

BARRE TOWN DEVELOPMENT REVIEW BOARD MINUTES FOR JANUARY 13, 2021

The Barre Town Development Review Board held their regular meeting and public hearings on **Wednesday, January 13, 2021** beginning at 7:00 p.m. by video and tele conference. There was no physical meeting place for this meeting under Covid-19 legislative authority.

MEMBERS

Cedric Sanborn, Chris Neddo, Mark Reaves, Jon Valsangiacomo, Jim Fecteau, and Angela Valentinetti
Alternates: Michael Gilbar

MEMBERS ABSENT:

Charles Thygesen, Sr.

STAFF PRESENT

Chris Violette and Cindy Spaulding

OTHERS PRESENT:

Craig Chase (consultant for Poulin and Ducharme), Ellen Poulin, Jeff Perkins, and Jeff Blow

CHANGES TO THE AGENDA:

Mr. Reaves called the meeting to order at 7:00 p.m. There were no changes to the agenda.

APPROVE MINUTES

December 9, 2020

A motion by Mr. Valsangiacomo, seconded by Ms. Valentinetti, the Development Review Board approved the minutes of December 9, 2020 as written. Vote 7-0-0.

SUBDIVISION REVIEW

APPLICANT: Ellen Poulin/ 3 lot subdivision
Preliminary

Request by Ellen Poulin for preliminary review of a three-lot subdivision located at 136 Nichols Road; Parcel ID: 009/009.00; Zoned medium density residential: P-20000018.

Consultant: Chase & Chase

Date: December 3, 2020

STAFF REPORT/REVIEW COMMENTS FROM CHRIS VIOLETTE, PLANNING OFFICER

This is preliminary review of a 3-lot subdivision of land (was on the December agenda as a 2-lot subdivision) by deferral that proposes to take a 26.63-acre parcel of land and create three lots (two new). The subject lot has road frontage on Nichols Road and Farwell Street, and is located in a medium-density residential zone with a minimum lot size of 2.0 acres and 200' of road frontage. The

development in this area is mostly residential along with agricultural, industrial, and the Montessori School is close by. Final approval is also warned on this month's meeting agenda.

The proposal calls for the creation of lot 2 & 3. As proposed, Lot 2 will be 19.3 acres in size and will consist mostly of wooded land, undeveloped land with a couple of minor exceptions. Lot 2 will have over 824' of road frontage along Farwell Street. The proposed parcel will be encumbered by several existing springs with rights belonging to various abutters. In addition, there is a small outbuilding belonging to abutter Hayward on Lot 2 along with a more significant encroachment from the same abutter which is detailed below.

Lot 3 is proposed to be 2.33 acres in size with open and wooded undeveloped land. Lot 3 will have 580' of road frontage along Nichols Road and 197' along Farwell Street. While I say this lot is undeveloped that is not totally accurate. It is not developed by the applicant; abutter Hayward has a metal garage that sits entirely on the applicant's land. The garage placement and the proposed boundary lines would place most of the shed on lot 3 but it does cross the proposed line onto lot 2. Mr. Hayward has been sent a letter to remove the garage.

Lot 1 will decrease in size to 5 acres and contains the applicant's homestead, a single-family dwelling and detached garage. Lot 1 will retain 604' of road frontage along Nichols Road. Onsite water and sewer serve lot 1.

The applicant has not indicated intent with either new parcel, there has been some indication that it will be sold but no onsite septic system has been designed to my knowledge, so it is likely to stay undeveloped, at least for now. As a result, this subdivision will be considered to defer development information to a later date.

As proposed, both lots conform to both minimum lot standards within the Zoning Bylaw and requirements of the Subdivision Ordinance.

SUMMARY OF RECOMMENDATIONS & CONDITIONS:

Relatively simple subdivision with no new development proposed. All three lots as proposed conform to the minimum standards within both the Zoning Bylaw and Subdivision Ordinance. Really the only hiccup is the existing building owned by abutter Hayward that will straddle the proposed common line between lots 2&3. Normally we would not allow a line to be created that did not allow existing buildings to conform to setback. However, this is not necessarily the fault of the applicant (although the garage has existed for some time) and given that the abutter has been notified to remove the garage, hopefully it will get removed or relocated.

I would point out a scenario that I could see happening, if the abutter should buy lot 3 in an attempt to be able to leave the garage in place, the garage will still not only not meet setback but will cross over onto lot 2. Either way the building must be relocated as proposed by the current layout.

I recommend approval of preliminary and moving to final next on this agenda.

MEETING DISCUSSION:

Mr. Violette provided an overview of his staff report of the Poulin three-lot subdivision. Mr. Chase recused himself as a member.

Highlights of discussion:

- Metal out-building owned by abutter Hayward on Ms. Poulin's property with her permission.
- Legal request from Ms. Poulin to abutter Hayward to remove the out-building in a timely manner.
- Q: Can there be a condition for the outbuilding to be removed? A: Yes
- Q: why the boundary line for Lots 2 & 3 through the outbuilding? A: Applicant wanted it that way.
- Q: Did Mr. Hayward get a building permit for the outbuilding and did he represent it was on his property. A: There is no building permit on record. If unpermitted building the enforcement against Ms. Poulin not Mr. Hayward as it is on her property.
- Process of the preliminary permit approval vs final approval with condition.
- Suggest moving the proposed property line to meet the required setbacks for the non-conforming structure.

On motion by Mr. Valsangiacomo, seconded by Mr. Fecteau, the Development Review Board continued to February 10 17, 2021, the request by Ellen Poulin for a preliminary review of a three-lot subdivision located at 136 Nichols Road, PID: 009/009.00; Zoned medium density residential: P-20000018. Vote 7-0-0.

APPLICANT: Pierre Ducharme / 2 lot subdivision
Preliminary

Request by Pierre Ducharme for preliminary review of a two-lot subdivision located on Baptist Street; Parcel ID: 013/002.00; Zoned high density residential: P-20000019.

Consultant: Chase & Chase

Date: December 21, 2020

STAFF REPORT/REVIEW COMMENTS FROM CHRIS VIOLETTE,
PLANNING OFFICER

This is preliminary review of a 2-lot subdivision of land that proposes to take a 54.9-acre parcel of land and create two lots. The subject lot has approximately 1,500' of road frontage along Baptist Street, in a high-density residential zone with a minimum lot size of 1/3 acre (with municipal water and sewer) and 110' of road frontage. Final approval is also warned on this month's meeting agenda.

The proposal calls for the creation of lot 2 which will be 2.6 acres in size with 140' of road frontage along Baptist Street. The proposed parcel is entirely wooded and undeveloped. No plans are shown

for development thus requiring a deferral of development be placed on the lot. Future development will have to come back to the Development Review Board for approval.

There appears to be spring rights located on the proposed new parcel in favor of abutter Newton.

Lot 1 will decrease in size to 52.3 acres and will retain over 1,300' of road frontage along Baptist Street.

As proposed, both lots conform to both minimum lot standards within the Zoning Bylaw and requirements of the Subdivision Ordinance.

SUMMARY OF RECOMMENDATIONS & CONDITIONS:

This is a simple subdivision by deferral request that meets both Zoning Bylaw and Subdivision Ordinance. No new development is planned. I recommend preliminary approval and move this request to final.

MEETING DISCUSSION:

Mr. Violette announced that Mr. Ducharme has asked for a continuance as he (Ducharme), was not satisfied with where the boundary lines were for the proposed subdivision.

On motion by Ms. Valentinetti, seconded by Mr. Valsangiacomo, the Development Review Board continued to February 10 17, 2021, request by Pierre Ducharme for preliminary review of a two-lot subdivision located on Baptist Street; Parcel ID: 013/002.00; Zoned high density residential: P-20000019. Vote 7-0-0.

WARNED PUBLIC HEARING

Subdivision

APPLICANT: Ellen Poulin/ 3 lot subdivision

Final warned public hearing

Request by Ellen Poulin for final review of a three-lot subdivision located at 136 Nichols Road; Parcel ID: 009/009.00; Zoned medium density residential: P-20000018.

Consultant: Chase & Chase

Date: September 22, 2020

**STAFF REPORT/REVIEW COMMENTS FROM CHRIS VIOLETTE,
PLANNING OFFICER**

This is a warned public hearing for review of a 3-lot subdivision of land (was on the December agenda as a 2-lot subdivision) by deferral that proposes to take a 26.63-acre parcel of land and create three

lots (two new). Final review assumes preliminary approval earlier on this agenda. The subject lot has road frontage on Nichols Road and Farwell Street, and is located in a medium-density residential zone with a minimum lot size of 2.0 acres and 200' of road frontage. The development in this area is mostly residential along with agricultural, industrial, and the Montessori School is close by. Final approval is also warned on this month's meeting agenda.

The proposal calls for the creation of lot 2 & 3. As proposed, Lot 2 will be 19.3 acres in size and will consist mostly of wooded land, undeveloped land with a couple of minor exceptions. Lot 2 will have over 824' of road frontage along Farwell Street. The proposed parcel will be encumbered by several existing springs with rights belonging to various abutters. In addition, there is a small outbuilding belonging to abutter Hayward on Lot 2 along with a more significant encroachment from the same abutter which is detailed below.

Lot 3 is proposed to be 2.33 acres in size with open and wooded undeveloped land. Lot 3 will have 580' of road frontage along Nichols Road and 197' along Farwell Street. While I say this lot is undeveloped that is not totally accurate. It is not developed by the applicant; abutter Hayward has a metal garage that sites entirely on the applicant's land. The garage placement and the proposed boundary lines would place most of the shed on lot 3 but it does cross the proposed line onto lot 2. Mr. Hayward has been sent a letter to remove the garage.

Lot 1 will decrease in size to 5 acres and contains the applicant's homestead, a single-family dwelling and detached garage. Lot 1 will retain 604' of road frontage along Nichols Road. Onsite water and sewer serve lot 1.

The applicant has not indicated intent with either new parcel, there has been some indication that it will be sold but no onsite septic system has been designed to my knowledge, so it is likely to stay undeveloped, at least for now. As a result, this subdivision will be considered to defer development information to a later date.

As proposed, both lots conform to both minimum lot standards within the Zoning Bylaw and requirements of the Subdivision Ordinance.

SUMMARY OF RECOMMENDATIONS & CONDITIONS:

Relatively simple subdivision with no new development proposed. All three lots as proposed conform to the minimum standards within both the Zoning Bylaw and Subdivision Ordinance (deferral). Really the only hiccup is the existing building owned by abutter Hayward that will straddle the proposed common line between lots 2&3. Normally we would not allow a line to be created that did not allow existing buildings to conform to setback. However, this is not necessarily the fault of the applicant (although the garage has existed for some time) and given that the abutter has been notified to remove the garage, hopefully it will get removed or relocated.

I would point out a scenario that I could see happening, if the abutter should buy lot 3 in an attempt to be able to leave the garage in place, the garage will still not only not meet setback but will cross over onto lot 2. Either way the building must be relocated as proposed by the current layout.

I'd defer to the board regarding the comfort level of granting final approval with the existing garage crossing over one of the proposed property lines. The applicant has informed abutter Hayward to remove the shed from her land and will provide us a copy of the letter. It would be a little unfortunate

to hold the applicant up from receiving approval of this subdivision, but I have a slight concern about the scenario I mentioned above and the shed not getting moved at all.

When approved I suggest the conditions below:

- 1) Any condition the board feels appropriate to approve the request with assurance the existing garage will end up compliant.
- 2) This subdivision is approved by deferral meaning that to fully comply with the subdivision ordinance, any proposed development of lot 2 & 3 must come back to the Development Review Board for review and approval.
- 3) One (1) (18" x 24") recording plat must be submitted to the Planning office for filing in the Town of Barre land records in accordance with Barre Town subdivision regulation and state statute within 180-days of approval.
- 4) Three (3) sets (24" x 36") paper copies of the final approved plan must be submitted to the Planning Office within 90-days of approval unless a request to extend is made and approved by staff.
- 5) An electronic copy of the final approved plan provided to the Planning and Zoning Office within 30-days of final approval.
- 6) No changes to the approved plan can be made unless first reviewed by either the Town Planning Officer, or the Town Engineer for a determination of significance. If it is determined that a proposed change is significant, the plan will be required to go back before the Development Review Board for approval of the proposed change.
- 7) Failure to comply with any conditions as stated herein, could lead to nullification of this subdivision.

On motion by Mr. Fecteau, second by Mr. Valsangiacomo, the DRB continued to February 10 17, 2021, the request by Ellen Poulin for a final review of a three-lot subdivision located at 136 Nichols Road, PID: 009/009.00; Zoned medium density residential: P-20000018. Vote 7-0-0.

APPLICANT: Pierre Ducharme / 2 lot subdivision

Final warned public hearing

Request by Pierre Ducharme for final review of a two-lot subdivision located on Baptist Street; Parcel ID: 013/002.00; Zoned high density residential: P-20000019.

Consultant: Chase & Chase

Date: December 21, 2020

STAFF REPORT/REVIEW COMMENTS FROM CHRIS VIOLETTE, PLANNING OFFICER

This is a warned public hearing for a 2-lot subdivision of land that proposes to take a 54.9-acre parcel of land and create two lots (one new). The subject lot has approximately 1,500' of road frontage along Baptist Street, in a high-density residential zone with a minimum lot size of 1/3 acre (with municipal water and sewer) and 110' of road frontage. Final review assumes preliminary approval was granted earlier on this agenda.

The proposal calls for the creation of lot 2 which will be 2.6 acres in size with 140' of road frontage along Baptist Street. The proposed parcel is entirely wooded and undeveloped. No plans are shown for development thus requiring a deferral of development be placed on the lot. Future development will have to come back to the Development Review Board for approval.

There appears to be spring rights located on the proposed new parcel in favor of abutter Newton. Lot 1 will decrease in size to 52.3 acres and will retain over 1,300' of road frontage along Baptist Street.

As proposed, both lots conform to both minimum lot standards within the Zoning Bylaw and requirements of the Subdivision Ordinance.

SUMMARY OF RECOMMENDATIONS & CONDITIONS:

This is a simple subdivision by deferral request that meets both Zoning Bylaw and Subdivision Ordinance (deferral). No new development is planned. With consideration to the conditions below I recommend final approval of this 2-lot subdivision by deferral, creating one new lot of 2.6 acres.

- 1) This subdivision is approved by deferral meaning that in order to fully comply with the subdivision ordinance, any proposed development of lot 2 must come back to the Development Review Board for review and approval.
- 2) One (1) (18" x 24") recording plat must be submitted to the Planning office for filing in the Town of Barre land records in accordance with Barre Town subdivision regulation and state statute within 180-days of approval.
- 3) Three (3) sets (24" x 36") paper copies of the final approved plan must be submitted to the Planning Office within 90-days of approval unless a request to extend is made and approved by staff.
- 4) An electronic copy of the final approved plan provided to the Planning and Zoning Office within 30-days of final approval.
- 5) No changes to the approved plan can be made unless first reviewed by either the Town Planning Officer, or the Town Engineer for a determination of significance. If it is determined that a proposed change is significant, the plan will be required to go back before the Development Review Board for approval of the proposed change.

- 6) Failure to comply with any conditions as stated herein, could lead to nullification of this subdivision.

On motion by Mr. Reaves, seconded by Mr. Fecteau, the Development Reviewed board continue to February 10 ~~17~~, 2021, request by Pierre Ducharme for final review of a two-lot subdivision located on Baptist Street; Parcel ID: 013/002.00; Zoned high density residential: P-20000019. Vote 7-0-0.

Variance

APPLICANT: Perkins (dba: East Barre Auto Sales)/ Variance

Request by Jeffrey Perkins (dba: East Barre Auto Sales) for a 21' variance of Article 2, table 2.2 (dimensional standards) to allow a 4' setback (25' required) for the construction of a commercial storage building attached to existing building located at 864 East Barre Road; Parcel ID: 006/057.00; zoned Highway Commercial; V-20000007.

Consultant: None

Date: December 4, 2020

STAFF REPORT/REVIEW COMMENTS FROM CHRIS VIOLETTE, PLANNING OFFICER

This is a warned public hearing (continued from December 9, 2020 meeting) for the purpose of hearing a variance request in accordance with Article 7, section 7.9 of the Barre Town Zoning Bylaw whereas it was determined after the applicant filed a building permit request that the proposed project will not meet the required side setback.

Mr. Perkins came before the DRB last month to seek a variance for an addition he has constructed to his existing commercial building located on East Barre Road (US Rt. 302). See below for previous details about this.

Mr. Perkins stated the purpose of building the addition was for extra vehicle storage; an inside area where potential buyers could view vehicles, especially in the winter months. He built the addition to be aesthetically appropriate for the area and he had received letter from Rick Quero of the car wash and abutting property owner indicating it was okay. He would do the same for Mr. Quero as they both pay taxes.

During discussion last month here are some important notes taken from the minutes:

Mr. Gilbar inquired if Mr. Perkins was aware there were zoning ordinances, that required an application and a permit to be issued? Mr. Perkins responded he was not aware of the 25' setback, and he had submitted a permit application, but he did not get a response, he wanted to get the structure up before winter. He felt it was a benefit to all. It is important to note that while Mr. Perkins states he applied for a permit without a response, no permit application was received or issued. Mr. Perkins did not follow-up regarding the permit before beginning construction without one.

Mr. Sanborn asked, if it was a stick-built addition with poured concrete and frost wall? Mr. Perkins answered, yes, he had poured concrete and a 4' frost wall on the east side. He did it the right way, so it looks the same as the other side of the building.

I asked how confident was Mr. Perkins was regarding the 4' setback that he showed on the building permit application? I asked whether there was any chance that the addition may be located on the abutting property? Mr. Perkins replied no. He has looked at the pins, spoke with the abutting property owner and checked it out. I believe there is some question about the accuracy of this and should be investigated further. I have an old survey of the lot as well as a much new one. Determining the location of the property line should not be difficult but I will not rule out the need for a surveyor.

Mr. Fecteau asked, how many display parking spaces would have been lost if the addition would have been built in another location on the property? Mr. Perkins answered, he would have lost twelve display spots for vehicles.

Mr. Fecteau asked how many vehicles are displayed total? Mr. Perkins stated about seventy vehicles. Mr. Fecteau asked, twenty percent of outdoor display vehicle inventory would have been lost if building was place elsewhere? Mr. Perkins confirmed.

Mr. Valsangiacomo expressed his concerns that the building was built without a permit and that Mr. Perkins did not speak with Mr. Violette. If he (Perkins) had called, he would have been provided information on the setbacks. Mr. Valsangiacomo further stated that variances are given in certain situations. Everyone has to be treated the same no matter a business or homeowner—cannot give special privileges to a business over a homeowner. Mr. Valsangiacomo went on to say it could cause legal ramifications. He provided scenarios of various questions that are posed to an applicant during perspective meeting. He is concerned with the building was built without a permit and coming to the DRB after the fact, as the questions could be asked but not answered with no action. The questions asked and criteria are based on state law.

Ms. Valentinetti has the same concerns as Mr. Valsangiacomo, especially with structure built without a permit. She provided an example of a denied variance request. She is also concerned that Mr. Perkins was aware that a permit was needed. There were potentially other locations on the property for placement of the structure.

The possibility of a boundary line adjustment was discussed. However, there is not much if any room for a boundary line adjustment with abutter Quero that would not negatively impact that property. In fact, I have spoken to Mr. Quero and as suspected he is not interested in doing a boundary line adjustment with Mr. Perkins because of the impact to his property.

The hearing was continued to this month so that I could discuss the matter with Town Attorney, Jim Barlow, which I have done. Mr. Barlow acknowledges and understands the boards concern about whether this application qualifies for a variance. I have included the email from Mr. Barlow.

Mr. Barlow went a little further suggesting maybe a waiver would be a viable option. Waiver is a tool allowed within the Zoning Bylaw for properties that are in existence prior to the current Zoning Bylaw. A waiver is intended to provide "reasonable expansions of existing uses because of limitations on the property due to lot configuration, topography, or structure placement and was in conformance to the Zoning Bylaw in effect at the time".

The problem with considering a waiver is that only 50% of the dimensional standard can be waived. In this case that means 12.5' is what would be allowed to be waived, 21' is needed. Again, a boundary line adjustment could help with that but does not appear to be a viable option at this time.

I continue to have doubt as to the ability for a variance to be granted, especially based on the response to the criteria from Mr. Perkins. I suggest a deliberative session may be prudent to discuss what the options are. Certainly not ready for any sort of recommendation.

Below for are my original comments that provide a timeline of events:

On September 21, 2020 I wrote a letter to Mr. Perkins advising him that I had noticed that an addition had been constructed to his existing commercial building at 864 East Barre Road. I pointed out that a permit had not been received for the work and certainly one had not been issued. Mr. Perkins contacted me and said that he had submitted a permit application in July. The Zoning Office had no record of receiving a permit application from Mr. Perkins. Regardless, I questioned Mr. Perkins as to why he would have begun construction without a permit and even if he had.

Mr. Perkins submitted a permit application shortly after my September 21st letter to construct a 52' x 20' addition to his existing commercial (car sales and repair) business. I sent the application back to him on October 1, 2020 because it was incomplete. The addition sketch and identification of property line setbacks were insufficient for me to make a decision on compliance. Shortly thereafter Mr. Perkins resubmitted his application with an updated sketch and setback showing a right-side property line setback of 4'. A highway commercial zone requires at a minimum a 25' property line setback. This means, the building is 21' out of compliance.

Based on the setback being only 4' from the right-side property line I was forced to deny the permit which I did with my letter dated October 30, 2020. I told Mr. Perkins that at this point he had two options, to appeal my denial or to ask for a variance. That is what brings Mr. Perkins before the DRB this month to seek a variance.

Along with Mr. Perkins variance application in which he answers all the variance criteria in the affirmative, he submitted narrative. His narrative seems to indicate justification for the variance request of 21' being because he operates an existing "long term" business and that the addition doesn't change any of the dynamics of his lot, his building, neighboring businesses or the Town of Barre. He notes that the addition is a significant benefit to his business. None of the actual variance criteria below are answered to justify a variance.

It should also be noted that Mr. Perkins submitted a letter from the impacted abutter Rick Quero, owner of the car wash business next door.

Below are the five variance criteria as you all know much be answered in the affirmative and the Development Review Board must agree that the property is impacted by them.

- 1) Are there unique physical circumstances or conditions as to.
 - a. Irregularity, narrowness or shallowness of lot size or shape;
 - b. Exceptional topography or physical conditions peculiar to a particular property;

- c. Unnecessary hardship due to the above?
- 2) Are there physical circumstances or conditions that prevent conformity to zoning regulations; And, a variance is necessary to enable “reasonable use” of the property?
- 3) Is it true that no unnecessary hardship was created by the applicant?
- 4) Is it true that a variance will not.
 - a. alter the essential character of the neighborhood?
 - b. substantially or permanently impair appropriate use or development of adjacent property?
 - c. reduce access to renewable energy sources?
 - d. be detrimental to the public welfare?
- 5) Is it true the variance represents the minimum deviation from regulation and plan to provide relief?

SUMMARY, RECOMMENDATIONS & CONDITIONS:

I suggest that the DRB go into deliberative session, including myself, to discuss options and any legal ramifications.

MEETING DISCUSSION:

Mr. Violette recapped the situation with Mr. Perkins’ request for a 21’ variance.

Highlights of recap:

- Legal Opinion with town attorney with a suggestion with a waiver offer.
- Waiver only allows 50% of standard to be waived, in this case it would be 12.5 feet and Mr. Perkins needs 21 feet.
- Abutter Quero is not interested in a boundary line adjustment as owns a car wash business.
- Mr. Perkins mentioned in talking with Mr. Quero, the only option he would have would be potentially purchasing the carwash, even though he did not want to.

On motion by Mr. Fecteau, seconded by Ms. Valentinetti, the Development Review Board moved to enter into deliberative session at 7:58 p.m. and continue Mr. Perkins’ request for a 21’ variance to the February 10 ~~17~~, 2021 meeting and invited Mr. Violette, Mrs. Spaulding, and Mr. Chase to attend. Vote 7-0-0.

On motion by Mr. Reeves, second by Mr. Gilbar, the Development Review Board returned to open session at 8:12 p.m. Vote 7-0-0. No action was taken.

FOLLOW-UPS

No follow ups

ROUNDTABLE

No round table discussion

ADJOURN!

A motion by Ms. Valentinetti, second by Mr. Sanborn, the Development Review Board adjourned at 8:15 p.m. All voted in the affirmative.

Respectfully submitted,

Cindy Spaulding, Clerk for DRB

Mark Reaves, Chair

Angela Valentinetti

Cedric Sanborn

Jim Fecteau

Jon Valsangiacomo

Chris Neddo

Michael Gilbar (Alternate)

DRAFT