO ADHERE TO THE PLANS SUBMITTED EXCEPT TO THE EXTENT THAT SUCH PLAN IS REASONABLY MODIFIED THROUGH THE PLANNING BOARD REVIEW PROCESS WITH THE PLANS APPROVED BY THE PLANNING BOARD BEING THE FINAL PLANS PASSED ON A 5-0 VOTE.**

#### **IV. Approval of Minutes – May 23, 2022**

**MOTION:** Vice Chairman Hebert moved to approve the May 23, 2022 minutes as amended. Seconded by Member Carlucci. Unanimously approved.

#### **V. Other Business / Correspondence**

Member Carlucci asked about the process with regard to test wells, schedules, and whose responsibility to do so.

Chairman Kudrick said that in the past the Board has placed test wells as a condition. The Pembroke Water Works works with GeoInsight for the location of the test wells and the schedule of maintenance and testing.

Alternate Member Bourque said that there is an agreement between the Planning Board and the Applicant as to a schedule that the Pembroke Water Works has submitted as to how often they want the wells tested and the costs associated with doing so. Typically the testing is a few times a year unless they find something, then the schedule will become more frequent. If there is an issue, the Pembroke Water Works would notify the Town. Most of the time the sampling is done by GeoInsight. He was not sure if the testing was done by another party.

Vice Chairman Hebert asked if the Planning Board touches on Best Management Practices with regard to spills and mitigation.

Alternate Member Bourque said that if there is truck repair services, for example, the Water Works would look at it and make recommendations to the Planning Board.

Mr. Bacon said that the hazardous material associated with a site plan is evaluated by the Planning Board.

Alternate Member Bourque said that a site plan review requires that the Applicant supplies the Planning Board with a list of hazardous materials and in what quantities are being stored on the site.

Chairman Kudrick reminded the Board that a new Chairman, Vice Chairman and someone to summarize the cases must be elected.

**MOTION:** Member Carlucci nominated Bruce Kudrick as Chairman, Tom Hebert as Vice Chairman, and Natalie Glisson to summarize the cases. Seconded by Member Paradis.

**VOTE:**            B. Kudrick – Y                            T. Hebert – Y                            D. Carlucci – Y  
                      N. Glisson – Y                            P. Paradis – Y

**MOTION TO NOMINATE BRUCE KUDRICK AS CHAIRMAN, TOM HEBERT AS VICE CHAIRMAN, AND NATALIE GLISSON TO SUMMARIZE THE CASES PASSED ON A 5-0 VOTE.**

Alternate Member Bourque suggested that a line listing the Zoning District be added to the first page of the Variance and Special Exception Applications. All Board members agreed and asked Mr. Bacon to make the addition to the forms.

Alternate Member Bourque said that with regard to the Evans case, the Housing Appeals Board met last Tuesday. A decision has not been made yet but he thought that the Board had 45 days to make their decision.

**VI. Adjournment**

**MOTION:** Vice Chairman Hebert moved to adjourn the meeting at 7:40 pm. Seconded by Member Paradis. Unanimously approved.

Respectfully submitted,  
Jocelyn Carlucci  
Recording Secretary