

**Town of Seabrook  
Board of Adjustment  
August 26, 2020**

**Members Present:** Jeffrey Brown, David Davidson, Philip Howshan, Dr. Robert Lebold, James Sanborn, CEO Lacey Fowler and Secretary Judie Walker.

Not Present: Teresa Rowe-Thurlow

Roll Call

Jeff Brown opens the meeting at 7:00 PM and explains procedures and where the notices of meeting have been posted. We do have a full board tonight.

Old Business

July minutes

Motion: Phil Howshan                      As written

Second: Dave Davidson

Approve: Dr. Lebold and Jeff Brown

Abstain: James Sanborn

Cont. Cases

**CASE # 2020-007:** Patricia Degan off Cross Beach Road, Map 25 lot 17, Map 25 Lot 18 and Map 25 lot 19 undeveloped lands. The undersigned hereby request for a variance to the terms of Section 6 & 7 and asks that the said terms be waived to permit: The construction of one residential dwelling on a lot without sufficient road frontage on town road in the Conservation Zone in Zone #4 (& Zone 3 Beach Village District).

Mary Ganz representing the applicant Patricia Degan. She will go over the legal issues to support her case. 1. Granting variance: these lots are grandfather lots of record; prior to the zoning of 1972 they can be accessed by Colonial Road and Cross Beach. As indicated that the application and her husband have been working with Mark West West Environmental and Eben Lewis of NH DES to determine the environmentally best location to the proposed dwelling they would like to build. They determine the best location would be to access it from Colonial Road. They are hoping to build a retirement home. The will conserve most of the property keep it in Conservation. 2. The spirit of the ordinance is observed. The single family home to be built satisfies all the goals and spirits and the ordinance will be observed. There are two existing dwelling foundation as part of the zoning approval, She is willing to remove the existing foundations and as indicated she willing to protect the vast majority of these lots. 3. By granting this variance this will allow the applicant to utilize the property and in such justice is down. She will be making a very limited impact on the dunes and title wetlands.

4. By granting this variance the value of the surrounding properties are not diminished. It is our opinion with the development of a nice home this will increase the value of the other homes

5. Literal enforcement of the ordinance would result in unnecessary hardship. It will be an unnecessary hardship not lettering her build in the dunes. This area is under the jurisdiction of the state because of the dunes and she has been working diligently with qualified professionals to assist her with the necessary wetland and shoreland permits.

Henry Boyd of Millennium Engineering is also representing the Degans. When Henry first got involved and met the applicants he wasn't sure if this was even feasible, this is most dune habitat and off of Colonial Road which is a very ancient road. Colonial Road used to go all the way to Sandpiper Lane. First recommendation is to get Mark West involved who is a Wetland Scientist and he was asked to speak to the applicants and asks that Henry do a survey. We have done limited survey on the site. There is an existing survey of record that shows there is about 9 acres here a lot of it is marsh land. There are beautiful dunes. The property is just south of Cross Beach Road and on the West side of Ocean Boulevard below Cross Beach. There is access to the property from Cross Beach Road which is in the tidal buffer zone and in New Hampshire that is 100 feet. The tidal buffer zone extends 100 feet the tide line then you have another jurisdiction is another 250 to the tide line with is the Shoreland people. The base flood elevation is at elevation 9. Theoretically when it floods the water can actually come out to Colonial Road and at big tides that water consumes all of Cross Beach Road. There was an existing dwelling; a portion of that land was deeded to the town because of a boundary line. This property is just south of that.

Mark West of West Environmental a Wetland Scientist, because the wetlands bureau has jurisdiction over the dunes he as spend a lot of time with Dune vegetations, piping plovers, etc. You need a permit for any work within the tidal buffer zone and outside. He spoke with Eben Lewis and Eben asked Mark to bring Amy Lamb of the NH Natural Heritage Bureau who oversees plants species and dune. They did a site walk, to discuss if it is feasible, use the existing disturbed areas off of Colonial Road, that would be the least impact you would be out of the dune, because you will be in the old road way. The foundations are in the tidal wetlands and next to it. We talked about restoration the old foundations. They will fill it back in the native vegetation. They want to know where they can build the house. The sand dune has the species of heather (which is Hudsonia), which they want to protect and this is maritime woodland which is actually a shrub. Amy after looking around the site, it was decided where the house should go. They found a location that doesn't have any rare species and is historically disturbed, there is an old car metal there and also some invasive species shrubs so they can be removed so after looking around the site it was decided that this is where the house should go. They had a discussion was the minimization could be done on the site to further reduce potential impact. The State of NH regulations go to avoidance then go to minimization and then go to mitigation.

Minimization going to be done 1<sup>st</sup> is going to be put on piling. 2<sup>nd</sup> there would be parking under it but there would be no lawn or anything like that. They would have a driveway a with a one car turnaround for coming in and out and parking underneath, and then nothing else. The entire driveway would be pervious.

Last component was the preservation of for the remainder of the parcel so there would be a deed restriction for no construction, no disturbance, nothing else. The State even asks for little signs that say no disturb zone. They talked about potentially have a gate, because now people will drive in there so having the gate will stop people

from having a fire and other disturbances. It would allow people to hike, but no vehicles. Those are all the components that would be make this project feasible.

If there are species that they are concerned about will be removed and replanting. They will be dune transplanting. The total impact is about 5,000 sq ft, and then the remainder of the property will be permanently protected.

Dr. Lebold asked what come first the state permit or the town variance. The town variance, because you can't go any further without the towns variance. That why we did the pre work with State to make sure it was feasible with the state.

Dr. Lebold asked if their driveway will go past people's property. Mark informs yes it goes from Cross Beach to their property on Colonial Road.

Henry Boyd speaks on the public having rights to Colonial Road from Cross Beach for all the way to it terminus. Dr. Lebold asked if that would be in their deeds, Henry doesn't think so. It is existed as an ancient way. The town has rights within the right of way to do what they want. This instance this is an old historic road that goes back to colonial times.

Jeff Brown, Chair informs it used to be Route 1A years ago. Henry thinks it has people rights of way to go to Colonial Road. Jeff last he checked it is listed in the town code that Colonial Road in the town road. If it's a town road regardless what it looks like it still is a town road, so why are you asking for a frontage if on a town road. Mary did it as an abundance caution because it hasn't function as a town road. Jeff asks if it has to. Henry explains in the state law to receive a building permit you have to have frontage of off a public right away. This is a public right of way, not sure what class is but it's not travelable. Mary asks for a variance because it's not a typical road way. As it stand right now it is a pathway, some of it is consume completely with salt marsh, but it is there it s always been there. Henry really feels uncomfortable with gating it, because the town residents have right to the road.

Lacey asks if the Town liable to plow this road there was discussion. Henry doesn't think the town is liable because they never had to maintain it before, Lacey says but there was never a house there. Jeff is asking if there is a deed for the road. Henry has never seen a deed for it. NH archives might have the deed, but it will take some time for them to research it. Jeff is asking is a variance asks for frontage and there is no adequate frontage on a town road. Colonial Road why do you need a variance? Mary has been working on this for years and different building inspectors have asked for this, but if they don't need it they don't need it. Jeff concerns is the town because of some land issues years back the town own a squath that cuts Colonial Road off from Cross Beach Road. Which I don't think they can do that because Colonial Road is a town road, but now they have it listed as a driveway. Henry says no there is a proposed driveway showing the impact in the tidal buffer zone. The fact that they will be using Colonial Road as their driveway the town still has rights to the road.

Dr. Lebold as if the town will have to maintain Colonial Road. Henry says they would not be compelled to maintain Colonial Road. Dr Lebold says they are compelled to maintain Cross Beach Road Henry states that was due to political pressure. Mr. Howshan asks what if the residents wants to town to maintain the road,

Henry says then put a condition on the variance. Lacey asks if they did have to plow Colonial Road what about the salt. Henry will have to look into that.

Jeff asks Henry to go to Seabrook Conservation Commission and the Beach Commission. Conservation is just an advisory committee; they will go to the Conservation Commission to get their thoughts. Three things the Conservation Commission can do, not respond at all, respond negatively or respond positive. That doesn't mean that the DES won't approve. The DES will waive heavily as to what the conservation says. They can't go to any further without the ZBA approval. This is a use variance. Dr. Lebold asks Henry if he thinks this would be precedence setting, Henry says he won't disagree. Dr. Lebold two things no building or construction is permitted in this zone and two you are affecting all the town departments. Dr. Lebold is looking for written approval from all town departments before ZBA makes a decision.

Lacey asks whether they ever had water or sewer at the existing foundations. Lacey was under the impression that you can't have any more water and sewer systems allowed on Cross Beach Road or Colonial Road. Henry was under the same impression. Mrs. Degan met with the Sewer Department and they said they will allow sewer lines. It was asked about paving Cross Beach Road, State of NH will not allow Cross Beach Road to be paved because it's under water at high running tides at that same time the States says what is hooked up will stay and no new further hook-ups will be allowed.

Jeff wants to know about the status of dune preservation west of IA. The town says you can't even put a paver down on the dunes. The town does own some land West of IA in NH the dune is protected habitat. The state says is feasible if they met all the components. Lacey asks is the proposed dwelling going to be the Town Conservation Zone or Beach Zoning Zone, Henry believes the town conservation zone. Phil asks what happens if the fire department needs to get there, the driveway will be designed to support a fire truck, the driveway will be pervious and there should be gravel near the house to be able to handle fire trucks. This property has to be thoroughly vetted by the Army Corp of Engineers. Jeff wants to know if any of this land touches the Beach Village District it is possible that they have to go in front of the Beach Zoning Board. Henry will look at the map to see if they need a variance in the Beach Zoning.

Dr. Lebold makes a motion to request written confirmation from all departments including BOS and our conservation commission.

Second: Phil Howshan

Unanimous

Lacey suggests having a like a TRC Meeting for this project to discuss things as a group. Henry thinks it's a great idea to have TRC. Henry and Mark would present the case in front of department heads. Henry asks that Conservation Commission be invited to the meeting. Jeff asks that the TRC meeting be posted. The meeting will be held September 8th at the Selectmen's Meeting Room. Judie will take minutes.

Motion: Jeff's makes a motion this case be continued until next month.

Second: Dr. Lebold

Unanimous

**New Business**

**Case # 2020-12** George and Karen Francis 21 Ayer Circle, Map 9-98. The undersigned hereby request a variance to the terms of Section 7, sub section table 1 and asks that said terms be waived to permit: an addition within the 20' front setback in Zone 2R.

William Edwards of Edwards Surveying is representing the Francis's they are looking to build a 12 x 12 addition. Asking for a variance for 4.9' variance on the edging. Looking for variance to build an addition. They have frontage on three sides of their property

Anyone here to speak in favor the application. No one has spoken. Anyone here to speak against the application. Hearing none seeing none. After reviewing the petition and hearing the evidence they determine the following:

	<b>D. Davidson</b>	<b>J. Brown</b>	<b>P. Howshan</b>	<b>Dr. Lebold</b>	<b>J. Sanborn</b>
1	YES	YES	YES	YES	YES
2	YES	YES	YES	YES	YES
3	YES	YES	YES	YES	YES
4	YES	YES	YES	YES	YES
5	YES	YES	YES	YES	YES

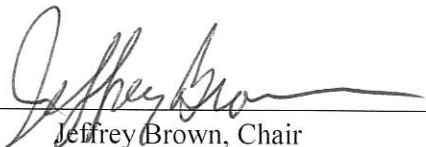
Motion to grant variance 4.9 feet in to the set back 1 story

Motion: Dr. Lebold  
Second: Phil Howshan  
Unanimous

Lacey wants to ask a question Deb Moore who had a notice of decision that was granted 2018. The house was in probate and the mother passed away. The notice is expiring the end of month. If they need to have extension do you want them to come back, we've done it a couple different ways in the past. Phil thinks we should standardize it. They should send abutters notices. Just an informal, just make sure they pay for abutters notices and the paper ad. Also Lacey wants to know on this application Deb Moore the condition was driveway off of Centennial. If the assessing is inaccurate should we have the applicants asked for a variance and have a certified plot plan. Dr. Lebold shows that the certified plot plan is on the checklist. They need a certified plot plan.

Motion: Dr. Lebold  
Second: Phil Howshan  
Unanimous

Motion: Dr. Lebold To adjourn meeting at 8:05 pm  
Second: David Davidson  
Unanimous

Signed:  \_\_\_\_\_  
Jeffrey Brown, Chair

NOTICE OF DECISION  
BOARD OF ADJUSTMENT  
TOWN OF SEABROOK, NEW HAMPSHIRE


You are hereby notified that the request of George and Karen Francis, 21 Ayer Circle Map 9 lot 98 for a, **VARIANCE**, APPEAL, SPECIAL EXCEPTION, EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENTS) OR EXPANSION OF THE NON-CONFORMING USE to: The Zoning Ordinance has been **Approved** for the reasons given in the following resolution passed by a majority of the BOARD OF ADJUSTMENTS:

ON CONDITION OF GRANTING ANY VARIANCE, APPEAL, SPECIAL EXCEPTION, EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENTS OR NON-CONFORMING USE IS THAT IT EXPIRES AT THE END OF TWO YEARS IF NOT COMPLETED WITHIN THAT TIME. RESOLVED, THAT THE FOLLOWING CONDITIONS SHALL BE ATTACHED TO SUCH USE:

**CASE# 2020-012:** George and Karen Francis, 21 Ayer Circle, Map 9-98. The undersigned hereby request a variance to the terms of Section 7, sub section table 1 and asks that said terms be waived to permit: an addition within the 20' front setback in Zone: 2R.

Motion: Dr. Lebold  
Second P. Howshan  
Yes: Unanimous

("Compliance with these conditions must be met before a building permit can be issued.")

(Signed)   
Jeffrey Brown  
Chairman  
Board of Adjustment

Date: 9 / 1 / 20

NOTE: Application for rehearing on any question of the above determination may be taken within thirty (30) days of said determination by any party to the action or person affected thereby according to the New Hampshire Revised Statutes Annotated, 1955, Chapter 31:74-76. Form Revised 2001