

Town of Seabrook  
Board of Adjustment  
May 22, 2024

Members Present: Jeff Brown, Chair, Dave Davidson, Teresa Thurlow, Phil Howshan, Jim Sanborn, Fidea Azouri, and Secretary Judie Walker

Jeff Brown, Chair opens the meeting at 7:00 pm and explains the procedures and where the notices of the meeting have been posted. We have a full board tonight. When speaking please say your name and address for the record.

Administrative Business:  
April 24, 2024, minutes  
Motion: David Davidson  
Second: Teresa Thurlow  
Unanimous

**New Business**

**CASE 2024-006** Michael and Amy McLaughlin, 227 Lower Collins St, Map 14-43, the undersigned hereby request a Variance to the terms of Section Zoning Map and asks that said terms be waived to permit residential use in Conservation Zone in Zone 4 Conservation.

Henry Boyd, Millenium Engineering with him tonight is Amy McLaughlin and her sons. Also Attorney Steven Shadallah. Years ago, the board granted variance to allow frontage for upland lots. They want to take the remaining land and build 9 homes and then deed the rest of the land to the town. All the lots are minimum lot size, they will not be building in the flood plain. They will not build in the wetlands.

Amy McLaughlin spoke and ask the board to reconsider the Phase 2. This land has been in the family since the 1600's we were very surprised that when her father passed away they realized that the land was in conservation land. We want to help with the home shortage.

**Anyone here to speak against the variance:**

Bob Laroche 18 Old Salt Drive sent a letter to the ZBA has 39 signatures from the abutters. He will read the letter he submitted. He believes it has always been conservation land. In the applicant's application it refers to case studies in other communities where a variance is granted. There is whole argument it was always in Conservation Land. In 2011 they went for a current use application for those who wish to preserve open space. It went into effect in 2011.

Alison Malloy 10 Salt Marsh Avenue  
Tim Rooney, 9 Marshview Circle  
Dave and Loris Burbine, 86 Marshview Circle  
Katerine Balletine, 211 Lower Collins Street.  
Jean Ramus 118 Marshview Circle.

John Watson, 90 Marshview Circle.  
Matthew Guerrero, 9 Old Salt Drive  
Members of Twin Brooks Campground believe it will destroy the business.  
Alan Falzarano, 70 Marshview Circle

**Anyone here to speak for the in favor:**

2002 Amy McLaughlin built her house and she says it was in zone 2R.  
Phil Franciosa 225 Lower Collins Street. He is in favor of the project.  
Owen McLaughlin 243 Lower Collins St. In favor of the project..  
Liam McLaughlin is in favor of the project in favor.  
Buzz Couillard 9 Merrimac Street Seabrook Beach. In favor of the project.

Attorney Shadullah you have the right to grant a variance. The town doesn't know when the land was rezoned. The fact that Mr. Adams filled out an application for current use shows that he didn't know it was zoned conservation.

The Zoning Board would like to go into Non-Pubic session:

Dave Davidson yes, Teresa Thurlow yes, James Sanborn Yes, Phil Howshan Yes, Fidae Azouri yes.

The Zoning Board would like to go into Public Session.

Dave Davidson yes, Teresa Thurlow yes, James Sanborn Yes, Phil Howshan Yes, Fidae Azouri yes.

After reviewing the petition and hearing the evidence they determine the following:

1. The variance is not contrary to the public interest:

F. Azouri	J. Sanborn	D. Davidson	P. Howshan	T. Thurlow
Yes	Yes	Yes	Yes	Yes

2. The spirit of the ordinance is observed:

F. Azouri	J. Sanborn	D. Davidson	P. Howshan	T. Thurlow
Yes	Yes	Yes	Yes	Yes

3. By granting this variance substantial justice is done.

F. Azouri	J. Sanborn	D. Davidson	P. Howshan	T. Thurlow
Yes	Yes	Yes	Yes	Yes

4. By granting this variance the value of surrounding properties are not diminished.

F. Azouri	J. Sanborn	D. Davidson	P. Howshan	T. Thurlow
Yes	Yes	Yes	Yes	Yes

5. Literal enforcement of the ordinance would result in unnecessary hardship.

F. Azouri	J. Sanborn	D. Davidson	P. Howshan	T. Thurlow
Yes	Yes	Yes	Yes	Yes

Move to grant the variance for 9 house lots with lot #10(22.20 acres) being donated to the town. With a condition that a substantial buffer is established between the proposed houses and the existing campground.

Motion: Dave Davidson

Second: Phil Howshan

Unanimous

### **Rehearing**

CASE# 2024-001 137 Folly Mill Road Realty, LLC, 137 Folly Mill Road, Map 9-226-1 the undersigned hereby request a variance to the terms of Section 7 and ask that said terms be waived to permit a building that is taller than 35' requesting 38' in Zone# 2R.

Henry Boyd explains they were granted a variance for the project. This site has been for decades 60 years or more has always had a factory on it. The factory provided a lot of jobs. This site has been industrial use. This will be a clean use, previously it had dangerous chemicals. The owners are willing to put up a vegetation wall that would block the noise.

Daniel Weaver, New Hampshire Certified General Real Estate Appraiser appraised the property. He could find no evidence this would impact on the property values will not be affected.

The abutters contend they would go through an industrial park to get to their houses. This is a classic case of hardship.

Anyone here to speak for the in favor of the variance any here to speak against.

Duncan MacCallum Attorney from Portsmouth, the applicant's justification I don't want to obey. Attorney MacCallum goes over the 5 criteria's; they must meet all the criteria to get a variance approved. He talks about the zoning change.

### **Residents Opposed:**

Phil Filippone 6 Charles Henry Way.

John Reynolds 107 Folly Mill Road

Peter Cassidy 103 Folly Mill

Phillip Hicks 108 Folly Mill Road.

Pablo Perez 25 Folly Mill terrace traffic problems.

Erica Linehan 118 Folly Mill Road.

Monica Brooks 111 Folly Mill Road

Christine Bachner 51 Folly Mill Road

Rick Brady 5 Charles Henry Way.

Duncan MacCallum asked Town Council if he received his correspondence Will Warren did receive correspondence, but he doesn't believe the ZBA members received the correspondence. Attorney MacCallum informs the board they don't have the right to rezone the property that is the authority of the Board of Selectmen.

Henry Boyd in closing, we stated this building probably will not be this large. This is part of the planning process. The intent is to provide screening.

Attorney Steve Shadullah every time you get a use variance you are allowing a use. RSA 674.28 use variance. There is a deed restriction for this property that precludes this property from being used for residential use. The fact that you can use it is not the test.

Zoning Board would like to Meet with Town Council Will Warren

Motion: Dave Davidson

Second: Jeff Brown

Unanimous

The Zoning Board would like to go into non-public session:

Jeff Brown yes, Dave Davidson yes, Jim Sanborn yes, Phil Howshan yes, Fidae Azouri yes.

The Zoning Board would like to go to public session:

Jeff Brown yes, Dave Davidson yes, Jim Sanborn yes, Phil Howshan yes, Fidae Azouri yes.

The correspondence that was sent to town council cannot be part of the record for this meeting.

First vote to allow industrial use in a residential zone.

After reviewing the petition and hearing the evidence they determine the following:

- 1. The variance is not contrary to the public interest:

J Brown	J. Sanborn	D. Davidson	P. Howshan	F. Azouri
Yes	Yes	Yes	Yes	Yes

- 2. The spirit of the ordinance is observed:

J Brown	J. Sanborn	D. Davidson	P. Howshan	F. Azouri
Yes	Yes	Yes	Yes	Yes

- 3. By granting this variance substantial justice is done.

J Brown	J. Sanborn	D. Davidson	P. Howshan	F. Azouri
Yes	Yes	Yes	Yes	Yes

- 4. By granting this variance the value of surrounding properties are not diminished.

J Brown	J. Sanborn	D. Davidson	P. Howshan	F. Azouri
Yes	Yes	Yes	Yes	Yes

- 5. Literal enforcement of the ordinance would result in unnecessary hardship.

J Brown	J. Sanborn	D. Davidson	P. Howshan	F. Azouri
---------	------------	-------------	------------	-----------

Move to allow industrial use in Zone 2R.

Motion: Dave Davidson

Second: Phil Howshan

Unanimous

Second Vote to grant a variance for Map 9, Lot 226-1 from zoning ordinance section 7, dimensional requirements to allow a maximum building height of thirty-eight feet (38') in Zone 2R, where the maximum building height is thirty-five feet (35').

After reviewing the petition and hearing the evidence they determine the following:

1. The variance is not contrary to the public interest:

J Brown	J. Sanborn	D. Davidson	P. Howshan	F. Azouri
Yes	Yes	Yes	Yes	Yes

2. The spirit of the ordinance is observed:

J Brown	J. Sanborn	D. Davidson	P. Howshan	F. Azouri
Yes	Yes	Yes	Yes	Yes

3. By granting this variance substantial justice is done.

J Brown	J. Sanborn	D. Davidson	P. Howshan	F. Azouri
Yes	Yes	Yes	Yes	Yes

4. By granting this variance the value of surrounding properties are not diminished.

J Brown	J. Sanborn	D. Davidson	P. Howshan	F. Azouri
Yes	Yes	Yes	Yes	Yes

5. Literal enforcement of the ordinance would result in unnecessary hardship.

J Brown	J. Sanborn	D. Davidson	P. Howshan	F. Azouri
Yes	Yes	Yes	Yes	Yes

Move to grant the variance for a building height 38' instead of 35'.

Motion: Dave Davidson

Second: Jim Sanborn

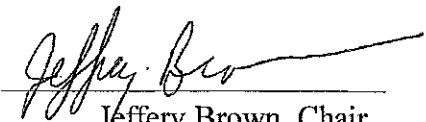
Unanimous

Meeting adjourned 10:16 pm

Motion: Jeff Brown

Second: Phil Howshan

Unanimous

  
Jeffery Brown, Chair

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

You are hereby notified that the request of Michael and Amy McLaughlin, 243 Lower Collins Street, Map 14 Lot 43 for **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 May 22, 2024:

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 2024-006** Michael and Amy McLaughlin, 227 Lower Collins St, Map 14-43, the undersigned hereby request a Variance to the terms of Section Zoning Map and asks that said terms be waived to permit residential use in Conservation Zone in Zone 4 Conservation.


Move to grant the variance for 9 house lots with lot #10(22.20 acres) being donated to the town, with a condition that a substantial buffer is established between the proposed houses and the existing campground.

Motion: Dave Davidson

Second: Phil Howshan

Unanimous

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

(Signed)   
Jeffrey Brown  
Chairman  
Board of Adjustment

Date: 6 26 24

ZONING BOARD OF ADJUSTMENT  
TOWN OF SEABROOK, NEW HAMPSHIRE

**NOTICE OF DECISION AND FINDINGS OF FACT**

APPLICANT: 137 Folly Mill Road Realty LLC  
PROPERTY: 137 Folly Mill Road, Map 9, Lot 226-1  
ZONE: 2R (Residential)  
DECISION DATE: May 22, 2024

---

The Town of Seabrook (“**Town**”) Zoning Board of Adjustment (“**ZBA**”) issues this Notice of Decision and Findings of Fact in accordance with RSA 676:3. The ZBA hereby incorporates by reference such facts and evidence as are reflected in the submittals, meeting minutes, and statements that were submitted, made, or given in connection with Case No. 2024-001, and which support the findings and decisions set forth below.

**NOTICE OF DECISION:**

- I. At a duly noticed rehearing conducted on April 22, 2024, the ZBA unanimously voted to grant a variance for Map 9, Lot 226-1 from Zoning Ordinance Section 6, Permitted Uses, Table 1, to allow an “Industrial-Light” use, as defined by Section 2 of the Zoning Ordinance, in Zone 2R (Residential), where Industrial-Light uses are not permitted.
- II. At a duly noticed rehearing conducted on April 22, 2024, the ZBA unanimously voted to grant a variance for Map 9, Lot 226-1 from Zoning Ordinance Section 7, Dimensional Requirements, to allow a maximum Building Height of thirty-eight feet (38’) in Zone 2R (Residential), where the maximum Building Height is thirty-five feet (35’).

**FINDINGS OF FACT:**

1. On December 5, 2023, 137 Folly Mill Road Realty LLC (“**Applicant**”) applied to the ZBA for the following variances from the Town of Seabrook Zoning Ordinance (“**Zoning Ordinance**” or just “**Ordinance**”) for the property at 137 Folly Mill Road, Map 9, Lot 226-1 (“**Property**”):

- a. A variance from Section 6, Permitted Uses, Table 1, to allow an industrial building in the 2R (Residential) Zone, where Industrial-Light and Industrial-Heavy uses are not permitted; and
- b. A variance from Section 7, Dimensional Requirements, to allow a maximum Building Height of thirty-eight feet (38') in the 2R (Residential) Zone, where the maximum Building Height is thirty-five feet (35').

The Plans submitted by the Applicant depicted proposed industrial building of 94,840 square feet. The Applicant explained that the height variance was requested to allow storage of an additional stack of pallets within the building.

2. The Property is located at the end of Folly Mill Road, near the eastern side of I-95. The Property has been used for Industrial-Light and/or Industrial-Heavy uses for decades, long before the Property was zoned 2R (Residential). Properties on the opposite (western) side of I-95 are situated in Zone 3 (Industrial). There are industrial buildings on the parcel abutting the western boundary of the Property (Map 9, Lot 228), and there is an office building on the lot to the north/northeast (Map 9, Lot 226). To the east/southeast of the Property, there is a residential neighborhood along Folly Mill Road and Folly Mill Terrace, consisting primarily of single-family residences.
3. The ZBA commenced a duly noticed public hearing on January 24, 2024. At the request of the Applicant, whose representative, Henry Boyd ("**Mr. Boyd**"), had a family emergency, the ZBA voted to continue the hearing, pursuant to RSA 676:7, V, to its next regularly scheduled meeting on February 28, 2024. At the hearing on February 28, 2024, the ZBA heard testimony and accepted evidence from the Applicant. The only members of the public to offer any comment were the Graysons, of 109 Folly Mill Road. Following public comment, the ZBA unanimously voted to grant the requested variances.
4. On or about March 28, 2024, Attorney Duncan J. MacCallum ("**Attorney MacCallum**") submitted a Motion for Rehearing on behalf of Peter J. Cassidy, Nongyao Cassidy, John C. Reynolds, Jane Reynolds, Robert M. Grayson, Linda A. Grayson, Trudy Atkinson, Ray Atkinson, Christine Bochner, John Bollettiero, Monica Brooks, Stacie Brown, Candace Castro, George Charos, Gerda Chasethom, William F. Colby, Joyce Colby, Roseanne Enos, Lisa Frascione, Sandy Freihofer, Suzanne Giordano, Douglas Grayson, Kristen Guimaraes, Fransuel Guimaraes, Melissa Havilla-Traver, Philip Hicks, Mary Hicks, James Leaver, Laura Linahan, Tina Maguire, Peter T. Mizzone, Lance Morrison, Marie O'Hanian, Pablo Perez, Laura Peterson, Antonio Pietrantonio, Nancy Pietrantonio, Martin Senemet, Justin Snyder, James Tatarczuk, and James Wersakas (while the ZBA acknowledges that not all of these individuals are necessarily abutters, they are



collectively referred to hereinafter as “**the Abutters**” for brevity). On April 12, 2024, Attorney MacCallum submitted an April 11, 2024 letter from Realtor Jim Lee (“**Mr. Lee**”). Mr. Lee’s letter concluded that the requested variances would diminish the values of surrounding properties.

5. On or about April 22, 2024, the Applicant, through Attorney Steven G. Shadallah (“**Attorney Shadallah**”), filed a written Response to the Abutters’ Motion for Rehearing. The Applicant’s Response was accompanied by a Value Impact & Alternative Use Determination Letter and a Visual Impact Assessment prepared by Certified General Appraiser Daniel G. Weaver (“**Mr. Weaver**”). Mr. Weaver’s letter explained, in detail, why and how the generalizations contained in Mr. Lee’s letter were overly broad and not necessarily accurate from an appraisal standpoint. Mr. Weaver’s assessment “indicate[d] that the proposed light industrial building, with an emphasis on a substantial and well-planned landscaping scheme, shows limited potential to negatively impact adjacent property values.”
6. Mr. Weaver also noted that “[g]iven the site’s constraints, residential development is not feasible. The property’s proximity to ongoing industrial activities, its location within the impact zone of traffic noise from the 103,563 vehicles that pass daily on I95 (according to the 2023 NH Traffic Study), and its historical designation for heavy (now light) industrial use, all restrict its development to non-residential purposes.”
7. At the ZBA’s April 24, 2024 meeting, the ZBA voted to grant the Abutters’ Request for Rehearing on the grounds that new information had been produced which was not presented or available at the February 28, 2024 hearing.
8. The ZBA conducted a duly noticed rehearing on May 22, 2024, at which it heard testimony and legal arguments from the Applicant’s representative (Henry Boyd), Attorney Shadallah, Mr. Weaver, Attorney MacCallum, and members of the public including John Reynolds, Peter Cassidy, Philip Hicks, Pablo Perez, Erica Linahan, Monica Brooks, Christine Bochner, and Richard Brady.
9. Mr. Weaver testified for the Applicant, explaining that he conducted an independent analysis of the Property, the proposed industrial building, and the impact they will have on the values of surrounding properties. Mr. Weaver testified that, in his professional opinion, the proposed industrial building will not have a considerable impact on the values of surrounding properties.
10. The Abutters testified that they believe the industrial building being proposed by the Applicant will diminish the values of surrounding properties. Relying, in part, on visual aids depicting the size of the proposed industrial building in relation to surrounding properties, the Abutters testified that the proposed industrial building

will be highly visible from surrounding properties. Mr. Boyd noted that the visual aids submitted by the Abutters were not accurate depictions of the proposed industrial building inasmuch as they did not depict any of the screening that is proposed by the Applicant. Attorney MacCallum requested that the visual aids be included in the ZBA's record, and it was requested that copies be submitted to ZBA Secretary Judie Walker to be added to the record.

11. The Abutters also testified that they are concerned about potential detrimental impacts on the surrounding neighborhood that may be caused by truck traffic driving to and from the Property. Several of the Abutters testified that there is already considerable truck traffic associated with the existing light industrial use of the Property, that the existing truck traffic poses a hazard to wildlife and, presumably, humans.
12. After hearing from the Applicant, the Abutters, and other members of the public, the ZBA found that the requested variances satisfy each of the statutory variance criteria.
13. With respect to the first and second variance criteria, the ZBA found that the requested variances will not be contrary to public interest and that the spirit of the ordinance is observed. The requested variances will not alter the essential character of the neighborhood because Property has been used for Industrial-Heavy and Industrial-Light activities for decades, and the existing Industrial-Light use of the Property has become characteristic of the neighborhood. While the Abutters raised concerns about traffic safety, they also testified that there is already a large volume of truck traffic associated with the existing Industrial-Light use of the Property.
14. Given that the current use of the Property is Industrial-Light, that the historical use of the Property was Industrial-Heavy, and that the existing use of the Property already generates considerable truck traffic, the requested variances, allowing a light industrial use and allowing a building height of thirty-eight feet (38') instead of thirty-five feet (35'), will not pose a hazard to the public health, safety, or welfare.
15. The basic zoning objectives of the Zoning Ordinance include promoting the economic development of the Town's resources and encouraging the most appropriate use of land throughout the Town of Seabrook. The requested variances will promote economic development by allowing a local business to expand its operations on a Property that has historically been used for both Industrial-Heavy and Industrial-Light activities. Granting the requested variances encourages the most appropriate use for the Property. As noted above, the Property has been used for industrial activity for decades. The ZBA also found Mr.

Weaver's testimony credible that the Property is not well suited for residential development.

16. With respect to the third variance criterion, the ZBA found that substantial justice is done by granting the requested variances. Any public gain if the variances are denied would be minimal because the Property is already used for Industrial-Light activities, because the existing use of the Property already generates considerable volumes of truck traffic, and the existing Industrial-Light use is grandfathered and may continue indefinitely. The only potential gain for some of the Abutters, which is not applicable to the public as a whole, is that denying the variances would prevent visual impacts from a larger industrial building, although visual impacts will be mitigated by screening that the Applicant has proposed.
17. Denying the requested variances would result in a loss to the Applicant in that it would prevent the Applicant from expanding its business activities and making the best and most profitable use of the Property. This loss to the Applicant significantly outweighs any minimal gain to the general public if the requested variances are denied.
18. With respect to the fourth variance criterion, the ZBA found that the values of surrounding properties will not be diminished. The ZBA found that the most persuasive evidence of value was the Value Impact & Alternative Use Determination Letter, Visual Impact Assessment, and the testimony of Mr. Weaver, as a licensed general appraiser. Mr. Weaver concluded in his written materials that the proposed industrial building has only limited potential to diminish the values of surrounding properties and that the Applicant's Property cannot practicably be used for residential purposes. Mr. Weaver testified to the same, explaining that the proposed building will not have a considerable impact on the values of surrounding properties. Mr. Weaver's conclusions are consistent with the ZBA's own experience and knowledge of the area, which indicates that granting the requested variances will not diminish the values of surrounding properties.
19. With respect to the final variance criterion, the ZBA found that literal enforcement of the Zoning Ordinance would result in an unnecessary hardship. The special conditions distinguishing the Property from other properties in the surrounding neighborhood include the fact that the Property has been used for decades for Industrial-Heavy activities, that the Property is still used for Industrial-Light activities, that the existing grandfathered use of the Property generates a considerable amount of truck traffic, and that the Property is an oddly shaped 5.17 +/- parcel of land that is not suited to residential development. These characteristics plainly distinguish the Property from the residential properties in the surrounding neighborhood.

20. The public purposes of Section 6 of the Zoning Ordinance, to the extent that it prohibits industrial uses in the 2R Zone, and Section 7, to the extent that it limits building heights within the 2R Zone to thirty-five feet (35'), are to promote the public health, safety, and welfare, and to conserve the value of property. Based on the special conditions identified above, there is no fair or substantial relationship between these purposes and strict application of Sections 6 and 7 to the Applicant's Property. Granting the requested variances will not harm the public health, safety, or welfare, nor will it diminish the values of surrounding properties, as explained in more detail above. Denying the requested variances, therefore, would not promote the public purposes of the Ordinance provisions at issue.
21. The proposed use is also reasonable. Industrial-Light uses are permitted in many areas throughout the Town, including Industrial Zone 3 on the opposite side of I-93 from where the Property is located. The Property has been used for decades for industrial activities and it is still used for Industrial-Light purposes. Given that the Industrial-Light use of the Property is reasonable, increasing the height of the proposed industrial building by just three feet (3') is also reasonable. The ZBA found no meaningful difference between a 35-foot-tall industrial building and a 38-foot-tall industrial building, and the added height will allow the Applicant to make the most use of the space for stacking pallets.
22. Based on the foregoing, the ZBA found that all of the statutory variance criteria were met and unanimously voted to grant the requested variances.

Respectfully,

**TOWN OF SEABROOK  
ZONING BOARD OF ADJUSTMENT**

Dated: 6 26 24

By:   
Jeffrey Brown, Chairman, Duly Authorized