



# BOARD OF APPEALS MEETING MINUTES

Wednesday January 27, 2016  
Town Hall Meeting Room  
6:30 p.m.

## Call to Order

Chair Russell Gagner called the meeting to order and explained that the purpose of the meeting was to reconsider a variance application submitted by William Richards.

## Pledge of Allegiance

## Introduction of Board Members

### Regular Board Members Present:

Russell Gagner; Ron Vigue; John Campbell; Diane Morrill; Ken Poirier

### Regular Board Member(s) Absent:

None

### Alternate Members Present:

Pat Boisvert

### Staff Members Present:

John Stoll, Town Planner; Joseph Rousselle, Code Enforcement Officer

## Old Business

- Application for Variance –William Richards. SW intersection of Diamond Hill Rd and Little River Rd Tax Map R18, Lot 14.
  - Applicant requests expansion of building envelop from 30 feet to 60 feet.

Chair Gagner noted that the application submitted by Mr. Richards still showed a request for a building envelope expansion from 30 feet to 60 feet. Chair Gagner clarified that the variance application was actually to request a

20 foot setback from the property line for a 55 foot total variance from the 75 foot setback requirement in the Rural Residential Zone (R3) along Diamond Hill Road.

The applicant stated that he was requesting a 45 foot front setback from the center of (Diamond Hill Road), stating that it was 25 feet from the center of the road to his property line. John Stoll clarified that in Berwick the setback is measured from the front property line so the applicant would in fact be requesting a 20 foot setback.

Chair Gagner stated that there had been previous confusion about what the actual request was and that confusion was still evident at this meeting.

**Motion:** Chair Gagner made a motion to continue with the hearing based on the completeness of the appellant's application.

**Second:** Ken Poirier

Chair Gagner stated that the hearing would begin just like it would with a new application and explained how the hearing would proceed stating that the burden of proof was on the appellant. Chair Gagner stated that the Board had a full quorum and that Pat Boisvert would not be voting but could ask questions during the hearing.

**VOTED – 4-1  
Motion Passed**

In Favor: Russell Gagner; Ron Vigue; John Campbell; Ken Poirier

Opposed: Diane Morrill

William Richards stated that he was requesting his building envelope be expanded from 30 feet to 60 feet so that he could build an adequate house with a yard and front porch. Mr. Richards stated that his area of building was relatively small.

Chair Gagner asked the applicant if he had anything else to present reminding him that the Board would decide the case based upon the required hardship rules for a variance.

Chair Gagner asked the applicant how big the lot was. Mr. Richards replied that the lot was 8.3 acres.

Chair Gagner asked the applicant how much he paid for the lot. Mr. Richards replied \$53,000 dollars.

Chair Gagner clarified that the applicant stated during his presentation that he was requesting a building envelope expansion when in fact he was requesting a 20 foot front setback.

Ron Vigue asked if the property was purchased through a broker. Mr. Richards stated that it was purchased through private party. Mr. Vigue asked if the applicant completed any research at the Town Hall prior to purchasing the property, specifically the Shore Land Zoning requirements. Mr. Richards stated that Mark Truman told him that the lot was buildable but that he was not told what the setback on the property was or the shore land zoning.

John Campbell asked if the applicant was also requesting a setback from Little River Road. Mr. Richards replied that he was not and that those areas held wetlands. Mr. Richards stated that the only portion of the lot that he could build in was the area noted in the application.

Mr. Vigue stated that at the last hearing there was a discussion about FEMA flood maps. Mr. Richards stated that the portion of the lot that he would be building in is not in the flood zone.

Pat Boisvert asked if the applicant intended to build the front of the house at the 20 foot requested setback. Mr. Richards stated that the front of the house would probably be at about 35 feet. Ms. Boisvert stated that the setback requirements are nothing new in Town and asked the applicant why he would purchase a piece of property that would be difficult to meet setbacks. Mr. Richards stated that he liked the piece of property, and that Mark Truman had told him it was a buildable lot. Ms. Boisvert expressed concern that a house this close to the road would be very different from the other homes in the neighborhood and asked the applicant if any other houses were that close to the road. Mr. Richards stated that there was only one house within view of his property and that it was built closer to the road.

Joseph Rousselle stated that he went to the property with the applicant and measured 100 feet from the high water mark and 75 feet from the front property line and there was not enough room to build. This was the basis for his denial of the building permit because it could not meet the existing 75 foot front setback requirement.

Mr. Vigue noted that the staff report states that this application was sent to the Maine Department of Environmental Protection (MDEP), and asked why this was reviewed by DEP. Mr. Stoll responded that any variance requests with the shore land zoning district must be reviewed by MDEP.

Chair Gagner asked if there were any other issues with vernal pools that would affect the application further. Mr. Rousselle stated that vernal pools, and significant wetlands, and streams all had required setbacks but it was unlikely those setbacks would further impact this application.

James De Moura of 163 Little River Road (R18, 13C) spoke at this time. Mr. De Moura stated that he was concerned about a house being built that close to the road. Mr. De Moura stated that he was required to build his home in accordance with the land use requirements. Mr. De Moura asked what type of home this would be. Mr. Richards

replied that the home would be a log home. Mr. De Moura stated that he was informed by the Town that Diamond Hill Road would be paved but that never happened. Mr. De Moura asked how putting a home that close to the road would affect future paving plans by the Town. Mr. Rousselle stated that this was the reason for a 50 foot wide road right of way. The newly paved road would be built within the 50 foot right of way.

Chair Gagner clarified again that the appellant was asking for a 20 foot setback which would allow the property owner to build 20 feet from his property line.

Diane Morrill asked if this hearing was noticed. Mr. Rousselle responded that there were 9 abutters notified and notice was published in Fosters Daily Democrat.

Chair Gagner reviewed the procedure for voting on the Maine Hardship Requirements for granting of a variance. A yes vote passes the standard and a no vote fails the standard. In order for a variance to be granted the application must have all four hardship standards passed.

**Motion:** Chair Gagner made a motion that the land in question cannot yield a reasonable return unless a variance is granted.

**Second:** Ron Vigue

Chair Gagner stated that the land totaling over 8 acres was purchased for \$53,000.

**VOTED – 2-3  
Motion Failed**

In Favor: Diane Morrill; Ken Poirier

Opposed: John Campbell; Ron Vigue; Russell Gagner

Mr. Stoll asked the Board how they arrived at this conclusion. Mr. Campbell stated that he did not feel that the variance is pertinent to the land yielding a reasonable return. Mr. Vigue stated that the he did not feel the applicant gave enough information to prove that the land couldn't yield a reasonable return unless a variance was granted. Chair Gagner concurred with Mr. Vigue that not enough information was provided.

Dissenting, Ms. Morrill agreed that more information should have been provided but felt that unless a variance was granted the applicant would not receive a return on the property.

**Motion:** Chair Gagner made a motion that the need for a variance is due to the unique circumstances of the property and not to the general conditions of the neighborhood.

**Second:** John Campbell

**VOTED – 4-1  
Motion Passed**

In Favor: Russell Gagner; Ron Vigue; John Campbell; Diane Morrill; Ken Poirier

Opposed: John Campbell

Mr. Stoll asked how the Board arrived at this conclusion. Chair Gagner stated that he felt the need for the variance was due to the unique circumstances of this specific property.

Dissenting, John Campbell felt that this circumstance was due to the general conditions of the neighborhood.

**Motion:** Chair Gagner made a motion that the granting of the variance would not alter the essential character of the locality.

**Second:** Ron Vigue

**VOTED – 3-2  
Motion Passed**

In Favor: Ron Vigue; Diane Morrill; Ken Poirier

Opposed: Russell Gagner; John Campbell

Mr. Stoll asked the Board how they arrived at this conclusion. Ron Vigue stated that this would be a residential use in a residential neighborhood and that the setback would be similar to nearby homes.

Dissenting, Chair Gagner stated that the character of the neighborhood is in accordance with the R3 setback standards and that building a house less than half the required setback distance would alter the character of the neighborhood.

**Motion:** Chair Gagner made a motion that the hardship is not the result of action taken by the applicant or a prior owner.

**Second:** Ron Vigue

Chair Gagner stated that the owner purchased the property and did not research local restrictions prior.

**VOTED – 1-4  
Motion Failed**

In Favor: Ken Poirier

Opposed: Russell Gagner; Ron Vigue; John Campbell; Diane Morrill

Mr. Stoll asked the Board how they arrived at this conclusion. Ron Vigue stated that the applicant did not do “due diligence” in reviewing local ordinances prior to purchasing the property.

**Motion:** Ron Vigue made a motion that the Board of Appeals grant the variance request by William Richards to have a 20 foot front building setback where a 75 foot front setback is required

**Second:** Chair Gagner

Chair Gagner clarified that the application has already failed the standard for approval.

**VOTED – 1-4**

**Motion Failed**

In Favor: Ken Poirier

Opposed: John Campbell; Russell Gagner; Ron Vigue; Diane Morrill

**Approval of Minutes**

- January 6, 2016
- January 13, 2016

**Motion:** Ron Vigue made a motion to approve the minutes of January 6, 2013; and January 13, 2016

**Second:** Russell Gagner

**VOTED – 5-0  
Motion Passed**

In Favor: Russell Gagner; Ron Vigue; John Campbell; Diane Morrill; Ken Poirier

Opposed: None

**Motion:** Ron Vigue made a motion that the Board adopt the proposed policies and procedures that were submitted by the Town Planner

**Second:** Russell Gagner

**VOTED – 5-0  
Motion Passed**

In Favor: Russell Gagner; Ron Vigue; John Campbell; Diane Morrill; Ken Poirier

Opposed: None

**Adjournment**

**Motion:** Russell Gagner made a motion to adjourn the meeting

**Second:** Ron Vigue

**VOTED – 5-0  
Motion Passed**

In Favor: Russell Gagner; Ron Vigue; John Campbell; Diane Morrill; Ken Poirier

Opposed: None

The Board of Appeals adjourned at approximately 7:35 p.m.

Minutes prepared by Town Planner John Stoll, for consideration at the Berwick Board of Appeals next meeting

Signed as Approved by the Board

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Russell Gagner, Chair

\_\_\_\_\_  
Date