



## Newton, NH Zoning Board of Adjustment

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Newton, NH 03858  
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### NEWTON ZONING BOARD of ADJUSTMENT PUBLIC MEETING Minutes of January 3rd, 2024

The Newton Zoning Board of Adjustment public meeting was called to order at 7:01PM.

Present were Mr. Kozec, Mr. Silvis, Mr. Hamel, Ms. McCarthy, and Alternate Ms. Riordan Also James Doggett – ZBA AA  
Via Zoom was Alternate Ms. White

Chairman Kozec led the Pledge of Allegiance.

Chairman Kozec seated Ms. Riordan for the excused Mr. Gibbs

#### 1. Preliminary Review

***Anne Myers of West Newbury MA requests a Public Hearing for relief from Section XIV of Zoning (specifically to be allowed to live in her existing home while building a new one on the same property) The property is referenced as Tax Map 12, Block 2, Lot 17.***

Chairman Kozec invited the applicant to present their application.

Ms. Anne Myers informed the Board she was hoping to continue living her existing but sub-standard house while her new home was build on a different part of the property. She stated she would be having the old house torn down as soon as the new one could be occupied.

Mr. Kozec **MOVED** to take the application to a public hearing on February 7<sup>th</sup>, 2024

Ms. Riordan seconded.

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Mr. Silvia – Aye Mr. Kozec- Aye Ms. McCarthy- Aye Mr. Hamel- Aye  
Ms. Riordan- Aye The VOTE was **UNANIMOUS**

## **2. Public Hearing**

Chairman Kozec opened the Public hearing at 7:11PM.

Mr. Hamel recused himself from the public hearing.

Chairman Kozec seated Ms. White for the recused Mr. Hamel.

Ms. White recused herself due to hearing the same plan as a Planning Board member.

***Chairman Kozec read: 125 Development NH Corp is requesting 13 variances from Article XXV, section 1, Location on Lot for a private roadway spanning 4 lots off Puzzle Lane. The lots are referenced as Tax Map 14, Block 1, Lots 1-1, 2, 27-3, 27-6 and 27-7.***

Mr. Kozec invited Mr. Gier to present his applications

Barry Gier, (P.E. with Jones and Beach Engineers, agent for the applicant) stated since our last meeting we have completed a sitewalk with members of the board and the public. at our last meeting we went through each of the requested variances and their need so unless the board has questions about specific locations and the associated variants I think it would be it would be better if I would like to speak a little bit about the criteria. we have three groups of items for which we are requesting variances those are the drainage features pipes catch basins etc., structures supporting the roadway such as retaining walls and guard rail and then the road itself. All the variances relate to the road or structures required by the road, the criteria for the variances are very similar so I would like to cover those items that are applicable to all the variances and then we can speak about each of those individually as necessary so looking at the five criteria. the first one is that granting the variance not be contrary to the public interest; the requested improvements will not adversely impact abutting properties nor where they create a public safety issue in fact some are required to increase safety so that therefore it is not contrary to the public interest. number two is that the spirit of the ordinance is observed so we believe that the intent of the ordinance is to prevent undue impact on otherwise zoned properties all the variances are associated with the road and the road is at a lower elevation and screened by vegetation to those homes in Plaistow which mitigates any

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impact. all structures for which variances are requested are at ground level or just above ground level such as guard rail and retaining wall all homes or the setback to industrial. Plaistow is only 100 feet we are going to be at least 200 feet from the exterior property line which would indicate that they do not believe a larger setback is required for all these reasons we believe the spirit of the ordinance is observed number three is that granting the variance would do substantial justice as you know the proposed road is necessary to access approximately 55 acres of the remaining upon of the and provide a secondary connection to Route 108 for safety reasons the proposed location of the road accomplishes without undue impact environmental impact by filling large sections of wetlands so therefore we believe that the substantial justice is done. Number four is that the surrounding property values are not diminished so the Plaistow only requires 100-foot setback which leads us to believe that they believe 200 feet will not cause a diminution of property values in addition a market analysis has been performed by a certified appraiser the conclusion of which is that the proposed development would not result in a dimming of property values the analysis shows that the houses within 150 feet of an existing drive within this this development saw no loss and property values so all the existing homes in Plaistow are over 300 feet from the proposed road so for these reasons we do not anticipate a decrease in surrounding property values. then five is that the denial of the variance would create a hardship now we previously discussed needing to access in this location to minimize the environmental impacts there will be 200t setback to all buildings and a minimum of 50 foot vegetative setback the applicant has tried to accommodate the abutters by providing as large a setback as practical and so for these reasons we believe that the proposal is reasonable and there is no fair relationship between the ordinance and its application in this location. we provided a booklet that contains all the various requests or all the variance requests and their criteria responses and we can I would be happy to discuss those in particular or we can go through individual criteria or however you want to do it from here.

Mr. Kozec stated we are going to start off right with number one very that is you know in your wonderful book here that you gave us makes it easier that way does anybody have any other way they would like to go through this is this fine with everyone everybody has the book I just for sake of the record we have this additional plan which is right here you want to just run through what this is for us absolutely perfect the one we have here.

Mr. Gier stated as you may or may not know this project to construct the road does require several or wetland permits for several wetland impacts we have received approval from a for our all of our wetland impacts to the state part of our mitigation of those wetland impacts was that we providing a conservation

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easement specifically for turtles in the area that is located in the southwest our was that the one from fishing game that talked about the turtles and so forth.

Ms. White stated since the Board has a quorum I am going to recuse myself from voting on these variances.

Chairman Kozec opened the floor for public comment and input on all the applications, He reminded the public that there would be no further input after the Board entered deliberations.

Tom Alberti (abutter, 12 Ridgewood Road in Plaistow) speaking on behalf of our homeowners association. I just want to point out a few things and in an again I respect your time and everything else. I do want to speak to the five criteria and some other details regarding this request. On page 24 Newton zoning reads that a setback shall be 200 feet with a 50ft natural buffer when abutting any other zone. I want to point out that the property that is in Plaistow, land ownership is inconsequential, it is especially in relation to the zoning so the land that is in Plaistow is zoned low density residential. Per your zoning it requires a 200-foot setback, when you transition, that is where the property line is with Newton and Plaistow. With the applicant's request to reduce that 200-foot buffer, it is almost a 75% reduction, he is about 50 feet with the roadway location as proposed. That is in support of a condo development that is a half a mile away at this time. I do also want to point out that on September 21st of 2020 there was a variant request that went in front of the Newton ZBA to reduce setbacks from 200t to 50 feet that was unanimously rejected. It also went to the state courts which affirmed that the ZBA judgment was correct. I just want to point that out, and again it cited things like on criteria number one, that 73% of the Town had recently voted to maintain the 200-foot buffer because there was a warrant, a citizen petition to reduce it to 50 feet and again 73% of the Town vote against it. I will go against the few other points specific to the setbacks. For standard number one which the variance is not contrary to public interest and again this every single one of these standards was really rejected by that board in 2020 and I feel like these same standards apply and should be recognized and applied in this instance as well. Setbacks are established to maintain a reasonable distance and boundaries between structures. The proposed variance is, like I said, 50 feet to residentially zoned land, regarding the applicant's contention that it is limited by wetlands which I think they put in that that zoning. If you look at the walk, the road location, that they proposed, it is not on this plan here. The yellow lines to the right is the 50-foot wetland buffer, you can see that the roadway is proposed a good 100 feet away from that 50ft wetland buffer. I think if the applicant had come in and said I want to put my roadway outside of the wetland buffer, but it may encroach into

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the 200-foot setback buffer I do not think the abutters from Plaistow would be here arguing that case. Maybe if it is a 20-foot variance request but this is a 75% reduction, 150 feet. With that in mind it is against the public interest and again this was affirmed in 2020. Standard number two, the spirit of the ordinance is observed again I go to that same concept that land ownership is inconsequential, it is really about lot and zoning. The variant would place the roadway 50 feet from low density residential zoned land and again as I said previously 200-foot setback was reaffirmed a few years ago, which you know basically stating the 75% reduction of the set back is significantly contrary to the public interest. Substantial Justice is done, and the values of surrounding properties are not diminished. There is no Injustice to the requestor, he can put a road there, it is the location of the road which I think we have an issue with. We are not denying the use of his land, he could use the land again if he just located it in a reasonable fashion. The applicant sites wetland protection, yet if you look on this map you see that he comes right over the wetland buffer here, when there is no issues over here, so it is kind of contrary to what they are trying to say is their motivation behind it. They could push that turn a lot further out and not cut that wetland buffer right there. I just want to point that out as well and there are international studies being done on the impact on commercial development to residential land citing real estate valuations. Right now real estate in the whole country has gone up incredibly high. What you have to consider is what would be the impact of a road or commercial building set really close to these homes. How would that reduce it from there and talking to real realtors and other people and also looking at studies there is an impact that shows that you know close construction of commercial roads can reduce property values by upwards of 14%. Then, the last standard, literal enforcement of the ordinance would result in unnecessary hardship. Again, I will kind of go over the same things there is space to put this road that does not need to be a 75% reduction in in the setback. That was affirmed by the ZBA back in 2020, was affirmed by the citizens of Newton in their vote in 2020, and there is nothing unique to this land that justifies that variance. Lastly I just want to say their desire to maintain personal financial gain should not outweigh or be confused with actual hardship. This is not about profits it is about the rights of the abutters and property owners so with that I will thank you for your time.

Mr. Kozec asked if there were any other comments.

Lynne Jeffries (Abutter, 12 Ridgewood Road, Plaistow) I was here at the last or two meetings ago and I am the property that juts out and the one comment that I would have is that has to do with the surrounding properties and not diminished and he talked about this buffer of I do not know what the term is but anyhow be when this all started the first thing they did was cut down all these decade old

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trees and buffer that we had there originally I could never see the road before they did that now I see those trucks go up and back and up and back and I hear them and now they want to move this road closer to me and say that it does not diminish my property I think that is ridiculous because it already has affected my property and we have had a couple of sales within the neighborhood that have failed that have pulled out because they know this is going on, so it does affect properties, thank you .

Mr. Kozec asked for further comments.

Mr. Gier and Mr. Alberti had an exchange at the map which was not fully audible. Following is the transcript of their exchange.

I have a question for the first gentleman that spoke it seemed like one of the points that you were making was that at the top of this road go further up I see that it is that accurate yes so what I was saying was that he is way over right near the property line which is only about 50 feet from the property line which is where your zoning really starts so the setback should be I think right to here I get that there is some wetland buffer which is the yellow lines why this roadway is not there okay but then hugs the wetland buffer here so it is not really about the wetlands is my point if this roadway came up here and he had to come into the 200-foot setback by 20 30 feet I do not think we would be here to argue that this was something that is not needed the fact that it went all the way this way I do not know why they left all this land open here I do not know if there is an intention for a future little building or there something like that but either way that should not be a factor in this request that roadway could be right there along the 200-foot setback maybe 20 is there is there an additional outside of that yellow line is there an additional wetland to your knowledge and do you see what we are talking about so in addition to this is there something that we are missing yes the wet of this or is that just the buffer yes that is just the buffer the wetlands are on the interior of the roadway and then again you can the yellow lines denote the 50ft wetland buffer additional wetland up again we do not we do not know why the that roadway is not tighter to the wetland buffer right and if it required a 20 or 30 foot variance rather than 150t variance I do not think you would see the abuts here arguing that this is not needed or required or necessary we'd say okay we get it but the fact that it is so far in it makes no sense right that they are taking it all that extra liberty to be that much closer to the zoning delineation which again that is a residential plot of land and it goes to commercial and that should be a 200 foot setback thank you.

Mr. Kozec asked if the applicant would like to shed any light on that section.

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Mr. Gier stated I think you can see from where the actual setback line is that if we followed the setback line if we were inside of the 200-foot setback line we would be in the wetlands for the whole distance of that area. The crossing as we saw on our sidewalk is in the location it has to be because of those existing crossings and to try to weave in and out of those the upland areas as suggested is not only bad engineering it is bad safety you are going to an S curve which would basically create a double S curve is what he is suggesting to weave in and out to try to you know follow along the wetland setback line is one of those things you in engineering you just do not do because you are going to cause accidents. Those are the reasons we did not do that we crossed the wetlands where we are required to, stayed out of the wetland buffer to the best of our ability in those areas, and then DES on the road outside 200 feet from our external buffer. We tried to meet the spirit and intent of the ordinance by staying 200 feet from our external buffer. I understand that they do not believe that that the property ownership matters, I think we all agree that it probably does. As for the two he hearkened back several times to the 2020 variance request as the people on or whoever was on the board at the time know it was denied because the request was a blanket variance request for the whole property core not specific locations, so we are here asking for specific locations. I think you know the comment that the property values will not be or will be diminished we have a report that says this property this project in particular did not create property or values to be diminished

Mr. Alberti stated I have a follow-up question, are there any buildable sections on either ZBA 3 or ZBA 2, for I think this is I think I need to rephrase my question right I am confused are there any say it again are there any dwelling or business areas on either ZBA in Section ZBA 3 which is the top part of that turn or ZBA 2 which is the lower part of that turn.

Mr. Gier stated let us look at it, as we talked about if you look at the 200t structural setback what is that lie in that area right on the wetlands right so the potential for the construction in that 200-foot setback we would have to come back to the ZBA asking for anything else that would be structural right and we would be fighting wetlands. Most likely no, could it potentially be a drainage area for something that went in further up the road potentially. For a building or something to go in there we would be back in front of you guys. Mr. Gier then approached the Board's table talking about his points, The conversations became muddled.

Roy Tilsley, (Attorney for 125 development) I take issue with the idea that land ownership is inconsequential it certainly is. Talking about the

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idea that land ownership is inconsequential I disagree in terms of what today this board is doing it certainly is inconsequential in terms of whether we do or do not need a variance we do that is why we are here we cannot say well the buffer does not apply when we ask for a building permit because we also own the abutting property, but we are asking for a variance and what this board does a lot of what you do is wrestle with and balance the rights of people to develop their land with the impact that that land will have on neighboring properties and in this case the properties that are most affected the properties that are that require relief are my client's properties. So to the extent we have heard there will be a 16% reduction in value on that particular property my client is going to get that hit not these abutters, so I do think it is a relevant factor, and the other piece I think is relevant, again, part of what you folks do all the time is balance, someone has a right to improve their property. How does that affect the neighborhood and there is an element of fairness people buy their property in 1999 and something happens in 2024 that changes the neighborhood you know you have to balance that on the other hand in this case. We own the property. It is possible that we may not always own the property but if my client goes to sell the property that is affected by this that buyer is going to be aware of what is there and that is going to affect anyone's decision to buy it could conceivably affect the value but the affected party is the party that is asking you for relief, so it is inconsequential I think in terms of pulling a permit at code enforcement I do not think it is inconsequential to this board to keep in mind that the property that is most affected by this variant it is the only property that requires us to stand here, is owned by the people who are asking for relief in this case. thank you.

Mr. Kozec asked if there are any more questions from the audience.

Mr. Alberti restated his earlier arguments.

Mr. Kozec closed the public hearing at 7:46

A.A. Doggett informed the Board that he would read the number for the variance in the order they were on the plans. He would not be reading the applicants comments as they were mostly the same comments about either property access or safety issues, and he knew that the members had reviewed them well. He stated that after he listed the variance, he would read the Criteria and poll the Board, He would use the member comments as statements-of-fact. After the poll, the Board could make a motion to approve, approve with conditions, or deny the variance, once that vote had been taken, he would move to the next variance.

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Variance application #1 Drainage impact number one, the construction of drainage pipes within 134 feet 8 inches of an otherwise zoned property the variance distance requested is 65 feet 4 inches.

Criteria #1. Granting the variance would not be contrary to the public interest.

Criteria #2. If the variance were granted the Spirit of the ordinance would be observed. Ms. Riordan - yes, Ms. McCarthy – yes, Mr. Sylvia – yes, Mr. Kozec – yes.

Criteria #3 Granting the variance would do substantial Justice. Ms. Riordan - yes, Ms. McCarthy – yes, Mr. Sylvia – yes, Mr. Kozec – yes.

Criteria #4. If the variant were granted the values of surrounding properties would not be diminished. Ms. Riordan - yes, Ms. McCarthy – yes, Mr. Sylvia stated I think based on this the study that we were given by the qualified parties I will vote – yes, Mr. Kozec – yes.

Criteria #5-i. Owing to the special conditions of the property that distinguish it from other properties in the area denial of the variance would result in unnecessary hardship. Ms. Riordan - yes, Ms. McCarthy – yes, Mr. Sylvia – yes, Mr. Kozec – yes.

Criteria #5-ii. The proposed use is a reasonable one. Ms. Riordan - yes, Ms. McCarthy – yes, Mr. Sylvia – yes, Mr. Kozec – yes.

A.A. Doggett stated, Mr. Chair all criteria have been met.

Ms. McCarthy **MOVED** to grant the variance as requested, Mr. Silvia seconded the motion.

A.A. Doggett polled the Board: Ms. Riordan – yes, Ms. McCarthy -yes, Mr. Sylvia - yes, Mr. Kozec – yes. The **VOTE** was unanimous.

Variance application #2 drainage impact number 2, construction of drainage structure and pipe within 84 feet 3 and 1/4 inches of an otherwise zone property variance distance request is 115 feet 8 and 3/4 inches.

Criteria #1. Granting the variance would not be contrary to the public interest.

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Criteria #2. If the variance were granted the Spirit of the ordinance would be observed. Ms. Riordan - yes, Ms. McCarthy – yes, Mr. Sylvia – yes, Mr. Kozec – yes.

Criteria #3 Granting the variance would do substantial Justice. Ms. Riordan - yes, Ms. McCarthy – yes, Mr. Sylvia – yes, Mr. Kozec – yes.

Criteria #4. If the variant were granted the values of surrounding properties would not be diminished. Ms. Riordan - yes, Ms. McCarthy – yes, Mr. Sylvia – yes, Mr. Kozec – yes.

Criteria #5-i. Owing to the special conditions of the property that distinguish it from other properties in the area denial of the variance would result in unnecessary hardship. Ms. Riordan - yes, Ms. McCarthy – yes, Mr. Sylvia – yes, Mr. Kozec – yes.

Criteria #5-ii. The proposed use is a reasonable one. Ms. Riordan - yes, Ms. McCarthy – yes, Mr. Sylvia – yes, Mr. Kozec – yes.

A.A. Doggett stated, Mr. Chair all criteria have been met.

Mr. **MOVED** to grant the variance as requested. M seconded the motion.  
The **VOTE** was unanimous.

A.A. Doggett polled the Board: Ms. Riordan – yes, Ms. McCarthy -yes, Mr. Sylvia - yes, Mr. Kozec – yes. The **VOTE** was unanimous.

Variance application #3 drainage impact number 3, construction of drainage structure and pipe within 189 feet 3 and 3/4 inches of an otherwise zone property variance distance requested is 10 feet 8 and 1/4 inch

Criteria #1. Granting the variance would not be contrary to the public interest.

Criteria #2. If the variance were granted the Spirit of the ordinance would be observed. Ms. Riordan - yes, Ms. McCarthy – yes, Mr. Sylvia – yes, Mr. Kozec – yes.

Criteria #3 Granting the variance would do substantial Justice. Ms. Riordan - yes, Ms. McCarthy – yes, Mr. Sylvia – yes, Mr. Kozec – yes.

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Criteria #4. If the variant were granted the values of surrounding properties would not be diminished. Ms. Riordan - yes, Ms. McCarthy – yes, Mr. Sylvia – yes, Mr. Kozec – yes.

Criteria #5-i. Owing to the special conditions of the property that distinguish it from other properties in the area denial of the variance would result in unnecessary hardship. Ms. Riordan - yes, Ms. McCarthy – yes, Mr. Sylvia – yes, Mr. Kozec – yes.

Criteria #5-ii. The proposed use is a reasonable one. Ms. Riordan - yes, Ms. McCarthy – yes, Mr. Sylvia – yes, Mr. Kozec – yes.

A.A. Doggett stated, Mr. Chair all criteria have been met.

Ms. Riordan **MOVED** to grant the variance as requested. Ms. McCarthy seconded the motion.

A.A. Doggett polled the Board: Ms. Riordan – yes, Ms. McCarthy -yes, Mr. Sylvia - yes, Mr. Kozec – yes. The **VOTE** was unanimous.

Variance application #4, structural impact number one the construction of retaining wall within 104 feet 7 inches and of an otherwise zone property variance distance requested is 95 feet 5 inches.

Criteria #1. Granting the variance would not be contrary to the public interest.

Criteria #2. If the variance were granted the Spirit of the ordinance would be observed. Ms. Riordan - yes, Ms. McCarthy – yes, Mr. Sylvia – yes, Mr. Kozec – yes.

Criteria #3 Granting the variance would do substantial Justice. Ms. Riordan - yes, Ms. McCarthy – yes, Mr. Sylvia – yes, Mr. Kozec – yes.

Criteria #4. If the variant were granted the values of surrounding properties would not be diminished. Ms. Riordan - yes, Ms. McCarthy – yes, Mr. Sylvia – yes, Mr. Kozec – yes.

Criteria #5-i. Owing to the special conditions of the property that distinguish it from other properties in the area denial of the variance would result in unnecessary hardship. Ms. Riordan - yes, Ms. McCarthy – yes, Mr. Sylvia – yes, Mr. Kozec – yes.

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Criteria #5-ii. The proposed use is a reasonable one. Ms. Riordan - yes, Ms. McCarthy – yes, Mr. Sylvia – yes, Mr. Kozec – yes.

A.A. Doggett stated, Mr. Chair all criteria have been met.

Mr. Silvia **MOVED** to grant the variance as requested. Ms. McCarthy seconded the motion.

A.A. Doggett polled the Board: Ms. Riordan – yes, Ms. McCarthy -yes, Mr. Sylvia - yes, Mr. Kozec – yes. The **VOTE** was unanimous.

Variance application #5 structural impact number two, for the construction of retaining wall within 54 feet 5 and 1/2 inches of an otherwise zone property the variance distance request is 45 feet 6 and 1/2inches.

No general discussion.

Criteria #1. Granting the variance would not be contrary to the public interest. Ms. Riordan – yes, Ms. McCarthy -yes, Mr. Sylvia stated, I think based on the findings of the what is in which town and was the Fish and Game findings, based on that Hampshire Wetlands, I have no issue with this so that is a – yes, it would not be contrary to the public interest, Mr. Kozec – yes.

Criteria #2. If the variance were granted the Spirit of the ordinance would be observed. Ms. Riordan - yes, Ms. McCarthy – yes, Mr. Sylvia – yes, Mr. Kozec – yes.

Criteria #3 Granting the variance would do substantial Justice. Ms. Riordan - yes, Ms. McCarthy – yes, Mr. Sylvia – yes, Mr. Kozec – yes.

Criteria #4. If the variant were granted the values of surrounding properties would not be diminished. Ms. Riordan - yes, Ms. McCarthy – yes, Mr. Sylvia – yes, Mr. Kozec – yes.

Criteria #5-i. Owing to the special conditions of the property that distinguish it from other properties in the area denial of the variance would result in unnecessary hardship. Ms. Riordan - yes, Ms. McCarthy – yes, Mr. Sylvia – yes, Mr. Kozec – yes.

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Criteria #5-ii. The proposed use is a reasonable one. Ms. Riordan - yes, Ms. McCarthy – yes, Mr. Sylvia – yes, Mr. Kozec – yes.

A.A. Doggett stated, Mr. Chair all criteria have been met.

Ms. McCarthy **MOVED** to grant the variance as requested. Mr. Silvia seconded the motion.

A.A. Doggett polled the Board: Ms. Riordan – yes, Ms. McCarthy -yes, Mr. Sylvia - yes, Mr. Kozec – yes. The **VOTE** was unanimous.

Variance application #6 structural impact number three, construction of a god rail within 106 feet 3 and 3/4 Inches of an otherwise zoned property the variant distance request is 93 feet 8 and 1/4 in

No general discussion.

Criteria #1. Granting the variance would not be contrary to the public interest.

Criteria #2. If the variance were granted the Spirit of the ordinance would be observed. Ms. Riordan - yes, Ms. McCarthy – yes, Mr. Sylvia – yes, Mr. Kozec – yes.

Criteria #3 Granting the variance would do substantial Justice. Ms. Riordan - yes, Ms. McCarthy – yes, Mr. Sylvia – yes, Mr. Kozec – yes.

Criteria #4. If the variant were granted the values of surrounding properties would not be diminished. Ms. Riordan - yes, Ms. McCarthy – yes, Mr. Sylvia – yes, Mr. Kozec – yes.

Criteria #5-i. Owing to the special conditions of the property that distinguish it from other properties in the area denial of the variance would result in unnecessary hardship. Ms. Riordan - yes, Ms. McCarthy – yes, Mr. Sylvia – yes, Mr. Kozec – yes.

Criteria #5-ii. The proposed use is a reasonable one. Ms. Riordan - yes, Ms. McCarthy – yes, Mr. Sylvia – yes, Mr. Kozec – yes.

A.A. Doggett stated, Mr. Chair all criteria have been met.

Mr. Silvia **MOVED** to grant the variance as requested. Ms. McCarthy seconded the motion.

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A.A. Doggett polled the Board: Ms. Riordan – yes, Ms. McCarthy -yes, Mr. Sylvia - yes, Mr. Kozec – yes. The **VOTE** was unanimous.

Variance application #7 structural impact number four, construction of a guard rail within 140 feet 6 and 1/4 inches of an otherwise zoned property, variance distance requested is 59 feet 5 and 3/4in.

No general discussion.

Criteria #1. Granting the variance would not be contrary to the public interest.

Criteria #2. If the variance were granted the Spirit of the ordinance would be observed. Ms. Riordan - yes, Ms. McCarthy – yes, Mr. Sylvia – yes, Mr. Kozec – yes.

Criteria #3 Granting the variance would do substantial Justice. Ms. Riordan - yes, Ms. McCarthy – yes, Mr. Sylvia – yes, Mr. Kozec – yes.

Criteria #4. If the variant were granted the values of surrounding properties would not be diminished. Ms. Riordan - yes, Ms. McCarthy – yes, Mr. Sylvia – yes, Mr. Kozec – yes.

Criteria #5-i. Owing to the special conditions of the property that distinguish it from other properties in the area denial of the variance would result in unnecessary hardship. Ms. Riordan - yes, Ms. McCarthy – yes, Mr. Sylvia – yes, Mr. Kozec – yes.

Criteria #5-ii. The proposed use is a reasonable one. Ms. Riordan - yes, Ms. McCarthy – yes, Mr. Sylvia – yes, Mr. Kozec – yes.

A.A. Doggett stated, Mr. Chair all criteria have been met.

Ms. Riordan **MOVED** to grant the variance as requested. Ms. McCarthy seconded the motion.

A.A. Doggett polled the Board: Ms. Riordan – yes, Ms. McCarthy -yes, Mr. Sylvia - yes, Mr. Kozec – yes. The **VOTE** was unanimous.

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Variance application #8 Drive Impact number one this is construction of a roadway within 51 feet 10 and 1/2 inches of an otherwise zoned property the variance distance requested is 148 feet 1 and 1/2 inches.

Extensive discussion of potential conditions regarding this variance. The Board chose the following as the conditions.

The applicant shall work with the Conservation Commission to develop and implement a natural buffer between station 17.5 and station 25.5, to be reviewed, approved, and recorded by the planning board. The application shall post a landscaping bond to extend at least two years beyond when the Landscaping has been completed.

A.A. Doggett reminded the Board members to have those conditions in their mind as he called the poll.

Criteria #1. Granting the variance would not be contrary to the public interest. Ms. Riordan stated, with those conditions, - yes, Ms. McCarthy stated, with those conditions – yes, Mr. Silvia stated, I think the conditions put forth by the zoning board would greatly improve the current conditions of the property, so that being said, that is a – yes, Mr. Kozec – yes.

Criteria #2. If the variance were granted the Spirit of the ordinance would be observed. Ms. Riordan - yes, Ms. McCarthy – yes, Mr. Sylvia – yes, Mr. Kozec – yes.

Criteria #3 Granting the variance would do substantial Justice. Ms. Riordan - yes, Ms. McCarthy – yes, Mr. Sylvia – yes, Mr. Kozec – yes.

Criteria #4. If the variant were granted the values of surrounding properties would not be diminished. Ms. Riordan - yes, Ms. McCarthy – yes, Mr. Sylvia – yes, Mr. Kozec – yes.

Criteria #5-i. Owing to the special conditions of the property that distinguish it from other properties in the area denial of the variance would result in unnecessary hardship. Ms. Riordan - yes, Ms. McCarthy – yes, Mr. Sylvia – yes, Mr. Kozec – yes.

Criteria #5-ii. The proposed use is a reasonable one. Ms. Riordan - yes, Ms. McCarthy – yes, Mr. Sylvia – yes, Mr. Kozec – yes.  
with those conditions Mr. chair

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A.A. Doggett stated, Mr. Chair all criteria have been met.

Ms. McCarthy **MOVED** to conditionally grant the variance as with the following conditions:

The applicant shall work with Conservation Commission to design a natural buffer between station 17.5 and station 25.50 to be approved by the Planning Board the application shall post a bond for the construction of the buffer to extend at least two years after the landscaping has been completed. Mr. Silvia seconded the motion.

A.A. Doggett polled the Board: Ms. Riordan – yes, Ms. McCarthy -yes, Mr. Sylvia - yes, Mr. Kozec – yes. The **VOTE** was unanimous.

Chairman Kozec called for a 5-minute recess at 8:50.  
The Board came back into session at 8:55PM.

Variance application #9, drainage impact number four, construction of drainage structure and pipe within 79 feet 1 and 3/4 inches of an otherwise zoned property; the variance distance requested is 120 feet 10 and ¼ inches.

No general discussion

Criteria #1. Granting the variance would not be contrary to the public interest. Ms. Riordan - yes, Ms. McCarthy – yes, Mr. Sylvia – yes, Mr. Kozec – yes.

Criteria #2. If the variance were granted the Spirit of the ordinance would be observed. Ms. Riordan - yes, Ms. McCarthy – yes, Mr. Sylvia – yes, Mr. Kozec – yes.

Criteria #3 Granting the variance would do substantial Justice. Ms. Riordan - yes, Ms. McCarthy – yes, Mr. Sylvia – yes, Mr. Kozec – yes.

Criteria #4. If the variant were granted the values of surrounding properties would not be diminished. Ms. Riordan - yes, Ms. McCarthy – yes, Mr. Sylvia – yes, Mr. Kozec – yes.

Criteria #5-i. Owing to the special conditions of the property that distinguish it from other properties in the area denial of the variance would result in unnecessary hardship. Ms. Riordan - yes, Ms. McCarthy – yes, Mr. Sylvia – yes, Mr. Kozec – yes.

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Criteria #5-ii. The proposed use is a reasonable one. Ms. Riordan - yes, Ms. McCarthy – yes, Mr. Sylvia – yes, Mr. Kozec – yes.  
A.A. Doggett stated, Mr. Chair all criteria have been met.

Mr. Silvia **MOVED** to grant the variance as requested. Ms. McCarthy seconded the motion.

A.A. Doggett polled the Board: Ms. Riordan – yes, Ms. McCarthy -yes, Mr. Sylvia - yes, Mr. Kozec – yes. The **VOTE** was unanimous.

Variance application #10, page 40 drainage impact number five is there any deliberations is not this the one where it is right next to the building no not this is the construction of drainage structure and pipe within 41 feet 6 and 1/2 inches of an otherwise owned property, variance distance requested is 158 feet 5 and 1/2 inches.

Criteria #1. Granting the variance would not be contrary to the public interest.

Criteria #2. If the variance were granted the Spirit of the ordinance would be observed. Ms. Riordan - yes, Ms. McCarthy – yes, Mr. Sylvia – yes, Mr. Kozec – yes.

Criteria #3 Granting the variance would do substantial Justice. Ms. Riordan - yes, Ms. McCarthy – yes, Mr. Sylvia – yes, Mr. Kozec – yes.

Criteria #4. If the variant were granted the values of surrounding properties would not be diminished. Ms. Riordan - yes, Ms. McCarthy – yes, Mr. Sylvia – yes, Mr. Kozec – yes.

Criteria #5-i. Owing to the special conditions of the property that distinguish it from other properties in the area denial of the variance would result in unnecessary hardship. Ms. Riordan - yes, Ms. McCarthy – yes, Mr. Sylvia – yes, Mr. Kozec – yes.

Criteria #5-ii. The proposed use is a reasonable one. Ms. Riordan - yes, Ms. McCarthy – yes, Mr. Sylvia – yes, Mr. Kozec – yes.  
Mr. chair the Criteria have been met

A.A. Doggett stated, Mr. Chair all criteria have been met.

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Ms. McCarthy **MOVED** to grant the variance as requested. Ms. Riordan seconded the motion.

A.A. Doggett polled the Board: Ms. Riordan – yes, Ms. McCarthy -yes, Mr. Sylvia - yes, Mr. Kozec – yes. The **VOTE** was unanimous.

Variance application #11, Drive Impact number two construction of roadway within zero feet of an otherwise zoned property. Variance distance requested is 200 feet.

Criteria #1. Granting of the variance would not be contrary to the public interest Ms. Riordan – yes, Ms. McCarthy – yes, Mr. Sylvia stated based on that it is an extension of a previously determined road I will say – yes, Mr. Kozec – yes.

Criteria #2. If the variance were granted the spirit of the ordinance would be Observed. Ms. Riordan - yes, Ms. McCarthy – yes, Mr. Sylvia – yes, Mr. Kozec – yes.

Criteria #3. Granting the variance would do substantial justice. Ms. Riordan - yes, Ms. McCarthy – yes, Mr. Sylvia – yes, Mr. Kozec – yes.

Criteria #4. If the variance were granted the values of the surrounding properties would not be diminished. Ms. Riordan - yes, Ms. McCarthy – yes, Mr. Sylvia stated the applicant determines the value of the property that is in question so for that reasoning I say – yes, Mr. Kozec – yes.

Criteria #5-i. Owing to the special conditions of the property that distinguish it from other properties in the area denial of the variance would result in unnecessary hardship. Ms. Riordan - yes, Ms. McCarthy – yes, Mr. Sylvia – yes, Mr. Kozec – yes.

Criteria #5-ii. The proposed use is a reasonable one. Ms. Riordan - yes, Ms. McCarthy – yes, Mr. Sylvia – yes, Mr. Kozec – yes.

A.A. Doggett stated Mr. Chair the Criteria have been met.

Ms. Riordan **MOVED** to grant the variance as requested. Ms. McCarthy seconded the motion.

A.A. Doggett polled the Board: Ms. Riordan – yes, Ms. McCarthy -yes, Mr. Sylvia - yes, Mr. Kozec – yes. The **VOTE** was unanimous.

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Variance application #12, Structural impact number five, a building within 44 feet 9 and 1/4 inches of the existing street central line where 75 feet is required, variant distance requested is 30 feet 2 and 3/4 inches.

The Board deliberated extensively on this variance and determined that the sidewalk that leads to the road needed to be eliminated.

Mr. Kozec asked A.A. Doggett to poll the Board on the Criteria.

Criteria #1. Granting the variance would not be contrary to the public interest. Ms. Riordan – no, Ms. McCarthy -yes, Mr. Sylvia stated, the applicant owns that building so yes, Mr. Kozec – yes.

Criteria #2. If the variance are granted the spirit of the ordinance would be observed. Miss Riordan stated no, I think the I think the road will be too close to the building and it is a safety issue, Ms. McCarthy – yes, Mr. Sylvia – yes, Mr. Kozec – yes, as much as I would like to see something there to prevent any serious accident, but I am going to vote yes.

Criteria #3. Granting the observance granting the variance would do substantial Justice. Ms. Riordan - yes Ms. McCarthy yes Mr. Sylvia it grants access to the rest of the owner's land so by that logic – yes. Mr. Kozec – yes.

Criteria #4. If the variant were granted the values of the surrounding properties would not be diminished Ms. Riordan – yes, Ms. McCarthy – yes, Mr. Sylvia – yes, Mr. Kozec – yes.

Criteria #5-i. Owing to the special conditions of the property that di that distinguish it from other properties in the area denial of the variance would result in unnecessary hardship. Ms. Riordan stated no, I think that there is room to move the road, I am not an engineer but, it seems based on these things that they could put the road a little further away. Ms. McCarthy – yes, Mr. Sylvia – yes, Mr. Kozec – yes.

Criteria #5-ii. The proposal is a reasonable one. Ms. Riordan stated no for the same reason, Ms. Ms. McCarthy – yes, Mr. Sylvia stated due to the topography and the location of the wetlands and the existing right away I think this is reasonable – yes, Mr. Kozec – yes.

A.A. Doggett stated, Mr. Chair all criteria have been met.

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Mr. Silvia **MOVED** to grant the variance with the following condition:

That the sidewalk that leads to the road be eliminated.

Ms. McCarthy seconded the motion.

A.A. Doggett polled the Board: Ms. Riordan – nay, Ms. McCarthy -yes, Mr. Sylvia - yes, Mr. Kozec – yes. The **VOTE** passed, 3 in favour, 1 against.

Variance application #13, Drive Impact number three construction of roadway within zero feet of otherwise zone property variance distance requested is 200 feet.

Criteria #1. Granting the variance would not be contrary to the public interest.

Criteria #2. If the variance were granted the Spirit of the ordinance would be observed. Ms. Riordan - yes, Ms. McCarthy – yes, Mr. Sylvia – yes, Mr. Kozec – yes.

Criteria #3 Granting the variance would do substantial Justice. Ms. Riordan - yes, Ms. McCarthy – yes, Mr. Sylvia – yes, Mr. Kozec – yes.

Criteria #4. If the variant were granted the values of surrounding properties would not be diminished. Ms. Riordan - yes, Ms. McCarthy – yes, Mr. Sylvia – yes, Mr. Kozec – yes.

Criteria #5-i. Owing to the special conditions of the property that distinguish it from other properties in the area denial of the variance would result in unnecessary hardship. Ms. Riordan - yes, Ms. McCarthy – yes, Mr. Sylvia – yes, Mr. Kozec – yes.

Criteria #5-ii. The proposed use is a reasonable one. Ms. Riordan - yes, Ms. McCarthy – yes, Mr. Sylvia – yes, Mr. Kozec – yes.

A.A. Doggett stated, Mr. Chair all criteria have been met.

Mr. Silvia **MOVED** to grant the variance as requested. Ms. McCarthy seconded the motion.

A.A. Doggett polled the Board: Ms. Riordan – yes, Ms. McCarthy -yes, Mr. Sylvia - yes, Mr. Kozec – yes. The **VOTE** was unanimous.

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A.A. Doggett stated, Mr. Chair, 13 variances were granted, two conditionally.

Chairman Kozec announced that all 13 variances were conditionally granted.

Mr. Hamel returned to his seat on the Board, Ms. White returned to being an alternate.

### **3. Board Business**

- a. Acceptance of minutes of the 12/6/23 meeting

Mr. Hamel **MOVED** to approve the minutes.

Mr. Silvia seconded the Motion.

Mr. Silvia – Aye Mr. Kozec- Aye Ms. McCarthy- Aye Mr. Hamel- Aye  
Ms. Riordan- Aye The VOTE was **UNANIMOUS**

- b. Manifest

Mr. Hamel **MOVED** to approve the manifest in the amount of \$491.66.

Ms. Riordan seconded the Motion.

Mr. Silvia – Aye Mr. Kozec- Aye Ms. McCarthy- Aye Mr. Hamel- Aye  
Ms. Riordan- Aye The VOTE was **UNANIMOUS**

### **4. Adjourn.**

Chairman Kozec adjourned the meeting at: 9:25PM.

Respectfully submitted.

James L. Doggett  
ZBA Administrative Assistant

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