

**MINUTES**  
**PEMBROKE ZONING BOARD OF ADJUSTMENT**  
**July 29, 2019      Approved September 30, 2019**

**MEMBERS PRESENT:** Tom Hebert, Vice Chair; Dana Carlucci, Natalie Glisson

**ALTERNATES PRESENT:** Robert Bourque, Blakely Minor III

**EXCUSED:** Bruce Kudrick, Chair; Paul Paradis

**STAFF PRESENT:** Dana Pendergast, Code Enforcement Officer; Susan Gifford, Recording Secretary

Vice Chairman Hebert called the meeting to order at 7:00 p.m. The meeting is being recorded and will be available to watch on the Town website. The clerk took the roll call. Three regular Zoning Board of Adjustment members and two alternate members are present. Blakely Minor was designated to vote for Paul Paradis and Robert Bourque was designated to vote for Bruce Kudrick, thereby making up a full five-member board.

**Case #19-07-Z**

Applicant:                      David Arsenault  
   441 6<sup>th</sup> Range Road  
   Pembroke NH 03275

Property Owner(s):        David Arsenault  
   441 6<sup>th</sup> Range Road  
   Pembroke NH 03275

Property Address:        441 6<sup>th</sup> Range Road  
   Pembroke, NH 03275  
   Tax Map 262 Lot 65 in the R3 Zoning District.

**Case 19-07-Z A** request has been made for a **Variance under Article IV Use Regulations, Section 143-21 Table of Dimensional and Density Regulations C Minimum lot frontage Duplex**. The applicant, David Arsenault, 441 6<sup>th</sup> Range Road is requesting a **Variance** to construct a new lot with a ranch on it with 130 feet of road frontage when 230 feet is required. The property is located at 441 6<sup>th</sup> Range Road, Lot 262-55 in the R3 Zoning district and is owned by David Arsenault, 441 6<sup>th</sup> Range Road Pembroke, NH 03275.

Vice Chairman Hebert opened the public hearing on Case 19-07-Z at 7:05 p.m. Vice Chairman Hebert explained the rules of the hearing. Anyone who wishes to speak will give their name, address and interest in the case. All questions are directed to me, the Chair.

David Arsenault noted a correction to the reading of the case. The structure on the proposed 2 acre lot is a ranch style storage building, not a duplex. The duplex will remain located on the larger 63 acre parcel.

David Arsenault addressed the Variance criteria:

Please give a detailed description of your proposal below:

I would like to subdivide a 2-acre lot with appropriate road frontage for one lot, but that leaves the main house short on Class VI road frontage by approximately 100;

1. **The variance will not be contrary to the public interest.** Owing to special conditions ie. Nerve damage/5 way bypass/stroke/glaucoma and other conditions that are worsening, I would like to subdivide the lot. Without a variance, I would have to sell my home and leave Pembroke after living here 28 years (hardship).

2. **The spirit of the ordinance is observed.** The lot in question does have enough width but narrows at the road frontage so it could be considered without violating the spirit or intent of the ordinance. It would not result in overcrowding.
3. **Substantial justice is done.** To deny this variance would cause me hardship, as I would have to sell my property in the next year or so to attain handling accessibility. To grant such variance would also increase the town's tax base. This variance is very important for my future going forward to retirement.
4. **The values of surrounding properties are not diminished.** I can only see improvement in property values. It will not diminish surrounding property values.
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:**  
**No fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property; and:**
    - ii. **The proposed uses is a reasonable one.**

The unnecessary hardship is that I would have to move after living on this property for 28 years. The building already exists and needs interior finishes and a well installed to be complete. The proposed use is reasonable as it would allow me to down size to a handicap accessible house.

**B. 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 make a reasonable use of it.**

I am only short approximately 100' on road frontage for the other existing home. It does not conform to existing dimensional requirements for road frontage.

Dana Carlucci asked the applicant why he could not obtain 200 feet of frontage for a second lot. Dana Pendergast confirmed that the town requires a property owner to pave the road to town specifications to the end of his frontage. David Arsenault stated he is asking relief for 100 feet of frontage because paving that distance would cost \$100,000. Mr. Arsenault stated that his original home burned down in 2011. The ranch style storage building is built on the original footprint. Due to medical issues, Mr. Arsenault stated that he plans to move into the ranch style structure. Blakely Minor received clarification that if an owner has 200 feet of Class V frontage and 100 feet of Class VI road frontage, and the road were continued as Class V, any variance approved would become void/ not needed any more for a property.

Jim Qunzani, 444 Sixth Range Road, asked for clarification that the 2-acre lot would be compliant with zoning on frontage and the larger 63-acre lot would be short 100 feet of frontage. Board members and audience attendees viewed photographs of the area.

David Arsenault stated that the existing duplex driveway is before the end of the paved area. The ranch access lower driveway is paved. Mr. Arsenault provided a recent survey plan to the Zoning Board of Adjustment. The interior of the ranch style structure is unfinished and has no well.

Bob Bourque asked if the remainder of the parcel would be sold off. Mr. Arsenault stated no, he will keep it and downsize to the one story ranch.

Donna Quinzani, 444 Sixth Rang Road, stated that when Mr. Arsenault's family home burned, he built a carriage house that could be a livable ranch. Why is he allowed to build first and ask for a variance after the fact? He was told to cement over the old septic system from the 1950's. The septic lines from the old system go under the driveway. Donna Quinzani stated that she was denied a variance for eleven feet frontage to put a second residence for elderly family member. Also, Donna Quinzani has seen Mr. Arsenault's property listed for sale at \$1.4 million dollars.

Jim Quinzani, 444 Sixth Range Road, alleged that the current septic does not conform to current requirements. Does the driveway have a driveway permit? After a fire, does a property owner need to meet new code to rebuild?

Dana Pendergast stated that the driveway was preexisting. The State of New Hampshire governs septic systems. The system must be designed for appropriate number of bedrooms, and approved by the State. After a fire, an owner has up to a year to rebuild what he had. A legal building permit is required for a rebuild. The ranch structure is on the footprint of the original house that burned.

Vice Chairman Hebert stated that within a year after a fire, the owner has a right to rebuild on the same footprint. The ranch structure was approved for storage, not occupancy. Dana Carlucci asked if the rebuilt unit were occupied as a residence, does it need to meet current code. Dana Pendergast stated that if the rebuild were occupied, it must meet current code. The board discussed that no one is currently living in the small outbuilding. Mr. Arsenault lives in the duplex, which is occupied.

Deidre Littlefield, 445 Sixth Range Road, asked if the town has plans to extend the road. Vice Chairman Hebert said no, not to his knowledge. Dana Pendergast stated that if an owner were to put a development in, he would have to pave a road for adequate frontage.

Donna Quinzani, 444 Sixth Range Road, stated that if an 11 feet frontage variance were granted, they would have been required to pave 11 feet to town specifications and put a hammerhead in for town vehicles to turn around. The 1950's septic system on David Arsenault's property leaks across the road to our property.

David Arsenault stated that his house burned down in 2011. In 2012 he received a complaint about a failed septic system when he was not living there. He had the septic pumped out, put in dye and and septic was monitored by Town Code Enforcement Officer. No leakage was detected. Vice Chairman Hebert stated that we have no information on the process done then. We will do our own due diligence. This concern should be brought to the attention of the highway department.

Dana Pendergast clarified that the ranch outbuilding has no certificate of occupancy. To be habitable, it needs sleeping area, food prep area, sanitary needs and running water. A well needs to be installed to State standards. A septic system evaluation by a certified inspector needs to be performed, matching size of system to number of bedrooms using it and documentation submitted that the State of NH determines septic adequate. Dana Pendergast confirmed that Mr. Arsenault had a building permit when he rebuilt, and the structure was classified as a storage building.

Jim Quinzani, 444 Sixth Range Road, stated that during recent work on Sixth Range Road, he observed a culvert located in the wrong spot. Again, Vice Chairman Hebert advised Mr. Quinzani to take this concern to the road agent/highway department.

Natalie Glisson summarized the case. This is **Case 19-07-Z A**, a request for a **Variance under Article IV Use Regulations, Section 143-21 Table of Dimensional and Density Regulations C Minimum lot frontage Duplex**. The applicant, David Arsenault, 441 6<sup>th</sup> Range Road is requesting a **Variance** to construct a new 2-acre lot with a ranch on it, leaving a duplex short 130 feet of road frontage when 230 feet is required. The property is located at 441 6<sup>th</sup> Range Road, Lot 262-55 in the R3 Zoning district and is owned by David Arsenault, 441 6<sup>th</sup> Range Road Pembroke, NH 03275. Mr. Arsenault is looking at downsizing because his current house is deteriorating and he has many health issues. The lot has enough width, but not enough frontage. Denying the variance would cause him hardship because he would have to sell his property and move out of Pembroke after 28 years. Dana Carlucci asked why he could not obtain the required amount of frontage. Dana Pendergast clarified that the applicant is asking for relief of 100 feet frontage to create a 2-acre lot with required frontage and a 63-acre lot without required frontage. Neighbor Donna Quinzani stated she had fallacies to correct. She shared that she did not feel it is fair that the applicant ask for or receive a variance as she feels he has illegal building and property modifications. She feels it would set an unfair precedent if granted due to the size of the request. James Quinzani spoke in opposition because he considers the septic system illegal and the setback is not correct. Dana Pendergast clarified that the driveway is permitted per town ordinance. Specialists design septic systems which are then submitted to the State of NH for approval. Dana Pendergast shared that an owner has up to a year to rebuild after a fire. Dana Carlucci asked if the rebuilt unit had to comply with current code and septic. Dana Pendergast stated that building and septic had to comply with current code to obtain a certificate of occupancy. Deidre Littlefield asked about time frame to extend road. Vice Chairman Hebert responded at this time, to his knowledge, there are no plans to extend Sixth Range Road. Blakely Miner asked about Certificate of Occupancy. Dana Pendergast clarified requirements needed for certificate of occupancy. Deidre Littlefield asked about building permit. Dana Pendergast confirmed applicant had a building permit for storage structure. James Quinzani mentioned several concerns that would go to the Highway Department.

There being no further comment, Vice Chairman Hebert closed the public hearing at 7:53 p.m.

### **Deliberations:**

ZBA members discussed the Variance criteria.

1. The variance will not be contrary to the public interest. Disagree. Bob Bourque stated it is contrary to public interest to waive 100 feet of frontage where 230 feet is required. That is too much to ask for in a rural agricultural zoning district. Dana Carlucci agreed there is an option to extend the road, and 100 feet is not too much to ask. Blakely Minor stated there are a variety of other options. Natalie Glisson stated the roads are old and the town has to adapt in some way. However, a shortage of 100 feet frontage is too drastic.
2. The spirit of the ordinance is observed. Disagree. Dana Carlucci stated that the ordinance requires 430 feet frontage for a single-family home and a duplex on a lot. Owner has option to sell off a piece of land and extend the road.
3. Substantial justice is done. Disagree. There is already an occupied duplex on the lot. There is no denying the medical hardship, however, one of the units could be modified to meet Mr. Arsenault's needs.
4. Property values are not diminished. Agree; no evidence was provided about property values.
5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. Disagree; the storage building was never a residence. Owner can request change of use to

residential or the use can remain storage. It is not unique to have a large parcel of land with two structures on it.

The Zoning Board of Adjustment discussed that there is plenty of room to expand the road frontage. The applicant could approach the Board of Selectmen to extend the road meeting town road requirements. The owner must build required frontage to town standards.

Vice Chairman Hebert confirmed that subdivisions fall under the purview of the Planning Board. If the applicant receives an unsatisfactory decision from the Zoning Board of Adjustment, he can go ahead with a subdivision application as long as he meets all the requirements. If this variance were granted, it would stay with the property. In the future, a developer could build a road with a 50-foot right-of-way.

**MOTION:** Dana Carlucci moved to DENY Case #19-07-Z, a request for a Variance under Article IV Use Regulations, Section 143-21 Table of Dimensional and Density Regulations C Minimum lot frontage Duplex. The applicant, David Arsenault, 441 6<sup>th</sup> Range Road is requesting a Variance to construct a new 2-acre lot with a ranch on it with 200' frontage and a 63-acre lot with a duplex and 130 feet of road frontage when 230 feet is required. The property is located at 441 6<sup>th</sup> Range Road, Lot 262-55 in the R3 Zoning district and is owned by David Arsenault, 441 6<sup>th</sup> Range Road Pembroke, NH 03275. The reason for denial is that four criteria are not met:

1. The variance will not be contrary to the public interest. Disagree, it is contrary to public interest to waive 100 feet of frontage where 230 feet is required. That is too much to ask for in a rural agricultural zoning district.
2. The spirit of the ordinance is observed. Disagree. The ordinance requires 430 feet frontage for a single-family home and a duplex on a lot. Owner has option to sell off a piece of land and extend the road.
3. Substantial justice is done. Disagree, There is already an occupied duplex on the lot. There is no denying the medical hardship; however, one of the units could be modified to meet Mr. Arsenault's needs.
4. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. Disagree, the storage building was never a residence. Owner can request change of use to residential or the use can remain storage.

Bob Bourque seconded.

**VOTE:** BOB - YES TOM - YES BLAKELY - YES  
DANA- YES NATALIE - YES

MOTION TO DENY VARIANCE PASSED ON A 5-0 VOTE

#### **CORRESPONDENCE** – none

#### **MINUTES OF PREVIOUS MEETINGS**

**MOTION:** Dana Carlucci moved to approve the minutes of June 24, 2019 as amended. Natalie Glisson seconded.

**VOTE:** BOB - YES TOM - YES BLAKELY - YES  
DANA- YES NATALIE - YES

MINUTES OF JUNE 24, 2019 APPROVED AS AMENDED ON A 5-0 VOTE.

#### **OLD BUSINESS** -none

**NEXT MEETING**

**Date of next ZBA meeting** – Vice Chairman Hebert noted the next ZBA meeting would be on **Monday, September 30, 2019 at 7:00 p.m.** unless any cases were filed by August deadline.

**ADJOURN** **Motion:** Dana Carlucci moved to adjourn. Blakely Miner seconded. Vote was unanimous in favor of motion. Meeting adjourned at 8:12 p.m.

Respectfully submitted,  
Susan P. Gifford  
Recording Secretary