

**TOWN OF RAYMOND**  
**Zoning Board of Adjustment Agenda**  
**September 28, 2022**  
**Raymond High School, Room 109, 45 Harriman Hill Rd.**  
**7:30 pm**  
**Rules and Procedure Discussion**

**Public Announcement**

*If this meeting is canceled or postponed for any reason the information can be found on our website, posted at Town Hall, Facebook Notification, and RCTV. \**

**1. Call to Order**

- Pledge of Allegiance

**2. Public Meeting-**

**Discussion for updating the Rules and Procedures of the ZBA**

**3. Approval of Minutes**

- **07/27/2022**
- **08/24/2022**
- **08/31/2022**

**4. Other Business**

- Staff Updates –
- Board Member Updates
- Any other business brought before the board-

**5. Adjournment of Public Meeting (NO LATER THAN 10:00 P.M.)**

Note: If you require audio or visual aids, please contact the Selectmen's Office at least 72 hours prior to the meeting. If this meeting is postponed for any reason, it will be held on a date TBD.

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**2022 PUBLIC HEARING DATES AND APPLICATION DEADLINES**

<b>BOARD OF ADJUSTMENT (Public Hearing- 4<sup>th</sup> Wednesday)</b>	
<b>Public Hearing Date</b>	<b>Application Deadline</b>
September 28, 2022	August 24, 2022
October 26, 2022	September 28, 2022
November 16, 2022	October 26, 2022
December 28, 2022	November 16, 2022

Note: If you require audio or visual aids, please contact the Selectmen's Office at least 72 hours prior to the meeting. If this meeting is postponed for any reason, it will be held on a date TBD.

# **Town of Raymond, NH Zoning Board of Adjustment**

## **Rules of Procedure**

*Keith Smith – Suggested -Additions – Edits – DRAFT 7-27-2022*

## **ARTICLE I – AUTHORITY AND MEETING BASICS**

### **1.100 AUTHORITY**

These Rules of Procedure are adopted under the authority of New Hampshire Revised Statutes Annotated, Chapter 676:1, and the Town of Raymond Zoning Ordinance.

### **1.200 MEETING DATE, TIME AND PLACE**

Zoning Board of Adjustment (ZBA) meetings are held on the fourth Wednesday of every month on an as-needed basis, unless otherwise designated by the Chair. Additional meetings may be held if deemed necessary by the Chair. All ZBA meetings shall begin no later than 7:30 p.m. unless otherwise specified. In the event of inclement weather, the Wednesday following the canceled meeting shall serve as the makeup date, unless another date is specified. All ZBA meetings shall be held in Room 109 at Raymond High School, located at 45 Harriman Hill Road, unless otherwise specified.

## **ARTICLE II – BOARD MEMBERSHIP**

### **2.100 MAKEUP OF BOARD**

In accordance with the local legislative body, ZBA members shall be appointed by the Board of Selectmen. The ZBA shall consist of a maximum of five (5) Members, one (1) of which is to be a Selectman serving as an ex officio Member, and up to five (5) Alternate Members. Members and Alternates are required to be residents of the Town of Raymond, NH.

### **2.200 TERM LENGTH**

ZBA Members shall be appointed to terms of three (3) years, per RSA 673:5(II). Alternate Members shall be appointed to terms of three (3) years, per RSA 673:6(I)(a). The Town Clerk shall record the appointment and expiration dates of the terms of each Member and Alternate Member.

### **2.300 SWEARING-IN**

Each newly-appointed Member and Alternate Member must sign appointment papers and be sworn-in by the Town Clerk prior to being eligible to serve on the Board.

### **2.400 PROCESS FOR APPOINTMENT OF ALTERNATE MEMBERS MM**

Interested residents shall declare their interest in serving as an Alternate Member to the Chair at a posted meeting of the Board. **(IT IS STRONGLY RECOMMENDED -MM)** The prospective Alternate Member must attend three (3) consecutive ZBA meetings prior to consideration for appointment as an Alternate Member. **(MM -DELETE Once three (3) consecutive meetings have been attended,(MM -ADD" IN ADDITION") the prospective** Alternate Member will be interviewed by the Board and considered for a recommendation to the Board of Selectmen for appointment.

### **2.500 PROCESS FOR FILLING VACANT MEMBER SEATS**

In the event that a Member's seat becomes vacant due to resignation or any other reason, the Board of Selectmen shall appoint a new Member to fill the vacant seat for the remainder of the vacated Member's term, per RSA 673:12(II). The Chair may designate an Alternate Member to fill

the vacant seat temporarily until the Board of Selectmen permanently fills the seat, per RSA 673:12(III).

### **2.600 BOARD TRAINING WITH LEGAL COUNSEL MM**

A training session with the Board's Legal Counsel will be scheduled (MM- ADD"ANUALLY PREFERABLY") within three (3) months of the annual Town Meeting.

### **2.700 INDIVIDUAL BOARD MEMBER TRAINING AND REFERENCE MATERIALS**

Pursuant to RSA 673:3-a, it is recommended that any new Member of the Zoning Board of Adjustment undertake six (6) hours of training within six (6) months of assuming their position on the Board for the first time.

Community Development Department shall provide new Members with the following documents and reference materials and recommends that new members review them. The materials provided shall include but not be limited to:

- New Hampshire Planning & Land Use Regulation (RSA book)
- Town of Raymond Zoning Ordinance
- Town of Raymond Floodplain Development Ordinance
- The Board of Adjustment in New Hampshire – A Handbook for Local Officials (by the NH OSI)

## **ARTICLE III – BOARD OFFICERS**

### **3.100 PROCESS FOR ELECTING OFFICERS**

During the first meeting following the annual Town Election, the current Chair shall begin the meeting by requesting nominations for the position of Chair. The current Chair will then call for a vote on each person nominated in the order the nomination was received. This procedure will continue until a Member receives a majority vote. Once a Member has been elected as Chair, said Member shall then conduct elections for the positions of Vice Chair and Clerk, in the manner described above.

### **3.200 CHAIR**

A Chair shall be elected by a majority vote of the Board in the manner described in Article III, Section 3.100 of these Rules of Procedure. The Chair shall preside over all meetings and shall perform other duties customary to the office. The Chair shall be responsible for conduct and decorum of the meeting. The Chair shall also have the responsibility to ensure all parties receive a full and fair hearing before the Board, and to ensure that these Rules of Procedure and applicable State Laws are adhered to.

### **3.300 VICE CHAIR**

A Vice Chair shall be elected by a majority vote of the Board in the manner described in Article III, Section 3.100 of these Rules of Procedure. The Vice Chair shall preside in the absence of the Chair and shall have the full powers of the Chair on matters that come before the Board in the absence of the Chair.

### **3.400 CLERK**

A Clerk shall be elected by a majority vote of the Board in the manner described in Article III, Section 3.100 of these Rules of Procedure. The Clerk shall preside in the absence of both the Vice

Chair and Chair and shall have the full powers of the Chair on matters that come before the Board in the absence of both the Vice Chair and Chair. The Clerk shall also be responsible for keeping minutes during posted meetings for which the Assistant Planner and Code Enforcement Officer are not present. Additionally, the Clerk, or a Member designated by the Chair in the absence of the Clerk, shall take minutes and, if appropriate, photographs, during all site walks.

**3.500 TERM LENGTH FOR OFFICERS**

Officers shall be elected to terms of one (1) year and shall be eligible for re-election.

**3.600 INELIGIBILITY OF HOLDING OFFICE**

Alternate Members shall not be eligible to hold office.

**ARTICLE IV – AGENTS OF THE BOARD**

**4.100 BOARD STAFF**

The Board may appoint other agents, as necessary, to perform duties for the Board. The following are designated agents of the Board.

- a. **Code Enforcement Officer / Designated Staff KS** – Shall provide technical support and clarification, as needed, to the Zoning Board of Adjustment, and fulfill other duties as may be determined by the ZBA.
- b. **Assistant Planner / Designated Staff KS** – Shall provide technical support and clarification, as needed, to the Zoning Board of Adjustment. The Assistant Planner / **Designated Staff KS** shall also take meeting minutes, issue notice for all meetings, and fulfill other duties as may be determined by the ZBA.

**ARTICLE V – MEMBER RESPONSIBILITIES**

**5.100 ATTENDANCE MM**

Whereas the regular attendance of ZBA Members and Alternate Members is critical to the duties and responsibilities of the Board, and its duty to the public to provide an efficient and effective Board, Board Members and Alternate Members should make every effort to attend every scheduled meeting of the ZBA. In the event that a Member or Alternate Member will be unable to attend a meeting or site walk, said Member or Alternate Member shall notify the Chair, Vice Chair or Assistant Planner as soon as possible. If notification is made, the Member or Alternate Member can be granted an excused absence. Multiple unexcused absences shall be grounds for a **( MM – DELETTE request by the Board for resignation.) MM- ADD REMOVAL UNDER THE TERMS OF SECTION 5.300**

**5.100 .1 ADD; Allowing a Member to Participate Remotely. (KS)**

- A) The member’s attendance must be acceptable as unpractical, and that reason must be stated in the minutes of the meeting.**

**B) Except in an emergency, at least a quorum of the public body must be physically present at the location of the meeting. The determination that an emergency exists is to be made by the chair, and the facts upon which that determination is based must be included in the minutes.**

**C) All votes taken during such a meeting must be by roll call vote.**

**D) Each part of a meeting that is required to be open to the public must be audible to the public at the physical location of the meeting.**

**E) Any member participating remotely must identify anyone present at the remote location.**

#### **5.200 DISQUALIFICATION OF MEMBER**

If a Member becomes ineligible to serve on a specific case, per RSA 673:14, said Member shall notify the Chair as soon as possible. The Chair shall then designate an Alternate Member to sit in that Member's place. The ineligibility of a Member shall be announced prior to the start of the hearing. Any Board Member may request a non-binding vote of the Board regarding the eligibility of another Member. This vote can only be requested by a Board Member; Alternate Members cannot request such a vote. Any Member or Alternate Member disqualifying themselves from a case shall absent themselves from the Board table during the public hearing. When recused, the recused person shall not participate in further discussions, unless s/he clearly states for the record that s/he is doing so only as a general member of the public per the Town of Raymond Code of Ethics.

#### **5.300 REMOVAL OF MEMBERS ~~DELETE~~ : Removal of Members (KS)**

Board Members and Alternate Members may be removed for inefficiency, neglect of duty or malfeasance in office, by the Board of Selectmen, per RSA 673:13(I). **(DELETE) (AMEND 7-26-22)** If a Member or Alternate Member is absent for three (3) consecutive meetings or has four (4) or more total unexcused absences within a calendar year, then, A RECOMENDATION TO THE BOARD SELECTION SHALL BE MADE FOR THE REMOVAL OF that Member or Alternate member may be subject to removal proceedings.  
( NOT ALLOWED UNDER CURRENT STATE RSA'S – REF 673:13 Removal of Members )(KS)

#### **5.400 MEMBER CONDUCT**

Board Members and Alternate Members shall not discuss elements of an application with other Board Members or Alternate Members, Applicants or the general public outside of a noticed public hearing. If a Board Member or Alternate Member wishes to enter onto a site to gather information, they may do so only under the parameters of Article VIII, Section 8.600 of these Rules of Procedure, entitled Conduct of Site Walks.

#### **5.500 CODE OF ETHICS**

Board Members and Alternate Members are subject to the Town of Raymond Code of Ethics.

### **ARTICLE VI – APPEALS TO ZONING BOARD OF ADJUSTMENT**

#### **6.100 SCHEDULING OF APPEALS TO THE ZBA FROM (45 TO 30 - MM)**

Appeals to the ZBA concerning any matter within the Board's powers as set forth in RSA 674:33 shall be scheduled for a public hearing before the ZBA within 30 days of being filed with the

Community Development Department, per RSA 676:7. Appeals from Administrative Decision taken under RSA 676:5 shall be filed with the Community Development Department within **FROM (45 TO 30 - MM)** days of the date of the decision. Once filed, a public hearing shall be scheduled before the ZBA within 30 days.

**6.200 APPEALS REQUIRING ADDITIONAL INFORMATION AND REVIEW**

Per RSA 676:5, the Board of Adjustment may impose reasonable fees to cover its administrative expenses and costs of special investigative studies, review of documents, and other matters which may be required by particular appeals or applications.

- a. When reviewing a land use application, the ZBA may require the applicant to reimburse the Board for expenses reasonably incurred by obtaining third party review and consultation during the review process, provided that the review and consultation does not substantially replicate a review and consultation obtained by the Planning Board.
- b. When retaining the services of a third-party reviewer, the ZBA shall require detailed invoices with reasonable task descriptions for services rendered. Upon request of the applicant, the ZBA shall promptly provide a reasonably detailed accounting of expenses, or corresponding escrow deductions, with copies of supporting documentation.

**ARTICLE VII – NOTICE FOR ZONING BOARD OF ADJUSTMENT MEETINGS**

**7.100 AGENDAS**

Agendas for ZBA meetings shall be posted in the Town Office Lobby and in the display case located outside the Recreation/Public Works Office Building. Agendas shall be posted no later than 24 hours prior to the scheduled meeting. Agendas shall also be distributed to Members and Alternate Members no later than the Friday prior to the next meeting, unless otherwise specified.

**7.200 LEGAL NOTICES**

Public hearings held by the Zoning Board of Adjustment shall be noticed in accordance with RSA 676:7.

**7.300 LEGAL NOTICE OF ABUTTERS**

All legal notices mailed to abutters and associated professionals for public hearings before the Zoning Board of Adjustment shall be sent via certified mail with return receipt requested.

**ARTICLE VIII – ZONING BOARD OF ADJUSTMENT MEETINGS MM**

**8.100 GENERAL PROVISIONS**

- a. **QUORUM** – A quorum shall be three (3) members, including any Alternate Members sitting in place of absent Members.
- b. In the event that a quorum of the Board is present, but less than five (5) Members are seated, the applicant shall be informed that they have the opportunity to postpone a hearing. **(THIS GROUND FOR A CONTINUENCE IS LIMITED TO 3 TOTAL MEETINGS -MM)** If the applicant opts to proceed with a hearing, then a

vote by a Board consisting of fewer than five (5) Members cannot constitute grounds for rehearing.

- c. **MOTIONS** – A motion made, and duly seconded, shall only be carried by an affirmative vote of at least three (3) voting Members serving on the case. Voting Members may include any Alternate Members sitting in the place of regular Members.
- d. The concurring vote of three (3) Members of the Board shall be necessary to reverse any action of an Administrative official, or to decide in favor of the applicant on a matter of which it is required to pass.

#### **8.200 SEATING OF ALTERNATE MEMBERS : FROM shall TO may 2x (KS)**

The Chair shall select an Alternate Member to sit in place of an absent, recused or otherwise ineligible Member, on a rotating basis, as needed. Said Alternate Member **FROM shall TO may** remain seated as a Member of the Board until the regular Member can return to their seat.

In the event an Alternate Member is chosen to sit in place of any absent Member during a public hearing, said Alternate Member **FROM shall TO may** remain seated in the place of any absent Member until the Board renders a final decision, to the extent possible.

#### **8.300 ROLE OF ALTERNATE MEMBERS (? including the five(5) "Variance Worksheet Questions"KS**

Alternate Members may ask questions and otherwise participate in all discussions,**pursuant to rules adopted under RSA 676:1, including the five(5) "Variance Worksheet Questions"**, except those from which they recuse. When not sitting as a Member, Alternate Members shall not make, second or vote on any motions,**or participate in any Deliberative Discussions, and remove themselves from the Board. To being a member of the Public .** (**? "Variance Worksheet Questions" are these considered Deliberative Discussions ?**)

#### **8.400 DECORUM OF THE MEETING**

The Chair shall be responsible for the conduct and decorum of the meeting. All persons speaking should address only the Board, through the Chair. The Chair will not allow cross-witness arguments or cross-examination. Questions may be raised (e.g. a butter question to an applicant), but the questioner should address the Chair; the Chair will repeat the question in a manner which is impartial and seeks the type of information the Board needs to make its decision.

Board Members and Alternate Members will conduct themselves in a polite manner. Disagreements on positions are to be expected, but all Members and Alternate Members should interact with each other, applicants, expert witnesses and the public with respect. The Chair may ask a Member or Alternate Member to refrain from negative behavior. The Chair may request that a member of the public stop talking and may request that the person leave the room. An applicant may be warned that the hearing in progress will cease and be continued to a later date.

#### **8.500 CONDUCT OF MEETINGS & PUBLIC HEARINGS MM**

Zoning Board of Adjustment meetings and public hearings will generally be conducted in the following manner:

- I. Advise those in attendance of the Board's title and function

- II. Roll call by the Chair – Indicate excused or unexcused absence for any Board members not in attendance.
- III. List the meeting’s activities – Number of cases, names of applicants, and order heard.
- IV. **Approval of Minutes (MOVE)**
- V. Public Hearings:Announcement of application by Chair
  - a. Reading of legal notice
  - b. **Reading of abutters list – (MM COMMENT – ARE ALL THESE THINGS DONE? IF NOT MODIFY LIST)**
  - c. Ask if anyone in attendance was not announced as an abutter who believes they are an abutter. If there is, this must be resolved before proceeding.
  - d. Announcement of any disqualified members. If less than five (5) members are present, inform applicant of three (3) member requirement for positive votes.
  - e.1 **Swearing in of Applicants, Lawyers, and Experts or other persons presenting ?)Per Town Counsel suggestion(KS)**
  - e. Presentation of the application by the applicant or authorized agent
    - e.i. Testimony from abutters in favor of appeal Testimony from abutters opposed to appeal
    - e.ii. Testimony from other interested parties
    - e.iii. Rebuttal by the applicant to abutters/other interested parties  
Rebuttal by the abutters/other interested parties to applicant
    - e.iv. Closing statements by applicant or authorized agent
    - e.v. Close public information portion of meeting
  - f. Deliberative Session (if necessary)
  - g. Exit Deliberative Session (if necessary)
  - h. Read through **voting (DELETTE)** worksheets when discussion has completed
  - i. Receive Board motions, if offered
  - j. Announce decision of the Zoning Board of Adjustment (approval, denial or continuance)
- VI. Other Business
- VII. Adjournment

**8.600 CONDUCT OF SITE WALKS**

The purpose of a site walk is to review a plan and/or specific aspects that can be better understood through personal observation. A site walk shall be considered a public meeting. Therefore, notice shall be required, as well as minutes taken, and the public shall be allowed to attend and observe. If the Applicant refuses site access to the Board, or to the non-Board public, then such action may be a basis for denial of an appeal.

While on a site walk, questions should be limited to the plan and no deliberation shall take place. ZBA Members, staff, the applicant and the public should stay in close proximity so that all questions can be documented in the minutes.

Board Members may only enter onto a site independently of a formal site walk with previous permission from an Applicant and only in the presence of a Town staff member. The Town staff member shall report to the non-attending Members of the Board on what took place during such a visit.

## **ARTICLE IX – ZONING BOARD OF ADJUSTMENT DECISIONS**

### **9.100 ISSUANCE OF DECISIONS**

A written Notice of Decision, including any conditions required by the Board, shall be made available to the applicant, and made available for public inspection within five (5) business days of the vote, in accordance with RSA 676:3.

### **9.200 REQUESTS FOR REHEARING OF ZBA DECISIONS MM -( DELETTE - BLUE)**

**In accordance with RSA 677:2, any party may submit a written appeal/request for a rehearing within 30 days of the date of the original decision. The ZBA may grant such a rehearing if, in its opinion, the appellant identifies good reason within their request for rehearing. The ZBA also reserves the right to call for a rehearing, within 30 days of the date of the original decision, if necessary. (ADD MM-ANY AND ALL REQUEST FOR HEARINGS SHALL BE DONE IN ACCORDANCE WITH RSA677:2)**

## **ARTICLE X – ZONING BOARD OF ADJUSTMENT RECORDS**

### **10.100 RECORD KEEPING**

The records of the Zoning Board of Adjustment shall be kept by the Assistant Planner and made available for public inspection at the Community Development Department Office.

### **10.200 MEETING MINUTES**

Zoning Board of Adjustment meeting minutes shall **INCLUDE:(KS)**

- 1.Name and kind of meeting.**
- 2.Date, place, and time that the meeting began and ended.**
- 3.Names of the chair and secretary or their substitute.**
- 4.Names of voting members attending and alternates (seated or not seated indicated),whether a quorum was present.**
- 5.Names of guests and their subject matter.**
- 6.Whether minutes from the previous meeting were approved or corrected.**
- 7.Motions made. You must record:**
  - The exact wording of the motion**
  - Who made the motion and Seconded by.**
  - The results of the Vote by Names .**
  - Reason Of /For a No Vote if applicable.(Denial)**
- 7.Reports. Record the name of the report, the name of the member presenting it, and any action taken on the report. If the report was in writing, attach it, or tell where it may be found. An oral report may be summarized briefly.**
- 8.Other actions, assignments and deadlines, resolutions, and recommendations can be briefly recorded.**
- 9.Secretary's or Designated Staff signature once the minutes have been approved .**

**The minutes will not be a Verbatim Transcript per RSA 91-A Will be** open to public inspection and placed on file with the Town Clerk not more than five (5) business days after the public meeting as required by RSA 91-A:2(II). Shall be permanently retained and made **available (spelling- available )** per RSA 91-A. **(DELETTE) After the meeting minutes have been approved by the Zoning Board of Adjustment, the Assistant Planner shall destroy all means employed to prepare the minutes.** Any means utilized to prepare the minutes **,Video/Audio/Durable Electronic files, or other Common File Formats (DELETTE that are not destroyed) shall be retained as a Supplement to the minutes**

for three (3) years and made available for public inspection per RSA 91-A-4:III. The Minute Supplements may be Recycled, Deleted or Destroyed after three (3) years.

2.

## **ARTICLE XI – AMENDMENTS**

### **11.100 PROCEDURE TO AMEND THE RULES OF PROCEDURE**

These Rules of Procedure are a “Living Document “that (KS) may be amended by a majority vote of the Members of the Zoning Board of Adjustment, provided that any amendments are read at a regular meeting of the Board. Amended Rules of Procedure shall be placed on file with the Town Clerk. **The Latest Revision, by Date shall be Denoted on cover page and all page's of this Document and changed when Approval of Changes,(Edits), or New Amendments, are made or Addendum's are attached .**

## **ARTICLE XII WAIVERS – MM – ADD**

**12.100 WAIVER(S) ANY PORTION OF THESE RULES OF PROCEDURE MAY BE WAIVED, BY A MAJORITY VOTE, IN SUCH CASE WHERE IT IS THE OPINION OF THE BOARD ,STRICT CONFORMITY WOULD POSE A PRACTICAL DEFICULTY TO THE APPLICANT AND WAIVER WOULD NOT BE CONTRAY TO TO THE SPIRIT AND INTENT OF THE RULES.**



40 Lynne York, 1 Norrie Drive, expressed concerns over renting the second ADU in a single family  
41 home.

42

43 Mr. Ayer commented that there is an RSA that determines the number of ADUs allowed. Mr.  
44 Smith gave Mr. Ayer a copy of the RSA which he read (see attached).

45

46 Motion:

47 Mrs. Wood made a motion to go into deliberative. Mr. Cahill seconded the motion. The motion  
48 passed with a vote of 5 in favor, 0 opposed and 0 abstentions.

49

50 *Granting this variance will or will not be contrary to the public interest:*

51

52 Mr. Luszcz: "My concern with it again is it's a single family neighborhood. Ordinances are set in  
53 place to not have multi family in the area. I see what he wants to do. It's good that you don't want  
54 to help people. But it's not allowed in that area there. And I think we're going against why we  
55 have our ordinances, if we were to allow something like this, the 2.17 acres that are very private.  
56 I don't see how that is the question as far as would not be contrary to the public."

57

58 Mr. Cahill: "I tend to agree with Tom here. I think that we have some set ordinances for this  
59 specific deal that deal with the specific things and RSA is the deal with this thing. I do think it  
60 would be contrary. "

61

62 Mr. Smith: "I'm gonna say that it would be because of the articles that they listed the ordinances  
63 that were listed by staff that gave you also in our ordinance 2022 and the definitions 13 .1.2 A  
64 building or structure detach from but located on the same lot, which is customarily incidental and  
65 subordinate to the principal building shall not contain bedrooms, along with the other ones that  
66 you've already gotten and the state law that Paul read into the record, that's why I would say it  
67 would be contrary."

68

69 Mrs. Wood: "I agree with you."

70

71 Mrs. Welch: "I don't have anything further to add."

72

73 *Granting this variance will be consistent with the spirit of the ordinance:*

74

75 Mrs. Welch: "Gonna say it's not consistent with the spirit of the ordinance because the ordinance  
76 is based on an RSA. I don't really see how we get around the RSA."

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78 Mrs. Wood : "I agree with Alyssa, our job is to review applications in light of what our ordinance,  
79 it's to get relief from our ordinance. It's not to get relief from state law."

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Mrs. Smith: "I agree with them, it would not be."

Mr. Cahill: "I agree with all of you guys. I mean, our ordinance is that detached accessory dwelling units are not allowed."

Mr. Luszcz: "I would have to also agree, nothing further."

*Granting this variance would or would not do substantial justice:*

Mr. Luszcz: "It's again, the added two bedrooms helping the taxes. Still, it's just not allowed. So I would say that it would not do substantial justice."

Mr. Cahill: "I agree with Tom."

Mr. Smith: "I agree with Tom it would not."

Mrs. Wood: "I don't see that there's harm to the public here"

Mrs. Welch: "I don't have anything further to add."

*Granting this variance would or would not diminish the values of surrounding properties:*

Mrs. Welch: "I think there's a possibility that would be diminished. You do have an acreage minimum because of the RSA when you're increasing your residency size. So I think they would be diminished slightly."

Mrs. Wood: "I do not believe that it would diminish the values of surrounding properties. I mean, it's going to build the garage, regardless. So the parents won't be any different. It's got two bedrooms up top versus just loft space. I don't see any diminution of property values, by virtue of having the upstairs garage bedrooms."

Mr. Smith: "I would say it would diminish the property values just on the density of your property versus what everybody else is allowed under the state law and town ordinance."

Mr. Cahill: "I agree just it would slightly diminish property values we have, we have the lot size."

Mr. Luszcz: "I'm gonna say it wouldn't diminish the property values as far as the garage goes. But by adding the apartment, in essence, you're making a multifamily in a neighborhood where it's predominantly single family, I believe is a value to that people who want to live in that

120 community with just single family houses without multifamily. It's more desirable to be in that  
121 area. And by making it multifamily it could possibly diminish the values.”

122  
123 *Owing to the special conditions of the property that distinguish it from other properties in the*  
124 *area, literal enforcement of the provisions of the ordinance would result in an unnecessary*  
125 *hardship because...*

126 *a. No fair and substantial relationship exists between the general public purposes of the*  
127 *ordinance provision and the specific application of that provision to the property:*

128  
129 Mr. Cahill: “I actually don't think that there's a hardship on this. On this lot. It's a pretty standard  
130 lot.”

131  
132 Mr. Smith: “I'm gonna say it's not. Zoning regulations and town ordinances are permitted for all.  
133 If it's not permitted for everyone, then no, that's why I'm gonna say it is not.”

134  
135 Mrs. Wood: “I haven't heard anything that distinguishes this property from other properties in the  
136 area. I don't see any special conditions of the property. I guess that would mean that I don't see  
137 any unnecessary hardship here. There is no unnecessary hardship not because there are no  
138 special conditions of the property that distinguish it from other properties in the area.”

139  
140 Mrs. Welch: “ I agree with Joyce, I just think the RSA is a big roadblock for this one.”

141  
142 Mr. Luszcz: “I don't see any unnecessary hardship.”

143  
144 Motion:

145 Mr. Cahill made a motion to come out of deliberation. Mrs. Wood seconded the motion. The  
146 motion passed with a vote of 5 in favor, 0 opposed and 0 abstentions.

147  
148 Motion:

149 Mr. Cahill made a motion to deny the variance for application 2022-002. based on following or  
150 current ordinances and State laws. Mrs. Wood seconded the motion. The motion passed with a  
151 vote of 5 in favor, 0 opposed and 0 abstentions.

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155  
156 Mr. Smith swore in the applicants for application Application 2022-003.

157  
158 Attorney Monica Kaiser from Hopeful, Phoenix, Gormley and Roberts representing the  
159 application on behalf of Troy Brown, the principal of Loon Lake LLC and the owner of Mountain

160 Road Trading Post introduced herself and Paige Libby, engineer from Jones and Beach  
161 Engineers.

162  
163 The Board introduced themselves, staff, and Attorney Chris Dressler representing the ZBA.

164  
165 Application 2022-003 Monica Keiser representing Troy Brown of Mountain Road  
166 Trading Post: Applicant wishes to construct a 529 s.f. addition without sprinklers to  
167 include a 34.4-foot buffer :

- 168 ● 2.2.3. EXPANSION LIMITS: Expansion of any use by twenty-five percent (25%) or more  
169 is not permitted.
- 170 ● 8.3.3 As allowed by RSA 674:52-I pursuant to RSA 674:51 and that all commercial (to  
171 include multi-family housing) and industrial uses newly constructed shall be fully  
172 sprinkler protected in compliance with NFPA 13 (the standard for the installation of  
173 sprinkler systems) design criteria.
- 174 ● 15.2.4. Any commercial or industrial structure which is proposed to be located  
175 abutting a residential zone, or in C.2 only, an existing residential use, shall require a  
176 minimum setback of fifty feet(50')from property lines, which shall include a twenty  
177 foot (20')dense vegetative buffer and a fence to shield the residential zone or in C.2  
178 only, an existing residential use, from light and noise generated by the commercial  
179 or industrial structure.If the entire fifty-foot(50') buffer is developed and maintained as  
180 dense vegetative buffer, a fence is not required. (03/2002)

181 Property address is 68 Mountain Road, Raymond, Map46/Lot 9, Zone B.

182  
183 Mr. Smith said that the applicant could make their presentation now but the Board was going to  
184 make a motion to continue until September 28, 2022 or pending a denial from the Planning  
185 Board on any of these because we have no administrative denial to appeal. Mr. Smith said that  
186 the Planning Board did not make a decision.

187  
188 Attorney Monica Keiser explained: “ My I guess my position is a little bit different. An  
189 administrative decision doesn't need to be a denial, an administrative decision is any decision  
190 made by any official or board that interprets the ordinance? I don't think that needs to be it  
191 doesn't need to be a denial, because quite honestly, if there's a planning board denial, it may  
192 present sort of mixed issues, right? If the planning board denial is based on their site plan  
193 regulations, I have to go to Superior Court. If it's based on the ordinance, I have to come here  
194 once they give me a denial. I'm in a situation where I might have to go to both places within 30  
195 days. So that to me doesn't make sense.”

196  
197 “I'm asking you to, to uphold the administrative decisions that had been made by staff, which we  
198 relied on in preparing and presenting to the planning board only to get to the Planning Board and  
199 come to a screeching halt because they disagreed with the earlier administrative interpretation.”

200

201 Attorney Dressler suggested letting the applicant present and then after they presented if you  
202 wish to stay before any discussions, or any decisions are made until we can get clarification.

203

204 Attorney Keiser said if the Board look at exhibit I (see attached) there was a decision by the  
205 interim building inspector dated April 26 2022, which was rendered after the planning board  
206 heard our case the first time and expressed hesitation about the expansion we posed at that  
207 time, which was nearly three times the expansion that we're asking you for tonight. I'm asking  
208 you to uphold that decision.

209

210

211 Attorney Dressler said: "There are two things going on folks. An admin appeal and a variance.  
212 Yep. If applied for a variance, they're entitled to be heard on the variance. Don't confuse yourself  
213 with admin appeal. So what I would suggest just probably for the sake of keeping the minutes  
214 clean, entertain a motion to table the admin appeals. So their rights are preserved. Okay, so we  
215 can get to the bottom of all this. Okay. And then in the meantime, you can proceed with the  
216 variance as normal."

217

218 Motion:

219 Mr. Cahill made a motion to table the administration application for appeal for Application 2022-  
220 003 to September 28, 2022 at 7:30 pm. Mr. Luszcz seconded the motion. The motion passed  
221 with a vote of 5 in favor, 0 opposed and 0 abstentions.

222

223 Attorney Keiser explained that Mountain Road Trading Post has been in existence for some 40  
224 years at the location at 68 Mountain Road. Until about 2021 or so, the property had two  
225 conflicting uses on it. So it had the Trading Post and then it had a residential home on the  
226 property and it was about five acres in size. Troy came along and purchased the property after  
227 verifying the business could continue and subdivided the house off. And that subdivision  
228 required some variances, which you or your predecessors gave in 2021. But it also required site  
229 plan approval. So after having gotten the subdivision, Troy set to work on getting the site plan  
230 approval, and meeting a number of obligations that the Planning Board had imposed on that  
231 subdivision. And that included things like you know, there's no well serving the business, there's  
232 no septic serving the business. There's no real sanitary facilities serving the business. I think  
233 back when the former owners used to utilize the property I don't know whether they lived in the  
234 home or employees lived in the home but they certainly relied on the home somewhat for some  
235 of those things and they also relied on Porta Potti so some of the conditions involving the site  
236 plan approval of that subdivision which has long since been approved, recorded etc. involve  
237 things like get a bathroom, get a septic, get a well. And so Troy has said about doing those  
238 things and there's a number of exhibits in your packet that demonstrate that he's gotten a well  
239 approval for the property, that he's got a septic design. Construction approval hasn't installed it

240 yet but he's got the design approved by the State. So he's undertaken a number of things to get  
241 in compliance. But the nature of the old building and wanting to install a handicap accessible  
242 bathroom and stuff like that was more difficult. And so ultimately, he made the decision that it  
243 seemed like the best way to get that accessible bathroom and a little office space was to put an  
244 addition on. Now, Troy had ideas about a very large edition. Some of you may remember  
245 hearing that before. Obviously, that's not where we are anymore. But in any event, a larger  
246 edition was proposed to you when withdrawn. And then in consultation with Gregor Arvanitis,  
247 which was the first administrative decision that had been made, gave him a permit to put a larger  
248 addition on and then realized, Okay, well, now I gotta revoke the permit, you need site plan  
249 approval. So Troy has been in the process of getting site plan approval since last December,  
250 has taken a very long time to get any decision from the Planning Board, as you can see, so the  
251 application was accepted, you know, some time ago, and here we are. So that's a separate  
252 kettle of fish. But anyway, during that process, and the questions were raised by the Planning  
253 Board, the new inspector, interim inspector Smart, rendered a decision. And, but nonetheless,  
254 you know, it seemed to us that, in addition to maybe preserving the right to the administrative  
255 appeal, we would also just go ahead and seek a variance. And in consultation, our team refined  
256 our plan, and we came up with a much smaller addition proposed, that would literally just be a  
257 bathroom, a small workshop area, a break room, and a little an office area. So that's what's  
258 before you today.

259  
260 Paige Libbey explained “ what we're looking to do is just construct the addition on the back of  
261 the existing building, so it will be not visible from the road. So it'll entirely be behind the existing  
262 structure. And then with parking along the existing gravel, so we're not adding any impervious  
263 surface as a result of the project, we're simply adding the proposed addition to the back of the  
264 building in a spot where there's already pavement, and Troy keeps vehicles and things like that  
265 in the back when he needs to park them there, or whatever it needs to do back there. And then  
266 the other thing we're proposing as a result of the project is just to relocate Troy sign, because  
267 right now, for those of you that have to revive sort of in the middle of the existing gravel  
268 driveway, so what we're looking to do is just shifted over out of the center of the driveway to  
269 make it safer and more out of the way.”

270  
271 Attorney Keiser said: “I'm not asking for any percentage, I'm just asking you to approve a 529  
272 square foot addition, by virtue of asking you for the variance.”

273  
274 Motion:

275 Mr. Luszcz made a motion to have a sitewalk at 68 Mountain Road on August 31, at 6 o'clock,  
276 followed by a meeting at 730 PM at Raymond High School. Mrs. Welch seconded the motion.  
277 The motion passed with a vote of 5 in favor, 0 opposed, and 0 abstentions.

278  
279 Motion:

280 Mr. Cahill made a motion to continue application 2022-033 until August 31, 2022 at 7:30 pm.  
281 Mrs. Wood seconded the motion. The motion passed with a vote of 5 in favor, 0 opposed, and 0  
282 abstentions.  
283

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285  
286 Minutes:

287  
288 Motion:

289 Mr. Smith made a motion to table the minutes from July 27, 2022 until the Board reviews the  
290 rules and procedures, to the September 28, 2022 meeting. Mr. Cahill seconded the motion. The  
291 motion passed with a vote of 5 in favor, 0 opposed, and 0 abstentions.  
292

293 The Board discussed that David Hall be made an alternate due to his experience. Even though  
294 this was his first meeting Mr. Luszczyk recommended that Mr. Hall be appointed after the next  
295 meeting.  
296

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297  
298 Board Member Updates:

299  
300 Mr. Luszczyk reported that Rockingham Planning Commission. We met with the board of  
301 selectmen, we got an approval for them to move forward on some of the issues that we were  
302 having in town, one of them I think, Blueberry Hill, that they're actually taking a look at moving  
303 forward where there's a problem down there and they're seeing the problem so they are moving  
304 forward with the study. So thank you to the Selectmen doing their job and getting them moving  
305 forward. We haven't met the summer at all, they canceled the summer meetings. Yay. So I  
306 believe we'll be meeting up in September again.  
307

308  
309  
310 Motion:

311 Mr. Cahill made a motion that we move to non public with legal and when we come out of non  
312 public, we will adjourn. Mr. Luszczyk second the motion. The motion passed with a vote of 5 in  
313 favor, 0 opposed, and 0 abstentions.  
314

315 Respectfully submitted,

316  
317 Jill A. Vadeboncoeur  
318  
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## **Section 674:73**

**674:73 Detached Accessory Dwelling Units.** – A municipality is not required to but may permit detached accessory dwelling units. Detached accessory dwelling units shall comply with the requirements of, and any municipal ordinances or regulations adopted pursuant to, RSA 674:72, IV through IX. If a municipality allows detached accessory dwelling units, it may require an increased lot size.



## TOWN OF RAYMOND

Community Development  
Office of Code Enforcement  
4 Epping St Raymond, NH 03077  
Phone: 603.895.7020 • Fax: 603.895.0903  
<http://www.raymondnh.gov>

EXHIBIT I

April 26, 2022

Planning Board.

Review of the application for an expansion of use for the Mountain Road Trading Post.

I find that the non-conforming use at the Trading Post has been in existence since before June 1993. Under the present Zoning Ordinance Article 2: Section 2.2 Non-conforming use. Sub-Section 2.2.3 Expansion Limits: Expansion of any use by twenty five percent (25%) or more is not permitted. Therefore the proposed expansion of 24.5% is less than 25% and is permitted.

Charlie Smart  
Interim Building Inspector

1 **Zoning Board of Adjustment Draft Minutes**  
2 **August 31, 2022**

3 **Raymond High School, Room 109, 45 Harriman Hill Rd. - 7:30 p.m.**  
4

5 Keith Smith - Chairman  
6 Alissa Welch - Board of Selectmen Representative  
7 Joyce Wood - Alternate (Seated)  
8 Tim Cahill - Vice Chairman  
9 Tom Luszczyk - Alternate ( Seated)  
10 Christina McCarthy - Planning Technician/Tax Collector  
11 Paul Ayers- Building Inspector  
12

13 **Absent Members**

14 Paul McCoy - Member  
15 Brad Reed - Member  
16

17 Pledge of Allegiance  
18

19 Mr. Smith announced the Brad Reed has an excused absence. Both alternates, Joyce Wood,  
20 and Tom Luszczyk, were seated for the meeting.  
21

22 The Board introduced themselves, staff, and Attorney Chris Dressler representing the ZBA.  
23

24 Application 2022-003 Monica Keiser representing Troy Brown of Mountain Road  
25 Trading Post: Applicant wishes to construct a 529 s.f. addition without sprinklers to  
26 include a 34.4-foot buffer :

- 27 • 2.2.3. EXPANSION LIMITS: Expansion of any use by twenty-five percent (25%) or more  
28 is not permitted.
- 29 • 8.3.3 As allowed by RSA 674:52-I pursuant to RSA 674:51 and that all commercial (to  
30 include multi-family housing) and industrial uses newly constructed shall be fully  
31 sprinkler protected in compliance with NFPA 13 (the standard for the installation of  
32 sprinkler systems) design criteria.
- 33 • 15.2.4. Any commercial or industrial structure which is proposed to be located  
34 abutting a residential zone, or in C.2 only, an existing residential use, shall require a  
35 minimum setback of fifty feet(50')from property lines, which shall include a twenty  
36 foot (20')dense vegetative buffer and a fence to shield the residential zone or in C.2  
37 only, an existing residential use, from light and noise generated by the commercial  
38 or industrial structure. If the entire fifty-foot(50') buffer is developed and maintained as  
39 dense vegetative buffer, a fence is not required. (03/2002)  
40 Property address is 68 Mountain Road, Raymond, Map46/Lot 9, Zone B.

41

42 Paige Libby, engineer from Jones and Beach Engineers, Attorney Monica Keiser from Hopeful,  
43 Phoenix, Gormley and Roberts representing the application on behalf of Troy Brown, and Troy  
44 Brown owner of Mountain Road Trading Post introduced themselves.

45

46 Attorney Keiser presented to the Board her variance presentation. “ I usually start with the first  
47 two elements of the criteria together, the variance will not be contrary to the public interest, the  
48 spirit of the ordinance is observed. I address the criteria in detail in my memorandum. But  
49 basically, I start from the Malachi Glen case, which takes those first two criteria together, and  
50 says that you have to figure out whether granting a variance would unduly and to a market  
51 degree conflict with the ordinance is such that it violates the ordinances basic zoning objectives.  
52 Here conflict with the ordinance is not enough. And now what that means is merely coming to  
53 ask for an ordinance because you don't comply with the rule is not a reason to deny the  
54 variance. We're here because we propose something that doesn't comply. We think we can  
55 make the case to you that it does meet the five by criteria of the variance in the statute. So, in  
56 order for me to figure out what it means for a potential variance to unduly and to a market  
57 degree conflict with the basic objectives of your ordinance, I always turn to what are the  
58 purposes and objectives of your ordinance. And I don't want to belabor the point, but I go  
59 through on page nine of the memo, I articulate what the purposes of your ordinance are. And I  
60 say how this proposal either doesn't undermine that particular purpose or objective or meets that  
61 purpose of objective for example, you know, you have a purpose to protect natural resources,  
62 including lakes, rivers, streams, and the like and your groundwater. We're not in any buffers, we  
63 don't impact any of those issues. We're not in an aquifer, etc. will lessen congestion in the  
64 street, we're not posing the expansion that we propose is not going to result in a whole bunch of  
65 traffic. The parking we provided on the site plan is adequate for the use. And the Planning Board  
66 is going to evaluate those types of issues on top of secure safety from fire panic and other  
67 dangers. We think that the first-floor small addition that we propose here is small enough and will  
68 contain adequate egress. To protect the rest of the structure and neighboring properties from fire  
69 even if it doesn't have sprinklers, it's a small addition, there's other ways to mitigate and provide  
70 fire protection than installing sprinklers. I know that the building inspector has talked to Troy in  
71 the past about certain types of sheetrock that should be used, and such thickness may be  
72 potentially fire rated doors in the white, I don't know. But we're certainly interested in complying  
73 with any recommendations. Mr. Ayer has to provide prior safety in other ways. Promoting  
74 adequate light and air even though we're expanding on to this business, the expansion that we  
75 propose is tucked behind the existing business. It's not visible from the street, you saw that it  
76 was pretty well screened from all of the neighbors. Three of which you heard from you have the  
77 guy immediately next door and subdividing house who supports you have the woman who owns  
78 the property to the left and behind the property, she supports the proposal and you heard from  
79 the people across the street. So, nobody is concerned about any of those types of things.  
80 Prevent overcrowding of the land, again, in terms of building coverage, lot coverage and things

81 of that nature. This is a piddly little addition, and it's over an impervious paved area already. So,  
82 it's not creating more impervious coverage. I think you heard in my presentation previously that  
83 we've got the well permit, or we've got to well installed, we've got the septic permit, I see you  
84 nodding so you know that we're ready to go there. So that's my pitch about the purposes of your  
85 ordinance. Simply put, the variances are needed because we have this sort of odd duck of a  
86 property, it's way oversized. In so long standing, non-conforming use in the zone B district on the  
87 way to put tuck away, you can see because you were in there walking around, and also in the  
88 business, you can see that, you know, 40 has a nice business and a decent service to provide  
89 people. And, you know, it's helpful to see a place like that when you're on the way to  
90 Pawtucketaway. The property as you know, previously contained these conflicting uses: the  
91 residents and the business. And they sort of fed off of each other. But with a subdivision, we  
92 can't do that anymore. So, we need to provide for our own facilities and such. The purpose of  
93 Zone B is to support recreation and some other things. Troy's business is related to those  
94 objectives. The other methods for fire protection, and therefore, for those reasons, we don't think  
95 that the conflict with the ordinance is so severe that it undermines your ordinance's basic  
96 objectives. Another way to look at this is, granting the variance going to alter the essential  
97 character of the area is going to threaten the public health, safety, and welfare, it's not going to  
98 alter the essential character of the area, because you can see the use is going to stay roughly  
99 the same. It's a little expansion to provide some space for Troy and the employees. With some  
100 of the mitigation measures that Mr. Ayer proposes, it's not going to threaten public health, safety,  
101 and welfare on the fire protection angle. And it's also going to improve public health, safety, and  
102 welfare with respect to well, water and having appropriate sanitation facilities and the like. So, for  
103 those reasons, I think criteria one and two are satisfied on my list, and I understand your lists  
104 may be different, I'd have a form memo that I use next on my list is granting the variance will not  
105 diminish the surrounding property values. So again, it's an existing business, it's been there, the  
106 existence of this business is sort of baked into everybody's property values over there. But lots  
107 are larger over there than they might be, you know, in a place like Portsmouth where I'm from.  
108 So, people have sufficient space, the immediate abutters are giving us a thumbs up. The  
109 proposed addition complies, certainly with regular dimensional requirements. We think, and we  
110 don't want to get hung up on this. But we asked for this buffer variance because some people  
111 think that might apply. We're not sure it does if you take the letter of the ordinance, because it's  
112 clearly talking about a property that abuts a residential zone, not one that's in it. But  
113 understanding that you would want to provide appropriate boundaries to a neighboring  
114 residential property. First of all, Aleksey, who bought the property next door, bought sort of  
115 knowing Troy's intention, he's here to support the proposal. We also know that as you sat back  
116 there and looked at it, you're looking steeply up at a wet season in some of the abutters'  
117 houses, so they're not really going to be looking straight at this thing, which is going to be  
118 significantly downgradient. There is some existing vegetation there. We think that a variance is  
119 appropriate if you deem that that section applies. We think you can feel comfortable granting a  
120 variance from it, given the existing conditions on the ground. Because obviously, as you know,

121 each variance, each case stands on its own, there's always funky little things about these  
122 properties that influence your analysis. And again, the use itself is not expanded as a result of  
123 the addition of just some services and facilities for the employees. And for the customers in  
124 terms of bathrooms, such denial of the variance results in an unnecessary hardship. There are  
125 special conditions that exist that distinguish this property from others in the area. In the first  
126 instance, it's a really big lot. It's funny shaped and significantly burdened by wetland. And it's got  
127 this existing business that's been ongoing for 40 years, and all the structures on that business  
128 are where they are. So, if you're planning a slight addition, obviously got to add on to something  
129 that's already there. So, you're limited by the placement of that existing structure. Another  
130 special condition is the previous subdivision and the requirements stemming from that previous  
131 subdivision. As you know, Troy has some obligations, and he's been making efforts to complete  
132 those obligations without losing existing space in his business. The next part is no fair and  
133 substantial relationship exists between the general public purposes of the ordinance and its  
134 specific application in this instance. And what that means is, it doesn't make sense to apply the  
135 strict letter of the ordinance because, you know, some specific conditions. I would submit to you  
136 that this expansion that we now propose 529 square feet, is quite modest, it really is just what  
137 we need to get the job done. You know, and we're proposing this after we've significantly  
138 invested a lot of money to meet some of the other obligations. Sprinkler requirements obviously  
139 exist to keep people safe, and to make sure new commercial uses are safely constructed. I don't  
140 want to get into the language of the ordinance or any of the administrative appeal stuff, we're  
141 setting that aside, let's just go from the proposition that it's a tiny little addition. And there's other  
142 methods we can use to keep it safe. Lastly, the proposed use is reasonable. We think that given  
143 the subdivision that's approved the associated requirements. Certainly, if it wasn't a given maybe  
144 that we'd be in this situation, but it seems reasonable that and just easier to put on this little  
145 addition, then try to cut into that building and figure out how you're going to make it handicap  
146 accessible, where you're going to put the bathroom plumbing and things of that nature. Because  
147 what we propose is quite modest. And then a little addition largely complies with dimensional  
148 requirements, regular ones. You may decide to grant a variance from the stricter, more  
149 expansive buffers between the residential use but it's just a reasonable size and it's a  
150 reasonable proposal to have bathrooms, a break room, and a little office and to have a  
151 workbench or area where he can do those repairs. The last one on my list is substantial justice  
152 will be done by granting the variances. But basically, you're trying to figure out if there's no  
153 benefit to the public, that outweighs the hardship to the applicant from denial than the factors  
154 satisfied. Another way to look at it is any loss to Troy that's not outweighed by a gain to the  
155 general public is an injustice. We think because the proposal fulfills the obligations imposed by  
156 the Planning Board previously, has this very small edition that is well screened, has a better  
157 support and meets the International Building Code requirements with respect to the sprinklers,  
158 you know, I have a whole analysis about that. And it's accompanied by, you know, getting rid of  
159 the Porta Potti, and some other things, those are all good things. And there's no benefit to the  
160 public, from denial that comes from denying that. And there's no harm to the public in granting

161 those variances when you consider the mitigation that we can provide fire wise and the  
162 mitigation that we provide in terms of buffering from the topography and the existing vegetation.  
163 And, conversely, you need alternatively, denial of the variance will cause a lot of harm to Troy,  
164 because he will be back sort of at Ground Zero trying to figure out how to comply with the  
165 planning board approval process, without digging into his retail floor space. Without a variance  
166 for the addition, he's going to lose retail space in order to comply. And that's going to harm his  
167 business, which frankly, is already struggling, as I'm sure most small businesses are pitching  
168 early in the wake of the pandemic, we would submit that denial of the variance would result in in  
169 a denial of his constitutional rights to the reasonable use of this property under all the  
170 circumstances, including the characteristics of this lot and the subdivision obligations.”

171  
172 There was discussion on how long the Porta Potti has been at the location and it is unknown  
173 how long it has been in place.

174  
175 Mr. Luszcz inquired about the possibility of using the pole barn as workspace by adding heating  
176 and electricity. Mr. Brown and Mr. Ayer rebutted, indicating that it was not ideal for that use.

177  
178 James McLeod of 31 Main Street addressed the Board. He noted he is a member of the  
179 Planning Board but was present as a citizen of Raymond. Mr. McLeod read a letter to the Board  
180 (see attached.)

181  
182 Attorney Dressler noted the one of the RSA's cited in Mr. McLeod's letter has been repealed.

183  
184 Attorney Keiser explained “ We did consult the IBC. And I think you have some information in the  
185 materials about Miss Libby's consultation of the International Building Code. Industry last year,  
186 you also were looking at plumbing code. We looked at the International Building Code and its  
187 requirements for group M and Mercantile, and what types of things are required. And that's part  
188 of our argument, why we think that a variance is consistent with the IBC. The term, you know,  
189 which we don't see as requiring sprinklers, for something of this size, even the whole business.  
190 But in any event, we acknowledge that Raymond has that provision of the ordinance, and the  
191 goals of that ordinance provision for safety for the public, and first responders. Those are all  
192 laudable goals, simply think that this is a small enough addition with other mitigation members.  
193 And with the blessing of the fire department. We think that all those things add up to it being a  
194 reasonable request.”

195 A memo from Paul Ayer to the Board was read by Tim Cahill. ( See attached).

196  
197 Motion:

198 Mrs. Wood made a motion to go into deliberation. Mr. Cahill seconded the motion. The motion  
199 passed with a vote of 5 in favor, 0 opposed and 0 abstentions.

201 Mr. Cahil said 2.2.3 expansion limits expansion of any use by 25% or more is not permitted.

202  
203 Mr. Luszcz commented "I still have a problem with the presentation. The hardship that they  
204 talked about is the bathroom. It keeps coming Back to the bathroom and I agree there is no  
205 place to really put a bathroom in there. I don't think it really meets the criteria of the hardship  
206 though it's just the bathroom we're talking a lot more area than just the bathroom here I believe  
207 that the spirit of that ordinance is to not allow beyond that amount they are asking for the  
208 exception to that they're asking for a break room and you know again that in the sand they need  
209 to work on vehicles there you know the work on the kayaks and the canoes and stuff but it's not  
210 listed in the hardship pa the hardship comes down to this ugly Porta Potti that's out there that  
211 they want to get rid of. And I agree I had him on properties before and they're unsightly, they  
212 smell it should be removed but I don't think they met that criterion on the hardship there. We  
213 have no proof of where they use the bathroom. We don't have any proof in front of us about how  
214 long Porta Potti has been there. It wasn't proper for it to be there if it was before operating for the  
215 business there it didn't meet from what I see is the right codes there. But yet it was allowed for  
216 all the time that it was and after the subdivision this was the condition that was put on him. I still  
217 feel that they created that condition that they created that hardship there with having to put the  
218 bathroom in there. And there's still enough space, there's still enough room on the original thing  
219 here without even have to seek a variance for them to put that even enough room to put an  
220 office or maybe make that additional workspace you could almost expand that back room since  
221 that bat working room was right there. Right there against the wall. You could expand that a little  
222 bit for the bathroom, stay under the amount there and then you don't even have to be here. You  
223 don't even have to be here. Get enough out of that. That's what I see. I did a little more research  
224 about unnecessary hardship. There was a study done by apparently a lawyer Adam Lovelady at  
225 UNC School of Government. And, you know, he talked about the things about unnecessary  
226 hardship, and inconvenience shared by all the community and application for evaluations must  
227 show unnecessary hardship. What is enough hardship? Unfortunately, there's no simple formula  
228 that is determined on a case-by-case basis. The hardship must be more than a mere  
229 inconvenience or profits. Oh, nobody, he's not saying he can't put the bathroom in his main  
230 building, you're saying it would create a hardship. And again, it is congested that their cost of  
231 compliance may be a factor. But cost is not determinative and is not fair enough for an applicant  
232 to say that development will cost more in order to comply. So again, when I did talk about that,  
233 I'm trying to say 'Well, where can you put your workshop there?' I thought about that pole barn.  
234 And maybe that's a place you can do it. And you know, I don't know what it's going to cost. I  
235 have no idea. Trying to find a solution to try to work something out here. I still didn't see the  
236 hardship, the hardship, what hardship was created by asking for this variance. So, I understand  
237 why they put what they put there. And I'm glad that you have the neighbors supporting you. I  
238 think that's important. You know, it's nothing worse. But I think as people who spoke in the past  
239 there, he may not be there in a year. The neighbors may not be there in a year. It's great that  
240 they're all in support now, but everybody else can come in afterwards and say hey, why don't

241 you allow something like this here?" "Again, not knowing whether or not the bathroom was used  
242 in the house. Did he create that hardship when he did the subdivision? "

243  
244 Mr. Cahill: "You know, based on testimony and what the planning board did, the conditions that  
245 they put on the subdivision that he would build a bathroom, I think there was a hardship based  
246 on the fact the planning board the conditions of the subdivision state, but he'll build a bathroom. I  
247 think that would be a hardship on that." "I do agree with you that Troy could have made changes  
248 to his plans. But he has a right to come before us. "

249  
250 Mrs. Welch: "I agree with Tim, I think there is a hardship there. And I don't see a problem. We  
251 have a letter from our building inspector, supporting the variance and granting the variance and I  
252 don't see a problem."

253  
254 Mrs. Wood:" I guess I reserve judgment until we go through the criteria."

255  
256 Mr. Smith: " I think it was something that was put on to him by the subdivision it I agree with Tom  
257 on that point, the only thing that I would want to do is maybe put a condition of approval onto it,  
258 that it would not exceed the 529 square foot that this variance is for just this and that that  
259 continue, that condition would be added to the site plan under the conditions. And that a letter  
260 would be written to the building inspector along with the variance attached as an addendum or if  
261 you will, that this is just for this one purpose, this one 529 square foot." "You will always have  
262 that right to come back again on something different. But just for this one, this variance speaks  
263 just to this one. Just to make it conditional upon the square footage."

264  
265 Motion:

266 Mrs. Wood made a motion to come out of deliberation. Mr. Cahill seconded the motion. The  
267 motion passed with a vote of 5 in favor, 0 opposed and 0 abstentions.

268  
269 *Petition for variance of 2.2.3, expansion of the limits of property 68 Mountain Road, map 46, lot*  
270 *9. One, granting the variance would or would not be contrary to the public interest because:*

271  
272 Mrs. Welch: (In Audible)

273 Mrs. Wood: "I don't see anything in this request that would be contrary to the public interest."

274  
275 Mr. Smith: "I agree with Joyce."

276  
277 Mr. Cahill: "I agree with what Alyssa said it is an already established business and had a lot of  
278 support from the residents around the area."

279  
280 Mr. Luszcz: "Tom, it would not."

281  
282 *The spirit of the ordinance would or would not be observed because*  
283

284 Mrs. Welch: "The spirit of the ordinance would be observed."  
285

286 Mrs. Wood: "I am having a little bit more of a hard time with this one, yeah, we need the  
287 ordinance that was intended to prevent overcrowding. And this in this lot already has a lot on it.  
288 And this is going to make the use much denser."  
289

290 Mr. Smith: "I'm going to quickly say it would not because 25% still stands on its own merit. But  
291 that's a whole separate thing now you're seeking variance for that. But the ordinance does stand  
292 on its own. So, in my mind, that is it's a reasonable use of the property and expansion and stuff.  
293 But the warrant is still what the warrant was what the people wanted."  
294

295 Mr. Cahill: "I don't think it goes against the spirit of the ordinance because it's a very reasonable  
296 ask."  
297

298 Attorney Dressler : "Just so the board's aware, the Supreme Court has said that prongs one and  
299 two, being the contrary to public interest in the spirit of the ordinance and the same analysis, or  
300 otherwise the same thing. So just so you're aware."  
301

302 Mr. Luszczyk : " I say it does not."  
303

304 *Granting the variance would or would not do substantial justice because*  
305

306 Mr. Luszczyk: "It would not." "because of the existing business that's there, it is our back and it's  
307 out of the way. And the comment about the values is adjusted to the fact that there is the  
308 business they have been well established for years and years. So, he was saying would or  
309 would, that it will not diminish the surrounding property values"  
310

311 Mr. Cahill: "I think granting the variance would do substantial justice to the property owner  
312 because it was asked by the Planning Board to put this in, I think it would actually make his  
313 business better and give improvements surrounding properties."  
314

315 Mr. Smith: "I am agreeing with Tim. I think it would be substantial justice for you to get this."  
316

317 Mrs. Wood : "I think it would do substantial justice."  
318

319 Mrs. Welch: "I agree, I don't have anything to add to that."  
320

321 *For the following reasons, the values of the surrounding properties would or would not be*  
322 *diminished.*

323  
324 Mrs. Welch: "Granting the variance would not diminish the values of the surrounding properties,  
325 it's already an existing business."

326  
327 Mrs. Wood: "I don't see any diminution of surrounding property values as a result of this addition,  
328 with it's pretty much going to be invisible."

329  
330 Mrs. Smith: "I say would not. The additions in the back, I don't see any change in the  
331 neighborhood or anything."

332  
333 Mr. Cahill: "I don't think that granting this variance would dismiss diminished surrounding  
334 property values."

335  
336 Mr. Luszczyk: "I already answered it, but I will say it will not diminish."

337  
338 *Owing to special conditions of the property that distinguish it from other properties in the area.*  
339 *Denial of the variance would result in us unnecessary hardship because there is or is not fair*  
340 *and substantial relationship between the general public purpose of the ordinance provision and*  
341 *the specific application of that provision to the property because*

342  
343 Mr. Luszczyk: "I go back to my original argument what I said they did not show the hardship here  
344 of why they have to put this big again not big but the size of the building they got to put back  
345 there they did not show it."

346  
347 Mr. Cahill: " I think there is an established hardship based on the requirements of the planning  
348 board to build a bathroom. It's a reasonable ask to build this structure. How they presented it to  
349 us based on not disturbing the soil. It's been being built over as they showed us as being built  
350 over already established concrete that's already in use."

351  
352 Mr. Smith: "I agree with Tim it is reasonable to meet the requirements of the Planning and an  
353 ADA bathroom."

354  
355 Mrs. Wood: "Denial of the variance would create an unnecessary hardship."

356  
357 Mrs. Welch: "I agree with Joyce and nothing else."

358  
359 Motion:

360 Mr. Cahill made a motion for application 2022-003 that we approve the variance number one,  
361 provided that they do not expand past 529 feet for this variance. Mrs. Wood seconded the  
362 motion. The motion passed with a vote of 5 in favor, 0 opposed and 0 abstentions.  
363

364 *8.3.3 as allowed by RSA 674: 52-1 pursuant to RSA 674:51. That all commercial to include*  
365 *multifamily housing and industrial uses, newly constructed shall be sprinkler protected in*  
366 *compliance with NFPA 13, the standard for the installation of sprinkler systems design criteria.*  
367

368 Motion:

369 Mr. Luszcz made a motion to go into deliberation. Mr. Cahill seconded the motion. The motion  
370 passed with a vote of 5 in favor, 0 opposed and 0 abstentions.  
371

372 Mrs. Welch: “ I would default to Chief Hammond and his recommendation, which is that they are  
373 not required.”  
374

375 Mrs. Wood: “I’m okay with it. Especially if it has the additional fire protections, which they said  
376 they want to do.”  
377

378 Mr. Smith: “I’m fine with it based on Paul’s memo, the discussion with the fire chief and it doesn’t  
379 fall under any of the guidelines of NFPA 13 at this point.”  
380

381 Motion:

382 Mr. Smith made a motion to come out of deliberation. Mrs. Wood seconded the motion. The  
383 motion passed with a vote of 5 in favor, 0 opposed and 0 abstentions.  
384

385 *Petition for the variance of 8.3.3 NFPA 13. Sprinklers with a property located at 68 Mountain*  
386 *Road Map 46/lot 9. Let me read the full as allowed by RSA 674:52-1 pursuant to RSA 674: 51*  
387 *And that all commercial tools include multifamily housing industrial uses, newly constructed shall*  
388 *be fully sprinklered protecting compliance with an NFPA 13, the standard of the installation*  
389 *sprinkler systems and design criteria.*  
390

391 *granting the variance would or would not be contrary to the public interest because*  
392

393 Mrs. Wood: “would not be turned to the public can trust because other than the workshop, I don’t  
394 see any very high risk of fire here .”  
395

396 Mrs. Welch: “it would not be contrary to public interest, it’s not public space. And again, fire chief  
397 code enforcement discussed it and are good with non-sprinklers.”  
398

399 Mr. Smith: "I would say it would not be. It is low risk and he's going to be passive per the code  
400 enforcement officer."

401  
402 Mr. Cahill: "I agree it's not contrary to public interest. It's already established business and  
403 operating. We've discussed other options for passive fire prevention"

404  
405 Mr. Luszcz: "Would not."

406  
407 *The spirit of the ordinance would or would not be observed because*

408  
409 Mr. Luszcz: " I believe it would."

410  
411 Mr. Cahill: "I agree the spirit of the ordinance would be observed because public safety is  
412 already being taken into consideration."

413  
414 Mr. Smith: "I would agree that it would because this addition doesn't make it applicable to NFPA  
415 13 per the fire chief and code enforcement."

416  
417 Mrs. Wood: "I think the spirit of the ordinance is observed because there are alternatives to  
418 sprinklers that are going to be employed."

419  
420 Mrs. Welch: "I agree with what everyone has said it would be observed"

421  
422 *For the following reasons, the value of the surrounding properties would or would not be*  
423 *diminished.*

424  
425 Mr. Luszcz: "Would not."

426  
427 Mr. Cahill:" I agree with Tom they would not be diminished."

428  
429 Mr. Smith: "I agree Would not."

430  
431 Mrs. Wood: "I don't see any diminution of showing in property values."

432  
433 Mrs. Welch: " Would not."

434  
435 *Granting the variance would or would not do substantial justice*

436  
437 Mr. Cahill: "Granting the variance would do substantial justice because our fire chief has already  
438 stated that sprinklers are not required."

439  
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477

Mr. Smith: "I would say would because it is not applicable."

Mrs. Wood: "I think substantial, substantial justice wouldn't be done. I think this is a low-risk variance."

Mrs. Welch: "Would."

Mr. Luszcz: "Would."

*owing to the special conditions of the property that distinguish it from other properties in the area denial of the variance would result in unnecessary hardship, because there is or is not a fair and substantial relationship between the general public purpose of the ordinance provision and the specific application of that provision to the property because what be the proposed use is or is not a reasonable one because*

Mrs. Welch: "Literal enforcement would be an unnecessary hardship, especially since the fire chief has said it's not necessary and there's other provisions in place."

Mrs. Wood: " I agree with Alissa."

Mr. Smith: "I agree with the statement that Alissa made, it is a substantial between the general purpose."

Mr. Cahill: "I agree with Alissa."

Mr. Luszcz: "Ditto."

Motion:

Mr. Cahill made a motion to grant a variance of 8.3.3 for 2022-003. Mrs. Welch seconded the motion. The motion passed with a vote of 5 in favor, 0 opposed and 0 abstentions.

*Looking for relief from 15.2 point for any commercial industrial structure which is proposed to be located abutting a residential zone or in C to only an existing residential use shall require a minimum setback of 50 feet from property lines which shall include a 20 foot dense vegetative buffer and a fence to shield the residential zone or a see to only any existing residential use from life noise generated by the commercial or industrial structure. The words retire 55 for development maintained errs as dense vegetative buffer a fence is not required.*

Motion:

478 Mr. Cahill made a motion to go into deliberation. Mrs. Wood seconded the motion. The motion  
479 passed with a vote of 5 in favor, 0 opposed and 0 abstentions.

480

481 Mr. Luszczyk: "I saw the buffer; I saw the land and I don't see any reason to add anything to that  
482 and it is substantial. It does block everything that's back there."

483

484 Mr. Cahill: "I agree with Tom. And I think the buffer zones are pretty well established."

485

486 Mrs. Welch: "I think the existing buffer is adequate."

487

488 Mr. Smith: "I think it's fine."

489

490 Motion:

491 Mr. Cahill made a motion to come out of deliberation. Mrs. Wood seconded the motion. The  
492 motion passed with a vote of 5 in favor, 0 opposed and 0 abstentions.

493

494 *Granting the variance would or would not be contrary to the public interest, because*

495

496 Mrs. Wood: "I will say that it would not be contrary to the public interest, the most interested in  
497 public are the abutters. And both abutters on both sides of this support variance requests."

498

499 Mrs. Welch: "I do not think it would be contrary to public interest to grant the variance. I think  
500 what's there is adequate."

501

502 Mr. Luszczyk: "Would not."

503

504 Mr. Cahill: "I agree with Joyce and Alissa."

505 Mr. Smith: "I also agree with Joyce and Alissa."

506

507 *The spirit of the ordinance would or would not be observed because*

508

509 Mr. Cahill: "I think the spirit of the ordinance would be observed because there's already a  
510 substantial buffer established."

511

512 Mr. Luszczyk: "I agree the hill there is a substantial buffer"

513

514 Mr. Smith: "I agree the just the geography of the place and the house being set back so far from  
515 you that it would not."

516

517 Mrs. Wood: "I agree, the spirit of the ordinance is observed due to the existing buffer. Concern,  
518 however, the buffer would need to be maintained so that maybe it would be a condition of  
519 approval."

520  
521 Mrs. Welch: "I agree with Tim."

522  
523 *Granting the variance would or would not do a substantial justice because*  
524

525 Mr. Cahill: "I can start granting the variance would do substantial justice because there's already  
526 a well-established buffer."

527  
528 Mr. Luszcz: "I agree."

529  
530 Mr. Smith: "I agree with Tim."

531  
532 Mrs. Wood: "it will do substantial justice; I think there's no practical way to establish a 50-foot  
533 buffer. Given the topography and the ledge that's there on the uphill side of the store."  
534

535 Mrs. Welch: "Would do."

536  
537 *The values of the surrounding properties would or would not be diminished*  
538

539  
540 Mr. Luszcz: "They would not be diminished."

541  
542 Mr. Cahill: "They would not be diminished."

543  
544 Mrs. Wood : ""They would not be diminished."

545  
546 Mrs. Welch: "Would not."

547  
548 Mr. Smith: "Would not."

549  
550 *owing to the special conditions of the property that distinguish it from the properties in the area*  
551 *denial of their parents would result in an unnecessary hardship because there is or is not a*  
552 *substantial relationship between the general public purpose of the ordinance provision and the*  
553 *specific application of that provision to the property because the proposed use is or is not a*  
554 *reasonable one. Because*  
555

556 Mr. Cahill: "I could start if we denied this variance, it would create a hardship because there is  
557 already an established buffer zone and an established building already granted that it would  
558 meet the requirements for this variance is basically, there's already a building inside that."  
559

560 Mr. Luszcz: "I agree with Tim. The barrier is there."  
561

562 Mrs. Wood: "To deny all of the variance would result in unnecessary hardship."  
563

564 Mrs. Welch: " Would result in unnecessary hardship."  
565

566 Motion:

567 Mrs. Wood made a motion to grant a variance to Section 15.2.4 of the Raymond Zoning  
568 Ordinance and with the condition that the existing buffer be maintained. The motion failed for a  
569 lack of a second.  
570

571 Motion:

572 Mr. Cahill made a motion to approve the application 2022-003 for the variance of from 15.2.4.  
573 Mrs. Welch seconded the motion. The motion passed with a vote of 5 in favor, 0 opposed and 0  
574 abstentions.  
575

576 Motion:

577 Mr. Cahill made a motion to table the minutes from 8/24/22 and 7/27/22 until September 28,  
578 2022. Mrs. Welch seconded the motion. The motion passed with a vote of 5 in favor, 0 opposed  
579 and 0 abstentions.  
580

581 Mr. Smith commented "this being David Hall's third meeting. Per 2.4 of rules and procedures,  
582 the three meetings have an interview. Anybody have any questions for Dave Hall?"  
583 David Hall introduced himself as a resident of Raymond, and currently the code inspector for the  
584 City of Concord.  
585

586 Motion:

587 Mrs. Wood made a motion to send a letter of recommendation to the Board of Selectmen that  
588 Mr. David Hall be made an alternate to the Zoning Board. Mr. Cahill seconded the motion. The  
589 motion passed with a vote of 4 in favor, 0 opposed and 1 abstention.  
590

591 Motion:

592 Mrs. Welch made a motion to adjourn. Mr. Luszcz seconded the motion. The motion passed with  
593 a vote of 5 in favor, 0 opposed and 0 abstention.  
594

595 Respectfully submitted,

596  
597 Jill A. Vadeboncoeur  
598  
599  
600  
601  
602  
603

James McLeod

31 Main Street  
Raymond, NH 03077

Zoning Ordinance 8.3.3

August 31, 2022

To Whom It May Concern:

I am a member of the Planning Board in Raymond but am addressing you as a citizen of Raymond. The following ordinance is of the highest importance to me and reflects the intent of the people of Raymond and our First Responders to make sure all new commercial (and industrial and multi-family) construction is sprinkler protected. This can save property, but its chief purpose is the protection of lives. Not just those exposed to conflagration but the firefighters and other first responders that arrive to battle the blaze.

8.3.3 As allowed by RSA 674:52-I pursuant to RSA 674:51 and that all commercial (to include multi-family housing) and industrial uses newly constructed shall be fully sprinkler protected in compliance with NFPA 13 (the standard for the installation of sprinkler systems) design criteria.

There is no ambiguity in the language or the intent of this ordinance and I ask that the board weigh very heavily the ramifications of granting variances to this important life/safety ordinance.

I appreciate your thoughtful consideration and thank you for your valuable time.

Respectfully,  
Jim McLeod

# Memo

**To:** Zoning Board  
**From:** Paul Ayer Building Inspector  
**cc:** Name  
**Date:** 8/29/22  
**Re:** 68 Mountain Road

---

1: 2.2.3.I feel the expansion of 529 ft is allowed in our zoning, ordinance I have to agree with Charlie Smart that 24% is permitted. 529 is much less than 24%.

2: Spoke with Fire Dept. sprinklers are not needed. Will be built to Building Inspectors specs.

Thank You

Paul Ayer

Building Inspector