

**Town of Boscawen NH  
ZONING BOARD OF ADJUSTMENT  
Boscawen Municipal Complex**

**FINAL MEETING MINUTES  
Tuesday, August 22, 2023 at 6:30 PM**

Members Present: Chairman Ed Cherian Jr., Dr. Scott Maltzie, Tracy Jo Bartlett, Roger Sanborn, Tama Tillman

Absent: Rose Fife, Recording Secretary taking Minutes remotely.

Others present: Kellee Jo Easler, Planning and Community Development Director, Kara Gallagher, Planning & Community Development Assistant, Alan Hardy, Code Enforcement Officer

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- Call to Order by Chair at 6:30 pm on August 22, 2023
- Roll Call by Kara Gallagher
- Designate member for Action Items: none.
- Approval of draft Minutes – Ms. Tillman noted changes on Line 35, 47, 66 and 105. Ms. Gallagher will take care of the changes in the Minutes. A motion to approve the Minutes, as amended, was made by Dr. Maltzie, seconded by Ms. Tillman and passed by a unanimous vote.

**Old Business:**

None.

**New Business:**

A variance for relief from Article IV Use Regulations to allow for three residential duplexes in an AR zone, submitted and owned by York Properties, LLC, 13 Lamprey Road, Canterbury NH 03224, property address of 120 Elm Street, Boscawen NH 03303 on Map 83, Lot 63, Sublot 2 located in an AR zone.

Ms. Easler expressed to the Board that the application was complete.

Chair Cherian opened the public hearing at 6:33 pm.

Testified: Jim York, Mark York, property owners of 120 Elm Street. They are approved for 1 single duplex on the lot. It is a 5-acre lot. They will have water and municipal sewer, which makes the buildable area smaller. They can tie into municipal water and sewer. They believe this is a good use of this 5-acre parcel.

Chair Cherian asked what is allowed there, 1 or 3 duplexes. Mr. Hardy explained they would be allowed 2 duplexes.

Ms. Easler explained the parcel has water and sewer and is in an AR zone which falls under agricultural. Chair Cherian asked if it was Concord or Boscawen Water. Mr. Easler explained they are in the Penacook/Boscawen Water Precinct. They will have City of Concord sewer. They have spoken to the City of Concord Planner.

Mr. York explained they have an easement on 118 Elm Street. They have the right to access their lot and bring the utilities into their lot. They have a shared driveway with 118 Elm Street. Chair Cherian asked if they would need a driveway permit with the City of Concord. Mr. York explained that they do need a driveway permit and the City of Concord has said they will require a permit. Chair Cherian noted that they will probably place a condition that they do. Ms. Easler thought a condition of required State and local permits would be good.

Chair Cherian asked if the Water Precinct had commented on this request. Ms. Easler answered that they had. Mr. Sanborn asked how the water pressure was on that lot. Mr. York explained that there was no problem. Ms. Easler understands the utilities are all set. Mr. York has spoken to the City of Concord regarding the sewer. The City of Concord told them to come back and see them when they knew what they were going to do and how many units they will have. Chair Cherian asked if they would be running a radial up Elm Street. Mr. York answered they would be and they would be bringing up to their lot. Ms. Bartlett asked for a street view of what they were doing. Mr. Hardy explained that when they first starting discussing this application, he found that it was a unique lot as they are accessing the lot through one municipality to get to another. Chair Cherian asked if they did not have the frontage but had an easement. Mr. York answered they have road frontage, but it is in Concord. Ms. Easler spoke with the City of Concord and they are not concerned as most of the land is in Boscawen. The only issue, she believes, is to widen the driveway. Boscawen does not require that as driveways only need to be 13 feet wide. Ms. Easler explained they need 100 feet of frontage for water and sewer. Chair Cherian asked if they need to adjust that? Ms. Easler answered no. Ms. Easler stated there is a housing shortage right now. If it passes it would go to Technical Review Committee as it is a Minor Site Plan and that would be addressed then.

Chair Cherian asked if it had Regional Impact? Ms. Easler answered that it is a small regional impact. The City of Concord has been noticed. She spoke with the Planner in Concord. The Yorks talked with Engineering. Mr. York spoke with the Concord Engineer and City Planner Heather Shank.

Ms. Bartlett asked if they were going to own them or sell them. Mr. York answered that they would be keeping them. Ms. Tillman asked if they would be rentals. Mr. York answered yes. Ms. Bartlett asked how many bedrooms. Mr. York answered 3 each. Chair Cherian asked if it would go to Planning Board. Ms. Easler answered yes; it will go to Technical Review Committee for Minor Site Plan. Someone from the Planning Board will be there as well as department heads. Chair Cherian asked if the Police Department had any issue as it would be a Boscawen E911, not Concord. Ms. Easler believes so. Ms. Gallagher wanted to note that the Police Chief wanted the address to be clearly noted. Mr. York stated it would be 120 Elm Street. Ms. Easler was not sure if they would be A, B, C etc. as they are duplexes. It depends on what E911 wants. Dr. Maltzie asked if that meant they had a Regional Impact or not. Ms. Easler gave them Regional Impact paperwork. It will affect the City of Concord, but not much as they are three duplexes. Chair Cherian read the Regional Impact requirements. He does not believe it has Regional Impact.

Ms. Tillman asked about the garages. It is a 2-car garage but one car garage per unit. She knows from experience that a second car will have to park somewhere. Is there a space to park a second car. Mr. York answered that there would be.

Chair Cherian wanted a motion for Regional Impact. Ms. Tillman does not believe it has a Regional Impact. Ms. Bartlett wanted to know where it was located. Mr. York explained it is located by Woody Hollow. Regional Impact: Ms. Bartlett and Dr. Maltzie do not believe so. Mr. Sanborn does not either. A **motion** that it does not have Regional Impact was made by Ms. Tillman, seconded by Dr. Maltzie and passed by a unanimous vote.

Dr. Maltzie wanted the Minutes to show that both community abutters were notified and that the Board considered Regional Impact.

The property location was shown to the Board and how close it is to Woody Hollow.

Dr. Maltzie asked if the homes were within setbacks. Chair Cherian asked if it was wooded. Mr. York answered it is wooded and has a small field. Chair Cherian asked about buffer. Mr. York answered they will have a buffer. They do have wetlands there and there is a 45-foot setback from wetlands as well. Ms. Bartlett asked if there would be a turnaround for emergency vehicles. Mr. York answered yes. Ms. Easler explained that the town requires a hammer head at the end for a turn around. They are within the required setbacks. They will leave open space on the left where the wetland is located.

In favor abutters: none.

In opposition abutters: Chris Morse, 115 Elm Street, Penacook, which is across the street from 120 Elm Street. She is on the Penacook side. This road has 3 town lines; Concord, Penacook, and Boscawen. For her, this is about giving up their occupancy for residency. They are losing their vested interest for their neighbors. For 15 years they have been working it and loving it. She did not believe what would be built there would not be owner occupied. The house behind her sold for \$500,500 recently and they will be putting in an upholstery business. She believes they would be having 6 driveways worth of vehicles coming from this one access. It is a dangerous part of the road where the access is located. She would prefer this to be owner occupied.

Stephanie Foote, 122 Elm Street, Penacook, on the opposite side of 118 Elm Street. This driveway abuts their property. They do have a stream there. There is a bad blind spot there. She prefers it to be owner/occupied dwellings. She wanted to be sure the wetlands will not be a problem and it will not create flooding concerns. Also, she has concerns about noise coming from all those people located behind the rear of her property.

Mr. York addressed the noise issue. Chair Cherian asked Ms. Foote to address him and he would ask the applicant. Ms. Foote asked if it would be a 1-year lease or a month-to-month lease or Section 8 Housing. Chair Cherian explained that was not before the Board as they cannot regulate that. He addressed her other concerns.

Members of the public in favor or in opposition: none.

Chair Cherian asked Mr. Hardy if this should have been a Conditional Use, not a variance. Two families are allowed in the AR zone as a Conditional Use. Mr. Hardy explained. Ms. Easler explained that this is a 6 unit, regardless of it being 3 duplexes. Article V explains it a little better. She explained that they calculate by units. Article XII, Definitions also explains it. Chair Cherian did not believe this was correct as the Table of Uses says 3-12 units are not allowed in AR zone. Ms. Easler explained that is why they are applying for a variance. Discussion regarding the Table of Uses. Ms. Easler explained that Conditional Use permits are for Planning Board. Mr. Hardy explained Technical Review handles things for Planning Board, by law. Mr. Hardy explained the variance is being applied for due to the area. Mr. Cherian asked if they would need about 2 acres if they needed both water and sewer. Ms. Easler stated that they are asking for a variance to be allowed to have these 3 duplex buildings. Mr. Hardy explained that the term 'duplex' does not belong in this discussion, but the number of units allowed is what they need relief from. More discussion regarding the Zoning Ordinance and how it applies to this situation. Chair Cherian believes what the Ordinance means by the term 'duplex' vs. 'units' should be clearer. Mr. Hardy explained that there will be a major revision of the Ordinance coming up.

Ms. Tillman asked if this conversation directly affected this application. Chair Cherian felt that how they determine what they need a variance to and how it is applied affects all. Ms. Easler explained they have a grant to look at their Zoning Regulations. She explained.

Dr. Maltzie wanted clarification that if it was an R2 zone they would not be before the Board. Mr. Hardy said that was correct. Chair Cherian did not agree with that statement. Ms. Easler explained if it was in an R2, they would still have needed a Conditional Use Permit. Mr. Hardy explained how the Conditional Use Permit came to be.

Deliberation by the Board.

**Contrary to public interest:** Ms. Tillman does not believe it is contrary to the public interest. The issues they have is more of a traffic issue. They need more housing. Dr. Maltzie noted that one of the benefits of the public hearing is that the applicant can hear their input and take it into consideration. Ms. Tillman noted the abutter's biggest concerns was the wetlands and sidewalk, etc. Because the property is in Boscawen, they do not need to go through something similar in Concord, correct? Mr. York stated that was correct. Chair Cherian thought the wetlands would cover more in Concord than Boscawen. Mr. York stated that it is already an existing driveway they are using. Chair Cherian asked how they would get sewer up there. Mr. York answered they are going up the driveway that is existing. Mr. York explained that the driveway met Concord's specifications at the time that the driveway was constructed. Mr. Sanborn asked how many structures was that driveway constructed to service. Mr. York answered it was for a single home back there.

**Spirit of the Ordinance would be observed because:** Ms. Tillman believes it would be. Dr. Maltzie agrees. Chair Cherian noted it exceeds the dimensional size. Mr. Sanborn asked how close the structure was designed to town property lines. Ms. Easler explained that it is in the setbacks. She also explained that the surveyor would have to address that. Ms. Bartlett asked if the setbacks would apply to outbuildings. Ms. Easler answered it would.

**Granting a variance would do substantial justice:** Ms. Tillman believes it would. Dr. Maltzie agreed. There is a housing shortage and it is beautiful construction.

**The surrounding property values would not be diminished:** Ms. Tillman does not believe it would diminish property values in the surrounding area. It is set far back from the road and not visible from the road. Chair Cherian noted that no one stated it would impact their property values. It is designed to be in keeping with the surrounding area. Dr. Maltzie noted it would enhance the area.

**Unnecessary hardship due to special conditions of the property:** Ms. Tillman noted there is a fair and substantial relationship. That is something the Board already brought up. It is currently designated AR Zone and if it was not this would not be an issue. Chair Cherian stated it was a reasonable request. Dr. Maltzie noted that without a variance they would only be allowed to build a duplex.

A **motion** to close the hearing at 7:34 pm was made by Mr. Sanborn, seconded by Dr. Maltzie, and passed by a unanimous vote.

A **motion** to approve the request was made by Mr. Sanborn with the condition that they meet all state and local permits, as required. Ms. Easler spoke with City Planner Heather Shank, and they are saying that what is built in Boscawen is not in their prevue. They are only concerned with the end part of the driveway and she will be meeting with Ms. Shank next week. Mr. Hardy explained that they have a good working relationship with Concord's Planning Department.

A **motion** was made by Mr. Sanborn to approve with the noted condition, seconded by Dr. Maltzie and passed by a unanimous vote.

A **motion** to adjourn was made by Mr. Sanborn, seconded by Dr. Maltzie, and passed by a unanimous vote.

• **Other Business:**

None.

- Next Meeting: September 26, 2023 at 6:30 pm.

*Respectfully submitted,  
Rose Fife, Recording Secretary*