

**Town of Greenville  
Zoning Board of Adjustment**

**Minutes – November 2, 2021**

Call to order at 7:01 p.m. in the Town Hall Meeting Room, 46 Main Street, Greenville, NH. Present: Chairman Pedro Sousa, Members Michael Rathbun, Tracey Sadowski, and Kristie Murphy, Town Administrator Tara Sousa (serving as the Board's Administrative Assistant), with Town Attorney Biron Bedard participating via conference call.

**Agenda:**

**Letter Regarding Variance Previously Granted to Map 5 Lot 34**

The Chairman announced the Board's primary item of discussion as being a letter from Alpine Pacific Utilities Hydro, LLC requesting revisit of a variance issued December 19, 2018 for the property at 47 Main Street, Greenville (Map 5S Lot 34 and Map 5S Lot 34 UTIL). Chairman Sousa indicated the Board had read the letter, and invited Town Attorney Biron Bedard to provide his comments regarding the matter. Atty Bedard stated that this is an interesting situation before the Board, in the sense that this is a completed variance application granted by the Board in 2018, that all appeal periods have expired with respect to it, and to his understanding, the applicant has moved forward with using said variance to obtain building permits, use the building as a residence, etc. He explained that the request by Alpine Pacific does not fall with the Board's jurisdiction at this point in time, and that the only way this matter could come back before this Board would be if the Seymours agreed to have their variance revisited, or if somehow a higher authority remanded it back to this Board. He stated the Board has no original jurisdiction to revisit or rehear the variance at this juncture, and that even if the Board were inclined to grant Alpine Pacific some relief, he did not believe the Board had the ability to so. He indicated that they may have recourse elsewhere, but not before the Greenville ZBA.

The Chair asked if any members had questions for Atty Bedard. Hearing none, he asked Atty Bedard what legal and official recourse the company requesting the revisit would have at this point, and how would he suggest the Board proceed in response to their request. Atty Bedard suggested that the Board could request of the Seymours, in writing, if they wish to have their variance revisited by the Board based upon this request. He suggested if the Seymours say no, or do not give an affirmative response within a reasonable period of time, that the Board tell Alpine Pacific that the Board simply does not have jurisdiction to take any action based upon their request, because all applicable appeal periods that would give the Board jurisdiction have expired. Town Administrator Tara Sousa asked if Attorney Bedard would be able to draft one or both of the recommended responses, and if the Board should wait for a response or failure to respond from the Seymours before responding to the requestor (Alpine Pacific), or send them something indicating the action being taken (inquiry to the Seymours). Chairman Sousa reiterated the question as to what the Board's responsibility is in notifying the parties. Atty Bedard expressed that he did not believe the Board is under any obligation, but recommended for the sake of clarity that the Board send two letters: one to the Seymours with the letter from Alpine Pacific included, asking if they wish to submit themselves to the jurisdiction of the Board, and if they do not respond within 30 days, (take that to mean) they are not doing so; and secondly, at the same time, send a letter to Alpine Pacific indicating that the Board has made this request, but absent an affirmative response

from the Seymours, the Board has no jurisdiction to hear this matter, and that if the Seymours respond in the affirmative, we will notify them of that. He recommended both sides be copied on both correspondences. Chairman Sousa asked if Atty Bedard would be able to draft the letters to both parties, and Atty Bedard answered that he would. Mrs. Sousa recommended that the Board make a motion to authorize that action.

**Motion by Chairman Sousa, 2<sup>nd</sup> by Mrs. Sadowski, to accept the request for Town Counsel Bedard to draft the letters to both parties.**

**Motion carried with 4 in favor, none opposed.**

Mrs. Sousa requested clarification that with the matter closed, and given the language recommended by Atty Bedard, that the only further response from this Board would be if an affirmative response from the Seymours submitting to this Board's jurisdiction were received. Atty Bedard concurred, save for any potential 91-a requests. Mrs. Sousa confirmed with Atty Bedard that any documents relating to the original variance, as well as this letter, which was submitted to a public board, would be public information.

### **Rules of Procedure**

Mrs. Sousa noted that she had included the Rules of Procedure for consideration tonight, since there were no lengthy public hearings scheduled. Atty Bedard asked if the Board wanted him to stay on for the discussion, and Chairman Sousa asked Mrs. Sousa her opinion. She discussed that the draft was taken from another town and adjusted for Greenville, suggesting that the Board could work through it and submit to Atty Bedard for review if substantive changes were made. Chairman Sousa, hearing no objections from the other Board members, indicated that Atty Bedard would not need to remain on the line for this discussion, and Atty Bedard agreed. Mrs. Sousa noted that a variance application was anticipated from the Country Mile. Chairman Sousa thanked Atty Bedard, and the call was closed.

Mrs. Sousa explained that the need for an adopted set of procedures is required by statute. Chairman Sousa questioned if each section should be read aloud, and Mrs. Sousa directed attention to the first item she perceived as a discussion item, which was election of Chair, Vice Chair, etc. Chairman Sousa questioned if the Board wanted to elect the Chair annually. Mrs. Sousa discussed the current operating procedure, which she supposed was due to the members being appointed rather than elected, and the limited number of meetings annually. Mr. Rathbun said it was fine as written. Mrs. Sousa clarified that what was written is different from the current procedure. Chairman Sousa advocated for election of a Vice Chair. Michael Sadowski, Chair of the Planning Board, offered public comment that even though there was currently only himself and Miles Horsley on the Board, they are elected as Chair and Vice Chair. Board members expressed general agreement with adopting such, and it was discussed that a motion was not needed at this time. Mr. Rathbun discussed that whenever the Board shall convene after the March Town Meeting it will elect or reelect a Chair. It was agreed there would be no changes to this section 2.

Regarding section 3, Mrs. Sousa discussed the addition of the Town Administrator or her designee serving as Administrative Assistant to the Board, due to the irregular nature of the Board's schedule.

In Section 4 C, Mr. Rathbun suggested that the language be revised to reflect 3 consecutive meetings rather than 3 consecutive months (when considering repercussions for unexcused absences). In discussing 4 B.1, Mrs. Sousa noted the nearly full Board and that alternates would be requested in order to have 5 members to hear a variance, or when a disqualification is anticipated. Mr. Sadowski discussed the need for additional members on the Planning Board. Chairman Sousa suggested that /Administrative Assistant (Town Administrator) be added after Chairman regarding notification of disqualification. Mrs. Sousa discussed that the Chair could be contacted directly by individual members. Members expressed agreement with the suggested change in wording.

Regarding Section 5:C, Order of Business, Mrs. Sousa questioned if the Board wanted to take new applications before or after continued applications. The Board was in agreement that they would prefer to take continued applications before new applications.

For the Board's consideration of Section 5:D, Mrs. Sousa noted that number 1 was a report from the Administrative Assistant regarding noticing and other procedure matters before a hearing begins. Addressing number 2 of the same section, she discussed the lengthy formal completeness review process that the Planning Board uses. Mr. Rathbun expressed that the Zoning Board doesn't need to do the Planning Board's work, and those applicants have generally gone through the Planning Board process before coming to the ZBA. Mr. Sadowski noted that there are occasions when applicants seek a known required variance first. The limited review of completeness that is done upon receipt by the Town Administrator, in her capacity as the Zoning Board's Administrative Assistant, was discussed, as well as details of the application form. Chairman Sousa suggested that application materials be forwarded to members when notice of the need to schedule a hearing is sent out. Mrs. Sousa discussed the need for determinations of completeness to be at a convening of the Board. She discussed the Planning Board process further, as well as circumstances where testimony of the applicant provides additional information for the application. Chairman Sousa agreed that the Board could more-formally determine completeness before opening public hearings. Mrs. Sousa discussed the regional impact provision included in number 2, and explaining that only the Board can make that determination, which would trigger additional requirements and would delay a noticed hearing.

Chairman Sousa noted the specified procedures for those providing comments, considering them to be notes for more formal moderation of speakers. Mrs. Sousa suggested an alternative would be to add language putting abutters comments before other comments from the general public. After debate, the Board was in agreement to leave the language as presented. Mrs. Sousa explained the purpose of the Chairman's summary, as proposed in 5:D(7), noting that the Board does not always strictly adhere to receiving no further comments or testimony after the public hearing is closed. Chairman Sousa expressed that he could easily summarize noteworthy comments to give a last opportunity for correction or clarification.

Mr. Rathbun questioned the need to continue through each item individually, asking Mrs. Sousa if she identified any other issues when reviewing this. Mrs. Sousa explained that she did not want to assume in all instances that a current procedure is what the Board wants to formally adopt. Mr. Rathbun asked the same of Chairman Sousa, who indicated most of his questions or comments had been addressed in the

preceding sections, but wanted all members to review and understand the increased formality, and if everyone agreed, he would not feel it necessary to continue going through each item individually.

Mr. Sadowski showed the Chairman the guidelines the Planning Board was following regarding order of those providing comments at a hearing. Mr. Rathbun asked about the provision for a joint meeting. Mr. Sadowski discussed examples he believed would warrant a joint meeting, such as an impasse when one Board can't act with the decision of another Board and vice-versa, or when the spirit of an ordinance is in question.

Mrs. Sousa noted that the requirements under sections 7, Notice of Decision, and 8, Motion for Rehearing, are per statute. Mrs. Sousa reviewed Section 9, Records, noting that Planning/Zoning is encompassed within the Selectmen's Office.

Under Section 10, Public Notice, Mr. Rathbun suggested that hearing notices be published on the Town website rather than in a local newspaper. Mrs. Sousa explained her understanding that such was allowed for the Planning Board, but would have to confirm if statutorily allowed for Zoning public hearings. The cost associated with such notices, as well as placement on the website, was discussed. Mrs. Sousa confirmed that she would research the requirements and report back to the Board.

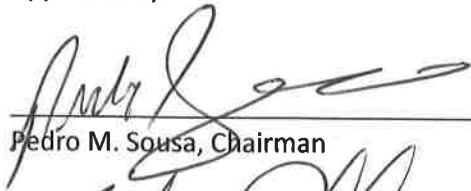
Mrs. Sousa suggested another section that might be needed would specify requirements of the application, such as number of copies, abutters labels provided, fees, etc. She noted it should also reference the Selectmen's office hours as the public hours for Planning and Zoning. She stated she would draft something and bring it back to the Board. Mrs. Sousa questioned how many sets of plans the Board felt was necessary. Mr. Rathbun felt one set would be sufficient. Mr. Sadowski explained the need for 6 sets for the Planning Board, for distribution to departments, and recommended against only requiring one copy for review by the Zoning Board. Chairman Sousa expressed that a clean copy is needed to be maintained for record keeping purposes, as Board members might make notations on their copy. Mrs. Sousa confirmed that 1 copy should be maintained in the property (assessing) folder, and one with the Zoning Board materials. Mr. Rathbun agreed that more copies made sense. Mr. Sadowski questioned if the Zoning Board seeks comment from other departments. Chairman Sousa and Mr. Rathbun discussed the limited scope of most Zoning decisions. Mrs. Sousa suggested that she could incorporate an email notification to Departments when notice of the hearing is published. She noted that, when available, electronic copies of the plans are included with the website notice. Mr. Rathbun asked if electronic copies could be required. Mrs. Sousa discussed the potential for documents not created professionally, which her office does not have the capability of scanning, but suggested language could request submission if available.

**Motion by Mr. Rathbun, 2<sup>nd</sup> by Mrs. Murphy, to accept the minutes of June 8, 2021 as presented.**  
**Motion carried with 4 in favor, none opposed.**

**Motion by Mrs. Sadowski, 2<sup>nd</sup> by Mr. Rathbun, to adjourn the meeting at 8:25 p.m.**  
**Motion carried with 4 in favor, none opposed.**

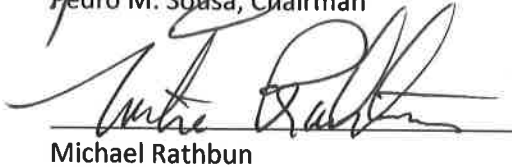
Prepared by: Tara Sousa, Town Administrator

Approved by:



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Pedro M. Sousa, Chairman



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Michael Rathbun



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Tracey Sadowski



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Kristie Murphy

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Alternate