

**Place:** Raymond High School, Media Center

**Call to Order:** 7:00 p.m.

**Members Present:** Chuck White, Vice Chairman; Joyce Wood, Clerk; Nick Moccia; Paul McCoy, James Canney, Alternate; Joseph Povilaitis, Alternate.

**Staff Present:** Richard Mailhot, Code Enforcement Officer; Robert Price, Planning Technician.

*Vice Chairman White assumed the position of Chairman for the duration of the meeting in the absence of Sharon Weldy.*

### **Pledge of Allegiance**

### **Approval of Minutes**

*Members sitting for the vote on Approval of Minutes: Chuck White, Joyce Wood, Nick Moccia, Paul McCoy and James Canney.*

MOTION: Paul McCoy made a motion to approve the minutes of 10/10/07 as presented. Joyce Wood seconded. The motion passed with a unanimous vote of 5-0-0.

### **Public Hearings – Flibotte Area Variance**

*Members sitting on Application #2007-015: Chuck White, Joyce Wood, Nick Moccia, Paul McCoy and James Canney.*

*Application #2007-015 - An application for an Area Variance has been received from Richard Flibotte, Jr. to construct a shed in an area with a 20 foot setback where 37 ½ feet is required. The property is shown on Raymond Tax Map 4, Lot 13-1; Chester Road.*

Planning Technician Price read the abutters list.

Chuck White stated he has business with Mr. Flibotte coming up at the end of November, however this will not affect his ability to serve on this case.

Paul McCoy stated he has been called as a witness to appear before the Ethics Committee for a case in which Mr. Flibotte is involved. He stated this will not affect his ability to serve on the case before the ZBA tonight.

Richard Flibotte, Jr. stated he is only looking to construct a temporary equipment shed. The shed will not be a permanent structure, and will be set up on blocks. The shed will be vinyl that will match the color of the house. He stated to meet setback requirements; he will have to set the shed in the part of his yard that is mainly used for recreational activities. He stated he would prefer not to do this, which is why he is seeking the variance from the Board.

Joyce Wood asked Mr. Flibotte to discuss where he could fit the shed within the setback. Mr. Flibotte explained that he could fit the shed off the patio, however this is not his preference because the area is nice as it currently exists and it would not be aesthetically pleasing to locate the shed there.

Joyce Wood stated she is concerned that the land does not present a hardship in this case. She asked Mr. Flibotte to describe what he is claiming as a hardship for the Board to give relief from the Zoning Ordinance. Mr. Flibotte stated it is not a hardship, but he is concerned that the recreational portion of his yard will be ruined by having to place the shed there. He stated he would also prefer to not stare at the shed outside his window in place of the wooded area that currently exists. He stated he is trying to keep things as aesthetically pleasing as possible with the presented configuration.

Chuck White stated he is also having trouble with the lack of an apparent hardship associated with the land. Mr. White asked if Mr. Flibotte could take a tree down to fit the shed. Mr. Flibotte replied that he would prefer not to because the tree in question is a nice tree, and surrounding vegetation is dying.

Chuck White asked what the shed will be used for. Mr. Flibotte replied that the shed will be used for storage of seasonal equipment, citing garden tools as an example. He stated no vehicles would be in the shed.

#### PUBLIC COMMENT

There was no public comment.

#### DELIBERATIVE SESSION

MOTION: Joyce Wood made a motion to enter deliberative session. Chuck White seconded. The motion passed with a unanimous vote of 5-0-0.

MOTION: Paul McCoy made a motion to come out of deliberative session. Chuck White seconded. The motion passed with a unanimous vote of 5-0-0.

#### VOTE ON AREA VARIANCE CRITERIA

1. Granting this Variance (WOULD – WOULD NOT) diminish surrounding property values because... **Would Not – 5-0**
2. Granting this Variance (WOULD – WOULD NOT) be contrary to the public interest because... **Would Not – 5-0**
3. Special conditions (DO – DO NOT) exist such that literal enforcement of the Ordinance results in unnecessary hardship because: **Do Not – 4-1**
  - a. An Area Variance is needed to enable the applicant's proposed use of the property given the special conditions of the property:  
(TRUE – FALSE) **False 3-2**

- b. The benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than via Area Variance.  
(TRUE – FALSE) **False – 4-1**
  - c. An Area Variance is required to avoid undue financial burden on the applicant.  
(TRUE – FALSE) **False – 4-1**
- 4. Granting this Variance (WOULD – WOULD NOT) do substantial justice. **Would – 3-2**
  - 5. Granting this Variance (WOULD – WOULD NOT) be consistent with the spirit of the Ordinance. **Would – 3-2**

MOTION: Joyce Wood made a motion to deny the request for an area variance because the applicant has not provided sufficient information showing that a hardship associated with the land exists to justify granting a variance. James Canney seconded. The motion passed with a vote of 4-1-0, with Paul McCoy opposed to the motion.

#### **Green Area Variance**

*Members sitting on Application #2007-016: Chuck White, Joyce Wood, Nick Moccia, Paul McCoy and James Canney.*

*Application #2007-016 - An application for an Area Variance has been received from Christopher Green to construct a two-story garage with a family room above in an area with a 32 foot setback where 50 feet is required. The property is shown on Raymond Tax Map 15, Lot 59; Hillside Drive.*

Planning Technician Price read the abutters list.

Christopher Green stated the garage can not go to the front of the house because there is an existing stairway, and it can not go to the left of the house because that is where the septic tank is located. He stated they want to place it to the right side of the house. He stated that any location attached to the house or not, on the right side of the house encroaches on the 50 foot setback requirement. He stated the garage could fit behind the house; however there is no convenient way to get the driveway to it in that location, plus their well would be located in the way of any driveway going to the back.

Mr. Green presented a signed statement from all but one of his abutters stating they have no objection to his proposal. The one abutter not having signed the form is no longer living in Raymond. Joyce Wood read this statement into the record. A copy of this document is attached to the original set of minutes on file in the Town Clerk's Office.

Chuck White asked the applicant to clarify where the current and proposed driveways were located on the plan. Mr. Green pointed their locations out for Mr. White.

Nick Moccia asked the applicant to clarify his intentions for the family room above the proposed garage. Mr. Green responded their intention is strictly to have a family room, not a living space.

Paul McCoy asked if the applicant proposed to connect the garage to his home with a breezeway. Mr. Green replied that was the intent.

Nick Moccia asked if the applicant proposed to have two means of egress from the family room. Mr. Green explained he is proposing a stairway from the breezeway to the family room, and also another door from the family room to the garage.

#### PUBLIC COMMENT

There was no public comment from anyone in attendance; however Planning Technician Price read a letter of support from abutter John Moore. A copy of this letter is attached to the original set of minutes on file in the Town Clerk's Office.

#### DELIBERATIVE SESSION

MOTION: Joyce Wood made a motion to enter deliberative session. James Canney seconded. The motion passed with a unanimous vote of 5-0-0.

Joyce Wood stated the applicant has covered all the bases. She asked if any of the Board members had any concerns with the proposal. Paul McCoy stated the only condition he believes should be added would be to remove the second driveway and replace it with vegetation.

MOTION: Paul McCoy made a motion to come out of deliberative session. Joyce Wood seconded. The motion passed with a unanimous vote of 5-0-0.

#### VOTE ON AREA VARIANCE CRITERIA

1. Granting this Variance (WOULD – WOULD NOT) diminish surrounding property values because... **Would Not – 5-0**
2. Granting this Variance (WOULD – WOULD NOT) be contrary to the public interest because... **Would Not – 5-0**
3. Special conditions (DO – DO NOT) exist such that literal enforcement of the Ordinance results in unnecessary hardship because: **Do– 5-0**
  - a. An Area Variance is needed to enable the applicant's proposed use of the property given the special conditions of the property:  
(TRUE – FALSE) **True 5-0**
  - b. The benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than via Area Variance.  
(TRUE – FALSE) **True – 5-0**

- d. An Area Variance is required to avoid undue financial burden on the applicant.

(TRUE – FALSE) **True – 5-0**

4. Granting this Variance (WOULD – WOULD NOT) do substantial justice. **Would – 5-0**
5. Granting this Variance (WOULD – WOULD NOT) be consistent with the spirit of the Ordinance. **Would – 5-0**

MOTION: Paul McCoy made a motion to grant an area variance to Christopher Green to construct a two-story garage with a family room above with the following condition:

- The driveway located to the southwest of the building shall be removed and vegetation shall be planted in its place

Joyce Wood seconded. The motion passed with a unanimous vote of 5-0-0.

#### **Arista Development/Walgreens Use Variance**

*Paul McCoy announced that he must recuse himself from this hearing, as he has involvement with the applicant.*

*Members sitting on Application #2007-017: Chuck White, Joyce Wood, Nick Moccia, Joseph Povilaitis and James Canney.*

*Application #2007-017 - An application for a Use Variance has been received from Arista Development, LLC to process rock via crushing in Zone C.1 where it is not allowed. The property is shown on Raymond Tax Map 25, Lot 29; NH Routes 27 & 156.*

Planning Technician Price read the abutters list.

Gordon Snyder, attorney representing Arista Development, LLC stated the excavation is incidental to the construction of the stores and parking area on the site. He stated the operation is intended to last 90 days at maximum.

Peter Cullinan of Arista Development, LLC stated the project was approved by the Planning Board in August 2007. The project consists of a subdivision of the lot, and two site plans: one being for a Walgreens Pharmacy and the other being for an Advance Auto Parts retail store. He stated the site is heavily sloped toward the rear, making it very similar to the neighboring Irving Gas Station site. He stated there is approximately 30,000 yards of rock on the site; 25-30% of that amount will be used on the site for the leveling of the pad.

Joyce Wood asked how close the nearest house is located to the property line traveling up Route 156. Mr. Cullinan estimated the nearest house is approximately 120 feet away from the property line.

Joyce Wood asked where on the site the crusher would be operating. Mr. Cullinan replied that it would be located close to the intersection of Routes 27 and 156.

Joe Povilaitis asked if the applicant knew where the crushed material would be taken to. Mr. Cullinan stated he did not have an answer for this question yet.

Chuck White asked about dust control. Mr. Cullinan explained they will have some sort of dust management in place, as is required.

Code Enforcement Officer Mailhot stated today's crushers are relatively quiet. He stated the winter months are the best time for an operation like this to occur because everyone's windows are closed, and people are generally inside. He also stated that spray racks can be operated in the winter time.

#### PUBLIC COMMENT

There was no public comment.

#### DELIBERATIVE SESSION

MOTION: Joyce Wood made a motion to enter deliberative session. Nick Moccia seconded. The motion passed with a unanimous vote of 5-0-0.

The Board discussed conditions to add to the variance, and how the conditions should be worded.

MOTION: Joyce Wood made a motion to come out of deliberative session. Nick Moccia seconded. The motion passed with a unanimous vote of 5-0-0.

#### VOTE ON USE VARIANCE CRITERIA

1. Granting this Variance (WOULD – WOULD NOT) diminish surrounding property values because... **Would Not – 5-0**
2. Granting this Variance (WOULD – WOULD NOT) be contrary to the public interest because... **Would Not – 5-0**
3. Denial of this Variance (WOULD – WOULD NOT) result in unnecessary hardship for the owner because... **Would – 5-0**
  - a. The Zoning Restriction as applied to the property (DOES – DOES NOT) interfere with its reasonable use: **Does – 5-0**
  - b. There (IS – IS NOT) a fair and substantial relationship between the general purposes of the Ordinance and the specific restriction on the property. **Is Not – 5-0**

- c. The Variance (WOULD – WOULD NOT) injure the public or private rights of others. **Would Not 5-0**
4. Granting this Variance (WOULD – WOULD NOT) do substantial justice. **Would – 5-0**
5. Granting this Variance (WOULD – WOULD NOT) be consistent with the spirit of the Ordinance. **Would - 5-0**

MOTION: Joyce Wood made a motion to grant a use variance to Arista Development, LLC to process rock via crushing in Zone C.1.

The following conditions shall apply:

- The applicant may crush rock excavated on the site to prepare the site for development as shown on plans entitled *Site Redevelopment Plans; Proposed Pharmacy*; Received by the Raymond ZBA on November 2, 2007). The crushing shall take place only in the winter months and for a period not to exceed 90 days from the issuance of a building permit, which is expected to be issued in December; in no event shall crushing be done any later than March 15.
- Any restrictions on crusher operations will be as determined in pre-construction consultation with the Public Works Director and the Planning Office and shall include, but not be limited to, appropriate sound abatement, traffic control, and dust control measures.
- The crusher must be located no less than one hundred feet from the northernmost property line .
- Work Hours are as depicted in the Raymond Earth Excavation Regulations:
  - a. Startup shall begin no earlier than 7:00 a.m.
  - b. No material shall leave the site any later than 4:30 p.m.
  - c. All processing shall be shut down by 6:00 p.m.
  - d. Crushing and hauling hours listed above are Monday through Friday
  - e. No crushing shall take place on Saturdays, Sundays or Holidays
  - f. Hauling of materials from the site is allowed on Saturdays between the hours of 7:00 a.m. to 12:00 p.m. only

Nick Moccia seconded. The motion passed with a unanimous vote of 5-0-0.

### **Garvin Area Variance**

*Paul McCoy allowed Joseph Povilaitis to serve in his place for the following case.*

*Members sitting on Application #2007-018: Chuck White, Joyce Wood, Nick Moccia, Joseph Povilaitis and James Canney.*

Application #2007-018 - An application for an Area Variance has been received from Clarence Garvin to construct a front entrance porch in an area with a 22 ½ foot setback where 25 feet is required. The property is shown on Raymond Tax Map 28-1, Lot 84; Epping Street.

Planning Technician Price read the abutters list.

Clarence Garvin explained that he would like to install an entrance porch onto the home. He stated he would like to install a couple columns and a roof on the porch. He explained that this porch will lessen the required setback to 22 ½ feet, which is the reason he is requesting a variance.

Joyce Wood asked if the entrance porch will match what is in the surrounding area. Mr. Garvin stated the porch will be appropriate for the house and what currently exists in the area.

#### PUBLIC COMMENT

There was no public comment from anyone in attendance; however Planning Technician Price read a letter of support from abutters Rhonda and Thomas Pepin. A copy of this letter is attached to the original set of minutes on file in the Town Clerk's Office.

Code Enforcement Officer Mailhot stated the stairs would not normally be included in the setback requirement, however the deck and roof assembly of the entrance porch is what pushed the applicant over the edge.

MOTION: Joseph Povilaitis made a motion to forego the deliberative session for this application. Nick Moccia seconded. The motion passed with a unanimous vote of 5-0-0.

#### VOTE ON AREA VARIANCE CRITERIA

1. Granting this Variance (WOULD – WOULD NOT) diminish surrounding property values because... **Would Not – 5-0**
2. Granting this Variance (WOULD – WOULD NOT) be contrary to the public interest because... **Would Not – 5-0**
3. Special conditions (DO – DO NOT) exist such that literal enforcement of the Ordinance results in unnecessary hardship because: **Do– 5-0**
  - a. An Area Variance is needed to enable the applicant's proposed use of the property given the special conditions of the property:  
(TRUE – FALSE) **True 5-0**

- b. The benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than via Area Variance.

(TRUE – FALSE) **True – 5-0**

- c. An Area Variance is required to avoid undue financial burden on the applicant.

(TRUE – FALSE) **True – 5-0**

4. Granting this Variance (WOULD – WOULD NOT) do substantial justice. **Would – 5-0**

5. Granting this Variance (WOULD – WOULD NOT) be consistent with the spirit of the Ordinance. **Would – 5-0**

MOTION: Joyce Wood made a motion to grant an area variance to Clarence Garvin for the purpose of constructing a front entrance porch. The porch is to extend no closer than 22 ½ feet from the front property line. Nick Moccia seconded. The motion passed with a unanimous vote of 5-0-0.

### **Gregoire Use & Area Variances**

*Paul McCoy returned to his seat for the remainder of the meeting. Alternate Jim Canney stepped down for the remainder of the meeting.*

*Members sitting on Application #2007-019 and #2007-020: Chuck White, Joyce Wood, Nick Moccia, Joseph Povilaitis and Paul McCoy.*

*Application #2007-019 - An application for a Use Variance has been received from James Gregoire to allow a yield plan for a conservation subdivision to be submitted showing a private road rather than a public road, as is required. The property is shown on Raymond Tax Map 23, Lot 4; Batchelder Road.*

*Application #2007-020 - An application for an Area Variance has been received from James Gregoire to reduce the required 50 foot setback within a conservation subdivision to 10 feet, which is allowed in the underlying Zoning District A. The property is shown on Raymond Tax Map 23, Lot 4; Batchelder Road.*

Due to the fact that both requests are intertwined, Acting Chairman White opened both hearings together.

Planning Technician Price read the abutters list.

Erik Saari of Jones and Beach Engineers, Inc. presented the plan to the Board. He explained that the use variance is for the yield plan, which will allow it to be based upon a private road. This is something that was discussed at previous meetings between Mr. Gregoire and the Zoning Board as well as between Mr. Gregoire and Town Staff, but was never applied for.

Code Enforcement Officer Mailhot added that the applicant attempted a different path in May to achieve his goal. Town Counsel's opinion at the time was that the applicant had a lesser variance route available in that he needed to seek a variance to allow a yield plan to be presented based upon a private road, which is what is before the Board this evening. Mr. Mailhot added that this is the first conservation subdivision that has been proposed in an area with town water. As a result, some layout issues have arisen in regards to the area variance portion of this case. Mr. Mailhot reiterated that the applicant is seeking a use variance this evening to allow a yield plan for a conservation subdivision to be presented showing a private road.

Joyce Wood stated the plans with the house lots that were presented do not show lot lines. Mr. Saari replied that in a conservation subdivision, lot lines "go away." He stated Mr. Gregoire's intent is to establish a condominium association. Code Enforcement Officer Mailhot added that conservation subdivisions do not have lot requirements. He added that they do not have setback requirements except for external property lines and separation between buildings.

Joyce Wood clarified that the applicant is seeking an area variance to reduce the required conservation subdivision external property line setback from the 50 feet that is required to 10 feet. Code Enforcement Officer Mailhot stated that the underlying zoning would allow for a 10 foot setback. He expanded by saying that the 50 foot setback comes from the Zone B Residential or outlying areas of the community. He stated if the applicant were to pursue a conventional subdivision in this area where Town water is available, the setback would only be 10 feet. He stated the applicant is seeking to use this lot, although as a conservation subdivision, with setbacks similar to those of the underlying Zone A, which would be 10 feet.

Joyce Wood asked why the applicant needs relief if he would be able to fit the proposed number of houses in the area using a 50 foot setback. Mr. Saari replied that the 50 foot setback removes any flexibility beyond the building footprints that are shown on the plan. He stated with the 50 foot setback, if someone wanted to put on a deck, shed, or anything, they would need to go before the Zoning Board, whereas in the underlying zone, people would not have to do that.

Joyce Wood asked how big the houses would be. Mr. Gregoire responded he would like to stay between 1,600-2,000 square feet, but this is dependant on building setbacks and space to allow for additions.

#### PUBLIC COMMENT

Francis McKinnon stated if Mr. Richard (an abutter) ever decided to develop his land, this project would not allow for him to put in a road. Mr. McKinnon asked if Mr. Gregoire would give Mr. Richard a right-of-way onto his private road so Mr. Richard would be able to develop his property. Mr. Saari stated Ms. Stathos is not willing to grant Mr. Richard access off her easement, and this is beyond the control of the applicant.

Mr. Mailhot stated Mr. Richard has a variance to construct a single-family home on that property that he acquired a number of years ago.

#### DELIBERATIVE SESSION

MOTION: Paul McCoy made a motion to enter deliberative session. Joyce Wood seconded. The motion passed with a unanimous vote of 5-0-0.

Paul McCoy stated this is exactly what we asked the applicant to do in the spring.

Chuck White agreed, saying this is the direction the Board steered the applicant previously.

Joyce Wood stated that she is concerned with the area variance portion. She stated she is concerned with the asking of a variance because someday someone might want to do something saying there does not appear to be a hardship as there is no specific information.

Paul McCoy stated the 50 foot setback is catered to a larger lot. These lots are very small, and their use would be quite limited with a 50 foot setback in place.

Joyce Wood stated the applicant can adequately fit 11 homes as shown on the plans presented. There is not relief required given the evidence that they have presented.

Paul McCoy stated the plans are showing that the houses can be placed within the setback; however their locations are speculative right now. They may need to adjust locations once test pits are dug.

Code Enforcement Officer Mailhot asked if the Board would be amenable to the applicant going back, placing the houses on the plan as best they can with the information available to them, and coming back at the next meeting. He asked if this makes more sense than forcing the applicant to physically build all the homes to prove there is a hardship. Joyce Wood stated the plans presented to the Board show that the applicant can fit 11 homes within the 50 foot setback. Mr. Mailhot responded this is house-only. Ms. Wood asked if the applicant is building something other than houses. Mr. Mailhot stated he could be building houses with garages, decks, etc. Mr. Mailhot stated this is why he is asking the Board if the applicant should be allowed to come back with more detail on what exactly is proposed on the lots to demonstrate the hardship.

Code Enforcement Officer Mailhot suggested the Board continue the area variance application to allow the applicant additional time to increase the level of information to support their request.

MOTION: Joyce Wood made a motion to come out of deliberative session. Nick Moccia seconded. The motion passed with a unanimous vote of 5-0-0.

**AREA VARIANCE**

MOTION: Paul McCoy made a motion to continue the application for an area variance to December 12, 2007 at 7:30 p.m. at Raymond High School. Joyce Wood seconded. The motion passed with a unanimous vote of 5-0-0.

**VOTE ON USE VARIANCE CRITERIA**

1. Granting this Variance (WOULD – WOULD NOT) diminish surrounding property values because... **Would Not – 5-0**
2. Granting this Variance (WOULD – WOULD NOT) be contrary to the public interest because... **Would Not – 5-0**
3. Denial of this Variance (WOULD – WOULD NOT) result in unnecessary hardship for the owner because... **Would – 5-0**
  - a. The Zoning Restriction as applied to the property (DOES – DOES NOT) interfere with its reasonable use: **Does – 5-0**
  - b. There (IS – IS NOT) a fair and substantial relationship between the general purposes of the Ordinance and the specific restriction on the property. **Is Not – 5-0**
  - c. The Variance (WOULD – WOULD NOT) injure the public or private rights of others. **Would Not 5-0**
4. Granting this Variance (WOULD – WOULD NOT) do substantial justice. **Would – 5-0**
5. Granting this Variance (WOULD – WOULD NOT) be consistent with the spirit of the Ordinance. **Would - 5-0**

MOTION: Joyce Wood made a motion to grant a use variance to James Gregoire to allow a yield plan for a conservation subdivision to be submitted showing a private road rather than a public road. Nick Moccia seconded. The motion passed with a unanimous vote of 5-0-0.

**Other Business**

Code Enforcement Officer Mailhot informed the Board that the Town has been sued relative to the Waldoborough, LLC request for a crusher on Scribner Road. He stated Town Counsel has requested a non-meeting with the Board in December to go over the certified record before it is filed with the Court on the Board's behalf.

The Board decided they will hold a non-meeting with Counsel on December 19, 2007 at 7:00 p.m.

**Adjournment**

MOTION: Paul McCoy made a motion to adjourn. Joyce Wood seconded. The motion passed with a unanimous vote of 5-0-0. Meeting adjourned at 9:15 p.m.

Respectfully Submitted,

Robert Price  
Planning Technician