

**Town of Greenville
Zoning Board of Adjustment
Minutes – March 4, 2021**

Call to order at 6:43 p.m. in the Mascenic SAU School Board Meeting Room, 16 School Street, Greenville, NH. Present: Chairman Pedro Sousa, Members Michael Rathbun and Tracey Sadowski, Alternate Kelly Fitzwater, Town Administrator Tara Sousa (serving as the Board's Administrative Assistant), and Town Counsel Meaghan Jepsen (participating remotely via Zoom conference call).

Public Hearing – Dunster & Main, LLC Special Exception Application

Chairman Sousa read the public notice for the Duster & Main, LLC special exception application. The Board introduced themselves. The Chairman invited the applicant to make their presentation. Attorney Silas Little introduced himself and Mr. Tom Hawkins, the principal owner of Dunster & Main, LLC and Northwood Wood Signs and Sign Graphics. Mr. Little stated the purpose of the special exception application is to use the building for light industrial manufacturing, and indicated that Mr. Hawkins had brought examples and pictures of the various work he explained the business' market area is the east coast, to the mid-atlantic and rarely beyond. He stated that the business would create no fumes or odors, and the hours would be considered "normal" business hours, generally between 7:00 a.m. and 5:00 p.m. He stated that he did not anticipate any change in the existing structure, but have presented plans for a contemplated addition, which would be storage space and garage with a loading dock on the back of the building. Mr. Little stated there would be no weekend hours, and that traffic generated by the business would be limited to employees and deliveries/shipments to and from the business, expressing that the impact of both the traffic and the operating hours would be less than the previous use as a restaurant. He noted the recent vacancy of the building and its "checkered success story" as a restaurant, and expressed that Mr. Hawkins feels he can "make a go of it" using the building for the stated purpose. He invited questions from the Board.

Mr. Rathbun asked Mr. Hawkins if he would be bringing his own employees. Mr. Hawkins answered yes, that in addition to himself, he has 2 full-time and 1 part-time employee. He discussed the 29 year history of his business which grew from a garage in Groton, MA, and moved into Temple, NH, where they added a post and beam barn to an 18th century saltbox home. He noted that they are operating under the home occupation ordinance, which has limitations such as the number of employees, and that they had been looking for a larger facility for some time. Mr. Rathbun asked how many years they had been in Temple, and Mr. Hawkins answered 22 years.

Chairman Sousa questioned if this included any changes to the exterior of the building, and Mr. Hawkins answered that they would be looking to restore the building to its original appearance by removing the "caboose-like" structure which was added to the restaurant to house the bar, and to expose the original platform structure. Mr. Rathbun asked if his intention was to keep it as authentic as possible, and he answered "exactly." Mr. Hawkins discussed the beauty and general original condition of the structure. He stated the intent would be to keep roughly the same square footage by removing the bar and adding the garage.

Mrs. Sousa asked if they had determined if any of the proposed changes would require variances. Mr. Hawkins answered he believed they would, but that their first objective was to gain approval for the

special exception, and upon receiving that they would make further determination of the next steps. He discussed the boundary lines, and that some of the steps/entryways appear to overhang the property line. He explained the future plan would require a variance for building basically on the boundary line for approximately 10'.

Chairman Sousa asked about the anticipated traffic to the business. Mr. Hawkins discussed that they have the occasional box truck delivery or semi-truck shipment. Mr. Little and Mr. Hawkins discussed the easement that allows access to the back parking area over the property owned by the antiques mall. Mr. Little relayed that a subdivision was approved by the Greenville Planning Board in 1998, and a non-exclusive easement was granted to the then Greenville Depot Restaurant. He noted that the deed history includes ownership by the Town of Greenville at one time.

Hearing no further questions, Chairman Sousa opened the floor to comment and questions from abutters, then non-abutters. Town Counsel Meaghan Jepsen asked for the hours of operation to be restated. Mrs. Sousa confirmed the previously stated hours to be roughly 7 to 5, Monday through Friday. Mr. Rathbun commented his presumption that the machining hours would be limited to that, but that there would be occasions where someone may be working later, as small businesses don't always "run by a clock". Mr. Hawkins agreed. Mr. Little discussed the relatively low-noise nature of the tools, such a router. Mr. Hawkins expressed that he did not anticipate the work would be able to be heard outside the building. Chairman Sousa noted the tools are the same as what homeowners might have in their garage.

Michalene Kosinski, of 8 Dunster Ave, introduced herself and Keith Turmel as the owners of the Antiques Mall, stating that they are very happy to have Tom's business as a neighbor. She expressed that it will be good for Greenville, and great for them. Mr. Turmel commented that they would not have to clean up broken bottles from the business.

Christa Ward, of 1 Main Street, expressed her only concern to be added traffic, as they already have difficulty getting out of their driveway at the corner due to there being no stop or yield sign. Mr. Hawkins replied that typically there will be 3 vehicles arriving in the morning, and two departing in the afternoon. He discussed the "bread and butter" of his business being the small signs he had on display. He explained that they go to job sites to install these signs across the northeast, and that they generally do not have people coming to the shop. Mr. Rathbun asked if there was any intention to open a retail storefront, and Mr. Hawkins answered no. Mr. Hawkins stated that they do not like to turn down business, and that they will make larger signs upon local request, but the bulk of their business is as he had previously described, with them going off-site to install hundreds (or thousands) of these small signs. He summarized that there would be far less traffic than the restaurant generated. Mr. Rathbun noted that it will quieter at night.

Mike Sadowski, of 55 Livingston Road, expressed that as a life-long residents, he would love to see the building restored to bring back the character.

Atty. Jepsen, reviewed the requirements for the special exception for light industry under 5.7, noting the need to review the cross-referenced section in 2.6, for the permitted uses in the industrial district. Mrs.

Sousa read the relevant section of 2.6. Atty. Jepsen recommended the consideration of whether the business presents any obnoxious or offensive concerns. Mr. Rathbun inquired about the finishing products used. Mr. Hawkins confirmed that a catalyzed polyurethane is used.

**Motion by Mr. Rathbun, 2nd by Ms. Fitzwater, to approve the special exception (for 1 Dunster Ave).
Motion carried with 4 in favor, none opposed.**

**Motion by Mr. Rathbun, 2nd by Ms. Fitzwater, to close the public hearing for Dunster & Main, LLC.
Motion carried with 4 in favor, none opposed.**

The Board entered a recess at 7:19 p.m.

Public Hearing – Meedzan Variance Application

The Board returned from recess at 7:30 p.m. Chairman Sousa read the public notice for the Meedzans' variance application, and the Board members reintroduced themselves. The Chair noted the documents and plans submitted, and asked for the applicant's presentation, if any.

Mike Ploof, of Fieldstone Land Consultants, introduced himself as the representative of Kyle and Kristie Meedzan, owners of 279 Adams Hill Road (Lot 3-31-B), stating that they are proposing a 2-lot subdivision, and explaining the highlighted areas on the map. He explained the divided frontage of the lot, which includes 450' of frontage to the south and 20' on the north side where an old "wood road" exists. He explained that the applicant wished to build only 2 homes on the 93-acre parcel. He relayed that Mr. Meedzan had contacted the Road Agent, who had looked at the two existing access points and indicated there wouldn't be a problem. Mr. Ploof noted that the (north) access lacked 180' of needed frontage, and referenced the narrative prepared in support of the variance. The Board members had no questions at this time. Mr. Ploof read the application narrative in its entirety into the record (see attached).

Mr. Joseph Pelletier, abutting land owner on Adams Hill Road, questioned how a driveway permit would be obtained when the access narrows to only 16'. Mr. Ploof answered that the Road Agent had already looked at the access and that the 20' of frontage was sufficient. Mr. Pelletier stated that a buffer would be needed to ensure only the 16' were used and prevent encroachment and damage on his lot, like that which was caused by the loggers who used that access. He stated he was addressing this with the homeowner now, suggesting a brick or stone wall would be needed to protect his lot. He stated that he "would give him his access, but doesn't want it encroaching." Mr. Ploof answered that a driveway is typically 12' wide.

Mr. Rathbun asked if the north access actually touches the road, and Mr. Ploof (and Mr. Pelletier) confirmed that it did. Charles Buttrick, of 365 Adams Hill Road, clarified that it touches the town-owned right-of-way, not the paved area of the road.

Chairman Sousa asked if the Board had any more questions at this time, and there were none. He noted that he anticipated having questions after hearing from the abutters.

Mr. Buttrick questioned the provided narrative under #2, asking what other parcels Mr. Ploof was suggesting the subdivided piece would be similar to. Mr. Ploof explained that he was not suggesting there are other parcels with only 20' of frontage, but that the 200' of frontage and a 2 acre minimum lot size was established to ensure a good separation distance between houses. Mr. Buttrick expressed concern that this would set a precedent for doing away with the 200' frontage requirement in Greenville. Mr. Ploof referenced the hardship issue related to the geometry of the lot, and stated that the (northern) portion of the lot couldn't be used conveniently. Mr. Buttrick discussed the use of that access by the abutters over the years. Mr. Buttrick asked Mr. Ploof if the area with the 450' of frontage could be subdivide later in life. Mr. Ploof answered that it could be, but would be challenging due to the land conditions (wetlands), and that the siting of the proposed house would take up much of the available frontage. Mr. Buttrick responded that road frontage doesn't have to be prime land. Mr. Ploof responded a "dredge and fill" would be required, and is difficult to obtain. Mr. Buttrick expressed that the owner is leaving open the possibility of an additional lot by not using part of that frontage to meet the 200' zoning requirement on the proposed (north) lot. Mr. Ploof relayed that it is not Mr. Meedzan's intent to do that, and Mr. Buttrick expressed that intentions change with the sale of properties. Mr. Buttrick expressed that he was not opposed to the house, but more the exception to the Town regulations. He referenced his own property subdivision, which was done according to regulations, and expressed that they are creating the hardship. Mr. Ploof showed a plan of the resulting lot if the subdivision were done splitting the 450' of frontage, and expressed that most towns don't want such a wildly shaped lot. He indicated that they were doing this (variance) to make things more symmetrical, and that they did not want to do the other lot configuration.

Mike Sadowski expressed that this application was seeking 90% relief from our regulations, and would create a non-conforming lot, which he believed would be non-buildable per the ordinance. Mr. Ploof answered that by virtue of having the variance granted, the lot would not be non-conforming. Mr. Sadowski questioned "at what point do we stop," expressing that the 90% relief would be extreme.

In response to comments by Mr. Pelletier about the 20' access, Mr. Ploof questioned why he believed more than 20' is needed. Mr. Pelletier replied "Why do you think you need 200'? It's to make sure they put the driveway where it's supposed to be. You're not going to put a driveway next to a guy's boundary." Chairman Sousa reference the presented argument in the narrative that it is to provide a reasonable buffer.

Mr. Rathbun asked if the owner was aware of the hardship that Mr. Ploof is talking about when he purchased the lot. Mr. Ploof replied that he could not speak to that. Mr. Rathbun asked if the owner was aware of the 200' frontage requirement, and again Mr. Ploof could not say.

Barbara Eaton, of 5 High Street, commented that subdividing on the south side would require a long driveway to go all the way around to the other piece. Mr. Ploof agreed that it would require more than 4000' (of driveway). She expressed that she can see where they are coming from in looking for a variance. The necessary lot configuration to meet the frontage requirements was discussed, With Mr. Rathbun suggesting that the 450' could be divided with the south-side parcel being built upon further into the property. He expressed that there is a solution for this property that doesn't require a variance, if the land were cut up differently, and Mr. Ploof confirmed that to be accurate. Mr. Sousa expressed a

possible other alternative with 180' plus the (northern) 20' creating 200' of non-contiguous frontage. He expressed his feeling that the proposal is not in keeping with the spirit of the ordinance.

Mr. Buttrick expressed that as land becomes scarce, the Planning Board may need to deal with these frontage issues, as there are going to be many of these unusual shaped lots. He expressed that the subject property is a difficult lot, and he suggests "buyer beware". He expressed he would be interested to learn how many lots could be developed there with the wetlands. He also questioned the determination of a 20' driveway for the Town of Greenville, which he would like to see in writing. He discussed the 50' right-of-way for laying out roads, but acknowledge that the 20' access point is a long-established access used for livestock, etc. in the past. Chairman Sousa acknowledge that he had not seen anything formally documenting the width required for driveway access. He expressed that the recommendation that these rules be reevaluated could be made to the Planning Board, but that this proceeding could not address any of those concerns this evening. Mr. Buttrick expressed, and Mr. Pelletier concurred, that another concern would be the potential to use the 20' ROW as a shared drive to further subdivide the north end of the lot. Mr. Buttrick discussed prior over-use of the access point, and stated that he was anti-development, but was concerned about the potential precedent.

Town Administrator Tara Sousa reminded the Chair that an abutter had submitted a letter which should be read into the record. Chairman Sousa read a letter from Marshall Buttrick, of 240 Adams Hill Road, which stated, "I am an abutter to the Meedzan property, Tax Map 3-31-b, unable to attend tonight's hearing due to a prior commitment. I have reviewed the application for a variance and feel that it meets the requirements for granting of a variance."

Tara Sousa indicated that she had comments and questions, not as the Board's Administrative Assistant, but as a resident of Greenville. She referenced Mr. Ploof's statements that a long driveway would be needed to access the northern portion of the lot if the frontage were taken from the southern frontage, and acknowledged that there may be further questions for the Road Agent given the information about the narrowing of the 20' access point, but asked if there was any reason why the owner could not use the northern non-contiguous frontage for the driveway. Mr. Ploof answered that he had considered that possibility. He noted he had not found anything specifically prohibiting such in Greenville's regulations, but that many towns require that the access point be on the larger piece of frontage. Mr. Sadowski gave the example that his property access is on the lesser section of non-contiguous frontage. Mrs. Sousa expressed a second concern that the proposal leaves a lot of room for future development. She expressed her belief that subdividing a more traditional-shaped lot with 20' of frontage would not be approved, and that if the variance were granted and that became a lot of record not tied to the larger parcel in any way, the residents would have gained no protection from additional development of the larger parcel. She discussed that although the parcel could be developed with a road under the current zoning, a variance wouldn't be granted for the 20' of frontage in that circumstance. Mr. Ploof commented that only 50' of frontage would be required for a road, and that you are creating frontage as you go. He noted that there would still be enough frontage for a road under the zoning-compliant proposal, so that could happen in the future anyway. He expressed that the wildly configured lot is what they are trying to avoid. Mr. Ploof reiterated Mr. Buttrick's comments that the regulations should be reconsidered, because these unusual lots will become more common as land becomes scarce. Mr. Rathbun acknowledged that that was a possibility, but not a guarantee, and discussed the threat of

additional development as a "bludgeon". He discussed the available alternatives for the lot, noting that that it goes to the hardship issue, and that the hardships are personal in that the configuration is not their preference. Chairman Sousa expressed that the presenter had enumerated the different options that did not require a variance. Chairman Sousa and Mr. Rathbun expressed their concern about the precedential nature of granting such substantial relief from the requirements. Mr. Ploof discussed his opinion that it would not create a precedent, as each lot is unique, and referencing the 5th point in the narrative relative to the geometry of the lot.

Mr. Buttrick commented that if a hardship could be well-documented, it might resolve the concern of creating a precedent. He questioned if it would be possible to limit future subdivision with a condition that limits that access to only that lot, thereby avoiding a trickle-down effect of additional lots with a common driveway. Mr. Rathbun noted that any scenario would have to be looked at individually and weighed against the 5 criteria. Mr. Pelletier agreed that if the variance is granted, an easement should not be able to be granted to go further down. Mr. Ploof indicated the owner would be amenable to that restriction. Mr. Pelletier discussed the potential for issues if right-of-way is not restricted and additional homes are built along a common driveway. Mr. Buttrick discussed potential future timber operations on that lot and the general challenging nature of the lot with its existing wetlands, expressing that he believed the potential for development beyond a couple lots would not be cost effective.

Mr. Sadowski expressed that 90% relief from the ordinance would be too far, likening it to increasing sign size once one variance has been granted. He believe a line in the sand should be drawn.

Chairman Sousa asked Town Counsel Meaghan Jepsen for her thoughts on the application. She stated that this had been good discussion, noting that the primary issue appeared to be the hardship prong, given that there are alternatives for subdividing the lot. Chairman Sousa stated that it had been agreed that there are other ways in which the property can be cut up, making the property both accessible and viable. Mrs. Sousa suggested that Ms. Jepsen comment on the legality of the suggestion by some of the abutters to restrict additional right-of-way easements. Ms. Jepsen stated that the Board could not put that type of restriction without the applicant agreeing to such, clarifying that it can't be a forced condition. She recommended that the Board discuss each of the 5 criteria.

Hearing no further comments, Chairman Sousa announced the closure of the public portion of the hearing at 8:42 p.m.

The Board reviewed the narrative as to criteria one: the variance would not be contrary to the public interest. Mr. Rathbun expressed his disagreement with the applicant's assertion that the variance would allow for the productive use of the property, given the available alternatives that would also allow for productive use. Ms. Fitzwater questioned if "productive use" relates to the land itself, ie: farming, and Mr. Rathbun answered no, that it was just their ability to use it as they want to, and Ms. Fitzwater agreed with him that it can be used without a variance. Mrs. Sousa reiterated the language of criteria one, and Mr. Ploof noted that (the narrative) is supporting information. Mr. Rathbun questioned if they are talking about whether granting the variance would affect the public interest, stating that he believed it was contrary to the public interest because they would set a precedent where you can have a lot with 20' of frontage. Mrs. Sadowski and Ms. Fitzwater agreed. Mr. Ploof suggested every variance the Board

granted would have that effect. Mr. Rathbun discussed his perception of the difference between seeking a minor relief such as having 190' and needing ten and the reverse. The ability to create a subdivision by putting in a road with 50 feet of frontage was brought up, and Chairman Sousa stated that that would be a matter for the Planning Board. Mrs. Sousa recommended obtaining clarification from Atty. Jepsen as to whether the potential for setting a precedent in and of itself can be contrary to the public interest. Atty. Jepsen answered that while it could be a consideration under criteria one, it would more appropriately be applied under the spirit of the ordinance, or for future hardships claims.

Motion by Mr. Rathbun, 2nd by Ms. Fitzwater, that criteria one is met, in that if the variance were granted, it would not be contrary to the public interest.

Motion carried with 4 in favor, none opposed.

Regarding criteria 2, spirit of the ordinance, Chairman Sousa expressed his feeling that the proposed use is contrary to the spirit of the ordinance, which is intended to create an ample buffer between property lines and properties, and granting such would impede that intent. The other Board members agreed. Atty. Jepsen concurred with the stated reasoning.

Motion by Mr. Rathbun, 2nd by Mrs. Sadowski, that criteria 2 is not met, as granting the variance would be contrary to the spirit of the ordinance.

Motion carried with 4 in favor, none opposed.

As to Criteria 3, substantial justice, the Chair reread the applicant's narrative regarding this criteria. Mrs. Sousa read from the State's zoning manual regarding substantial justice, which stated that the guiding rule was "any loss to the individual that is not outweighed by a gain to the general public is an injustice." Mr. Rathbun questioned if the public gain needed to be immediate, or could it be down the road. Atty. Jepsen answered that it is a balancing of considering the impact of granting the variance to the applicant as compared to the impact to the Town, and clarified that it would be for this specific application. Mr. Rathbun stated that he felt that criteria was met, and Board members concurred.

Motion by Mr. Rathbun, 2nd Ms. Fitzwater, that criteria 3, substantial justice, has been met.

Motion carried with 3 in favor, 1 opposed.

Regarding Criteria 4, that the values of surrounding properties would not be diminished, the Chair reread the applicant's answer to this criteria, and expressed that he did not see the building of 2 homes on 93+ acres as having any negative impact on surrounding property values. Other Board members agreed.

Motion by Ms. Fitzwater, 2nd by Mrs. Sadowski, that criteria 4 is met.

Motion carried with 4 in favor, none opposed.

Considering criteria 5, that denial of the variance would result in unnecessary hardship to the owner, Chairman Sousa read the definition of hardship as a restriction that, "when applied to a particular property, becomes arbitrary, confiscatory, or unduly oppressive because of conditions of the property that distinguish it from other properties under similar zoning restrictions." He reread the applicant's narrative relative to this item. Mr. Rathbun expressed that he does not agree that a hardship exists, because the land can still be subdivided, and the owner can still put two houses on it, if designed within the zoning requirements. Ms. Fitzwater agreed that due to there being an alternative, there is no

hardship. Chairman Sousa referenced the alternative subdivision plan presented by the applicant's representative.

Motion by Mr. Rathbun, 2nd by Ms. Fitzwater, that it is not an unnecessary hardship.

Motion carried with 4 in favor, none opposed.

The Chair clarified that the effect of the motion was that criteria 5 was not met.

Chairman Sousa read the requirement for a variance to be legally granted, in that (the applicant) must show that the proposed use meets all 5 of the criteria. He stated that all 5 criteria were not met, specifically criteria 2 and 5.

Motion by Mr. Rathbun, 2nd by Ms. Fitzwater, to deny the variance due to the applicant having met only 3 of the 5 required criteria.

Motion carried with 4 in favor, none opposed.

Mrs. Sousa asked Atty. Jepsen to relay information regarding the appeal period. Atty. Biron Bedard joined the meeting at Ms. Jepsen's location, and answered that the decision of Board, having voted in public session, begins the clock for the applicant to file a motion for rehearing within 30 days. He explained that the parties also have 30 days from the issuance of the notice of decision and draft minutes to amend their request for rehearing, if filed.

Motion by Mr. Rathbun, 2nd by Ms. Fitzwater, to accept the minutes of December 8, 2020 as presented.

Motion carried with 4 in favor, none opposed.

Mr. Buttrick questioned if, due to the appeal period, the pending notice for the Planning Board's hearing on the applicant's subdivision application is still valid. Mr. Sadowski, speaking in his capacity as Chairman of the Planning Board, commented that if the applicant intends to appeal the ZBA decision, he would have to request a continuance from the Planning Board. Upon questions from Mr. Rathbun, Mrs. Sousa explained that the subdivision application is still pending before the Planning Board, and at this time it is unknown if the applicant will seek an alternative that does not require a variance, or will request a rehearing of the ZBA's decision.

Motion by Mrs. Sadowski, 2nd by Ms. Fitzwater, to adjourn the meeting at 9:16 p.m.

Motion carried with 4 in favor, none opposed.

Prepared by: Tara Sousa, Town Administrator

Approved by:


Pedro M. Sousa, Chairman


Michael Rathbun

Tracey Sadowski

A handwritten signature in black ink, appearing to read 'Kelly A. Fitzwater', written over a horizontal line.

Kelly A. Fitzwater/Alternate