

**MINUTES OF A REGULAR MEETING  
OF THE ZONING BOARD OF APPEALS OF THE TOWN OF POMPEY**

**September 11, 2023**

**7:00 PM**

**Pompey Town Hall**

Board Members Present: David Tessier, Chairman  
David Hale  
Kevin Sharpe  
Donald Neugebauer  
Seara Haines

Also present were Town Supervisor Renee Rotondo, the Town of Pompey Codes Enforcement Officer Tim Bearup and Attorney Tim Frateschi.

Chairman Tessier called the meeting to order at 7:00 pm; he also noted tribute to lives lost on 9/11.

**Application by Harrington Homes, Inc. for TWO AREA VARIANCES, to allow a reduction of 0.62 acres, from the minimum of 2 acres per lot, as required for a single family residence in a Farm District, as per Schedule 165 in the Town Code, resulting in a lot size of 1.38 acres for each of two lots on Watervale Road, tax map numbers 4.-01-15 (lot 2), and 4.-01-3.2 (lot 3), just south of 4334 Watervale Road (lot 1).**

The application and hearing that was on the agenda from last month had been adjourned to tonight. David Hale presented a letter that was sent from former Codes Enforcement Officer Bob Rodriguez to Harrington Homes in May of 2021. Chairman Tessier read the letter aloud.

Present for the applicant was Tim Coyer of Ianuzi and Romans P.C. Attorney Tim Frateschi asked the applicant if they did have proof that a prior subdivision was created, but not filed. The applicant received the signed, approved map from the Town. The deed refers to lots 1, 2 and 3 of the unfiled subdivision. He has attempted to find a reason as to why the map was not filed, but could not. Lot 1 has an existing house, lots 2 and 3 are the lots that they are attempting to get a variance for. The applicant is not creating two new tax parcels; the tax parcels already exist. The map introduced by an audience member last month does show the two parcels, but those parcels were not part of the subdivision shown on this map (Broderick Subdivision, 1994.) The unfiled subdivision map is dated 1986. This is not the subdivision that

is shown in the map dated 1986. T. Frateschi noted that a process was obviously gone through if the previous Board Chair's name was signed on it. Harrington Homes purchased the lots in February 2020. The Code in place at the time the lots were created allowed the lots to exist as they are. D. Hale asked if there is a period in which the map would have had to been filed. T. Frateschi reported that final subdivision maps must be filed within six months of approval, and there is vested rights period that exists for three years. That statute is not always followed, and the County Clerk's office will take maps and file them even beyond the six-month period.

The applicant reached out to the neighboring property behind to see if it was possible for them to purchase more property; they are not interested in selling at this time. The lots do meet the required width; they are just not deep enough. The lots will not be taking up any additional room on Watervale Road.

D. Neugebauer noted that the Board also previously talked about when the 2-acre minimum was put in place. It is believed that it was in 1988. T. Frateschi noted that for tonight's decision, that does not matter because it has already been decided that the lots are non-conforming per today's code.

D. Hale confirmed that there are houses on each side of the two lots. It is unclear how close those houses are to the property lines. The applicant noted on the map that there are other lots in close proximity that are well below the 2-acre minimum, and have less road frontage; these lots are zoned residential, and the lots in question are zoned farm.

D. Neugebauer made a motion to open the hearing 7:20 pm. S. Haines seconded the motion. All were in favor, none were opposed. The Public Hearing was opened at 7:20 pm.

### **Public Hearing**

**Helen Bailey 2671 Ridge Road-** Ms. Bailey asked how big the third lot that already has the house on it is. This lot is the same size as the other two proposed lots. The lot next to these two is 4 acres; what would stop them from coming to the Board and asking to split their land as well? T. Frateschi confirmed that they could do this, but that they could not create any new lots that are less than 2 acres.

**James Starowitz 4335 Watervale Road-**Mr. Starowitz pointed out that the maps are not representative of the true character of the neighborhood.

**Zach Smith 4337 Watervale Road-**Mr. Smith asked if Harrington Homes provided the information that was requested of him by Codes Officer Bob Rodriguez in May of 2021. No, he did not, because the information does not exist.

**Wynn Collins 4333 Watervale Road**-Mr. Collins asked if it would be possible to read the previous letter from Bob Rodriguez again. Unless these findings are totally wrong, he does not feel that it should be allowed. The Town laws were made for a reason.

Chairman Tessier re-read the key points of the letter. Codes Officer Tim Bearup has also found no evidence of a previously filed subdivision map. The applicant is before the Board to appeal the finding of the Codes Officer.

**Eric Schwedes 4310 Watervale Road**-Mr. Schwedes supplied the map that was previously referenced. He said that there is no way that if two homes are put on these lots that he is not looking into someone's window. He does not think that the Town of Pompey should be filled with saltbox type homes. Are we going to have Pompey full of homes on lots that are less than one acre? When the previous owner of the property passed away, the property was sold as part of an estate. He approached the realtor with a copy of the map that showed the lots as one parcel. This realtor assured him that the lots would have to be sold as a "bundle." The applicant is not a homeowner who wants to build a home-this is a builder who has a lot of experience and who lives in the Town of Pompey. He provided the Board with a written document that he hoped would rebut the five standards that would later be considered by the Board. He knows that there are individuals who have previously offered to purchase the lots as one. The Board has the neighbors' previous petition, this written document and the letter from Bob Rodriguez.

**Sheila Schwedes 4310 Watervale Road**-Mrs. Schwedes pointed to the map to show how close her house is to the property line. She showed the Board an aerial photo of the property lines.

**Eric Schwedes** pointed out that the DEC may have a concern because there is a watershed downstream. Two septic's close to that waterway may pose some issues.

The applicant referred to the map. He reiterated that they have the width for the lots, so the location of the homes on the lots is a moot point. 200 feet of road frontage is allowed per code. The county Health Department has already cleared the septic designs re: the watershed.

**Jeff Hughes 4334 Watervale Road**- Mr. Hughes lives on Lot 1. He would like to speak to the five factors that are to be considered by the Board. From what he understands, the number one factor is how the benefit outweighs the negative. So far, he has not heard any benefit other than that Mr. Harrington gets to build two homes. It does not appear to improve the neighborhood in any way. He reported that no one really knows what the environmental impact is. Another issue is traffic and safety for the children in the neighborhood. He brought up at the last meeting that it is a very, very high-speed road. Coming up the hill, the neighbors struggle to get out of their driveways. He saw something about setting precedent-he feels that this sets a bad precedent. If the Board allows Mr. Harrington to purchase property that he

knows doesn't follow the rules, what has to stop him from buying more property and asking for it to be allowed again the future? He hopes to get some good neighbors; this could be the only potential positive development. D. Hale asked if Mr. Hughes built the home-he did not, he purchased the lot in 2020. His purchase came along with another lot directly to the North. S. Haines asked what the acreage of the additional lot is-it is 1.3 acres.

D. Hale said that obviously a permit was issued for Lot 1 as is, based on the approved subdivision map that was never filed with the county. D. Neugebauer questioned if it makes a difference if the subdivision was filed or not. T. Frateschi confirmed that it does make a difference.

**Shelia Schwedes** felt that the Board is losing sight of the issue because this is not a property owner who has been stuck with an unbuildable lot. This is a developer who knew what he was doing and did not seem concerned with the Board's decision.

**Wynn Collins** noted that for the longest time there was one for sale sign for one building lot. Then, out of blue, the for sale signs for two lots went up when Harrington Homes purchased it.

k. Sharpe noted that if you have 2000 sq. ft. home on a 2-acre lot you would have the same footprint as a 4000 sq. ft. home that could be built, so be careful what you are asking for. There could be a much bigger much more obtrusive structure built.

**Alma Hartnett 2703 Ridge Rd.**-Ms. Hartnett said that if the Town of Pompey code calls for two acres, then we need to stick with 2 acres.

D. Hale asked that because they built on Lot 1, did that put the ball in motion for the previous sub-division as far as the timeframe standards go. T. Frateschi will address that when the Public Hearing is over.

The Applicant wanted to note that they are not trying to create two lots; there are already two lots there. How often are you going to run into the situation in which the existing lot is too small for the Code?

**Wynn Collins** explained that the property used to be all farmland owned by the Smith's. They did subdivide some land for housing; this was likely back when the law allowed for 1 acre. The Town just approved a home on an acre of land on the town of Pompey/Manlius line. This would be three times that a house on less than 2 acres was approved on Watervale Road.

D. Neugebauer noted that he struggles with this application because he does believe in the 2 acres, but on the other hand, they are looking at 2 lots that with very little disturbance could be in line with code. Additionally, there is already a house on a lot that is exactly the same size as the two lots in question. He believes in growth.

D. Hale said that he understood the concern about looking in each other's windows, however, it was pointed out that there is already 200 ft. of road frontage, if someone builds they are going to be looking at each other regardless.

**S. Schwedes** said that this is not their only concern. They have a shallow well. This means that they could subdivide their land, and the person down the street could subdivide his as well. Yes, this could happen as long as the lots are not less than 2 acres.

**Jeff Hughes** asked if 200 ft. is more important than 2 acres. The board will weigh this.

**James Starowitz** said that the reason we are requiring 2 acres is because of septic demand. On the eastern side of the lots, there is a heavy water flow. If the lots were expanded in the rear, then you would not gain any additional space for septic due to the water flow.

D. Hale made a motion to close the Public Hearing at 7:55 pm. D. Neugebauer seconded the motion. All were in favor, none were opposed. The Public Hearing was closed at 7:56 pm.

T. Frateschi asked to adjourn the meeting for five minutes in order to allow for an attorney-client privilege meeting. D. Neugebauer motioned to adjourn at 7:57 pm. D. Hale seconded the motion. The meeting is adjourned at 7:57 pm.

D. Neugebauer motioned to re-open the meeting at 8:04 pm, D. Hale seconded the motion. The meeting was re-opened at 8:04 pm. T. Frateschi suggested that the Board wait until next month to make a decision as there is some legal research that needs to be done. The Public Hearing can be re-opened at the next meeting. The five standards will not be addressed at tonight's meeting. The decision will be adjourned to October 9, which is Columbus Day.

**Application by Double Swan Holdings, LLC, (Michael Skeele), for AREA VARIANCES for a building height increase of 14 feet, from the maximum of 15 feet, to the existing 29 feet, and/or building setback reduction of 14 feet, from the minimum of 33 feet, to the existing 19 feet for the property at 3857 Pompey Center Road, Tax Map number 8.-01-23.1.**

The matter was continued from last month. The Board has received no new information since last month.

S. Haines asked if we need clarification on what the actual variance request actually is.

D. Tessier noted that it is written correctly, but may be confusing because the applicant has a few options. The applicant will either have to increase the setback to 33 feet, or reduce the height down to 15 feet in order to comply with the code. The building is 14 feet too high, so he has to add 2 feet horizontally for every 1 foot of height, to make up for the extra 14 feet of

height. The applicant is looking for a variance to keep the building where it is, leading to a height variance of 7 feet or a setback variance of 14 feet.

D. Neugebauer also had concerns about building use as well, but that is an Enforcement issue, not a Zoning Board issue. S. Haines asked if it is okay to be granting a variance when there could be a use issue. T. Frateschi confirmed that any use problem is a Code Enforcement issue. D. Neugebauer confirmed that it does not matter if this is taken care of before their decision. The Town is also working on a Code that addresses Home Occupations, which also may address this.

D. Hale made a motion to re-open the Hearing at 8:15 pm. S. Haines seconded the motion. All were in favor, none were opposed. The Public Hearing was re-opened at 8:16 pm.

### **Public Hearing**

**Dale Sherman 3844 Pompey Center road**-Mr. Sherman noted that at the last meeting, the issue with the lot depth was brought up. D. Tessier noted that he did bring it up as a concern, but it does not appear that this issue needs to be addressed.

**Helen Bailey 2671 Ridge Road**-Ms. Bailey asked if it was approved already before it was built. Yes, a permit was issued. It did not go through the Planning Board, but a Building Permit was issued. T. Frateschi confirmed that a building permit was issued, but the building is still in violation of Town Code. Ms. Bailey asked if she were to build something that is not to code, would she be told to take hers down too. Codes issued a notice that the building is in violation, so now the Applicant is requesting a variance.

K. Sharpe asked if we have a hard copy of the permit. T. Bearup provides the copy.

**Mitch Gorczyca 3850 Pompey Center Rd**-Mr. Gorczyca lives directly across the road on the east side where this barn is. He also has a barn that he built himself; it took him about four years. He came to fill out the application, and was granted a permit. He was told he had to be so many feet from the property line with a certain height. It got approved, and he built a barn-he wondered if he was in violation too, and if when he goes to sell the property to go to warmer weather if he is going to be held hostage. D. Tessier asked if there was a completion inspection. He does not recall Codes coming back for any reason. The Board is not out looking to find issues.

**Helen Bailey** asked how the issue came about. D. Tessier said that it was a neighbor complaint.

Present is the applicant, Mike Skeeel. He explained that his sons are 1% owners in the LLC that owns this property. One of his sons became over excited and advertised the building for storage on Marketplace. Once the ad went up, he received a letter from Tim Bearup re: the use and has since addressed the issue. The building is used for personal storage only.

**Dale Sherman** asked if the applicant has a commercial business, and is storing commercial equipment, doesn't that make the building commercial? T. Frateschi explained that if he were using the building to store other people's equipment, then that would be commercial. He is using it store his commercial equipment for his business. This would be a decision for the Code Enforcement officer.

D. Hale asked if the property owner from the south has met with the applicant to rectify this. They have met, but did not discuss rectifying the issue.

K. Sharpe noted that the Building Permit is a stamped document that says 28 feet. Whether he knew it or not, a Code Enforcement Officer received an application with correct information that was not code and issued a permit.

T. Frateschi said that case law would show that the Board could still enforce against the decision made by the previous Codes Officer. The Board can consider that a Building Permit was granted. That can be considered when discussing if the detriment to the community outweighs the benefit to the Applicant. The new Codes Enforcement Officer has found that the building does not comply with Town Code.

K. Sharpe noted that the building is grossly out of code. He has been approached and asked how the building was built because it is so far out of code. There was a community member or members who stood up, came to the Town, and made a statement. Codes investigated and found out that the building is too tall. All we are dealing with is a height variance or a side setback.

D. Hale asked if the building was 7 feet shorter, would it still be an eyesore? K. Sharpe noted that it would meet Code, and would have the same footprint if it were 7 feet shorter.

**Mitch Gorczyca** asked for clarification on height requirements.

**Helen Bailey** asked if the variance was issued, could the Applicant do some landscaping to reduce the "eyesore." D. Tessier confirmed that the Board could approve with some conditions to mitigate the issue.

**Dale Sherman** asks the adjoining property owner (Ryan Yaroski) if he would rather see the building be shorter or further back. Mr. Yaroski would rather see it further back.

Mr. Skeele noted that he keeps hearing people use the word eyesore-he has received many compliments on the barn. The Board agrees the property looks very nice.

There is no lot coverage requirement, only setback requirements.

K. Sharpe asked if it was a house that was that large; would people have the same issue? This is a farm zone. It is not an Ag. Building, but it is an accessory structure.

**Ryan Yaroski 3837 Pompey Center Road-** Mr. Yaroski did some research into the Code and saw that accessory structures cannot be larger than the residential structure. The Board confirmed that this does not apply in a farm zone.

**Ryan Yaroski** questioned if the barn can actually be used, as the home is a rental home and last month it was mentioned that that the accessory structure is only to be used by the person occupying the home. T. Frateschi did not believe this to be accurate.

K. Sharpe asked Mr. Skeelee if there is any way to drop the peak at all. Mr. Skeelee said no, not unless the Town wants to pay for it. The Board has to weigh the consequences-if the Board approved it, Mr. Skeelee has a 29-foot building on a lot 19 feet away from the side yard setback. If they deny the request, how do we fix it? It would be a money issue, and money is not this Board's concern.

D. Neugebauer made a motion to close the Public Hearing at 8:43 pm. D. Hale seconded the motion. All were in favor, none were opposed. The Public Hearing was closed at 8:43 pm.

The Board will address the five criteria of an area variance: Whether the benefit sought by the applicant can be achieved by some other feasible method, Whether the variance will result in an undesirable change in the character of the neighborhood, Whether the requested variance is substantial, Whether the variance will have an adverse effect on physical or environmental conditions and Whether the alleged difficulty was self-created.

T. Frateschi reminded the Board that their job is to weight the benefit to the applicant of granting a 7-foot variance in height vs. the detriment to the community of granting a 7-foot variance in height.

K Sharpe wanted to begin with question two-Whether the benefit sought by the applicant can be achieved by some other feasible method. The Applicant could have built a smaller barn. Whatever is stored in there is to his benefit.

D. Neugebauer noted that if the building were not built this would be a different question. D. Hale felt it is not feasible. S. Haines felt that it is not feasible to require the alteration of that building. D. Tessier was not sure he agreed-yes, it is going to cost money, but it could be feasible. D. Neugebauer did not see it being feasible. The majority believed it is not feasible to alter the building. D. Hale confirmed that the building cost 165,000 to build.

S. Haines felt that the difficulty was not self-created in a sense because the Applicant was issued a building permit. D. Tessier noted that the applicant did not have to build a barn at all.

D. Hale noted that we are not here to tell someone they cannot build that size barn if they have the property-the Town created the problem as much as he did. K. Sharpe did not believe that the Applicant knew what the Code was and when he submitted these plans-this is a big miss by the Code Enforcement Officer. D. Neugebauer said that this is the first time that he has ever said the issue was not self-created. D. Hale noted that if he had come before the barn was built; it would be a different issue.

Question number one addresses the potential undesirable change to the neighborhood. D. Neugebauer noted that when he drove by, the building did look very large. If the Board does not give the variance and they take 7ft. off the height, it is not going to look any different. D. Hale agreed, but understands the concerns of other people who have built barns in the past. Even if it were shorter, it would not make a difference on the impact of the neighborhood, since it is already up.

Question three addresses if the variance is substantial. D. Hale noted that with the setback, the Applicant is allowed 22 feet. D. Neugebauer feels it is significant; K. Sharpe, D. Tessier and D. Hale agreed that mathematically it is substantial. The majority are saying it is a substantial variance as far as mathematics goes, but not on visual impact.

Question four addresses if the physical or environmental condition of the neighborhood will be impacted. D. Hale noted that this would only be true if the water issue coming off the roof would make an issue. Mr. Skeelee re-drained the property, and the building has gutters. The water is caught by the gutters and directed to the ditch. S. Haines asked Mr. Yaroski if he has had any issues with the rain recently-he did not notice any. His property sits higher than the barn.

T. Frateschi surmised that based on the discussion, it appears that the answers to four of the five questions is no. The only question remained with the substantiality, and there was even some discussion as to whether that was the appropriate term. It would appear that the benefit to granting the variance outweighs the detriment to the neighborhood.

D. Tessier said that he wished the building were not there, he wished it wasn't as high as it is, and he wished that there was a way to make it shorter than it is. The Applicant's improvements do look very nice.

K. Sharpe wondered if a hedgerow would help. There are no lights on the building. Mr. Yaroski's main concern is what the building will look like in the future if it is not maintained etc. In addition, the building blocks his view from the road. If people are not maintaining their property they can always contact Codes to make a complaint.

D. Tessier noted that since it is in place, it is very hard to say no as far as benefit to detriment of community goes.

D. Neugebauer made a motion to approve height variance of seven feet for the existing application. S. Haines seconded the motion at 9:05 pm.

D. Tessier asks for a roll call vote.

D. Neugebauer said that he made the motion, so he was in favor of granting the variance. As much as he wished that the barn were not as big and tall, he can appreciate the fact that he was given the stamped okay by Codes. The detriment of changing that is not a significant improvement to the community. He is in favor of granting the variance.

K. Sharpe was not in favor of granting the variance. 7 feet is significant, and it can be done by other means. What is done is done, but that does not mean that he has to accept a 7 ft. height variance.

D. Tessier was not in favor of granting the variance. It is a pretty building, but he thinks it is too big. It could be changed by reducing the end, it would cost money but that should not be our issue.

D. Hale said that if this came before the barn were built, his decision would be no. However, the barn is already built. He does not feel that the character would change if it were shortened or lowered. He voted yes.

S. Haines was in favor of granting the variance, weighing heavily on the fact that the permit was given and that the seven feet would not likely make a large difference. We all have personal responsibility, but the applicant was given the go-ahead.

Three members voted yes, two members voted no. The motion carried 3 to 2 at 9:09 pm.

D. Tessier noted that there is one item forthcoming at the next meeting for a roof-mounted solar system, in addition to the item being carried forward from this month.

A motion to adjourn the meeting was made by S. Haines at 9:11 pm. D. hale seconded the motion at 9:11 pm. The meeting was adjourned.

Respectfully Submitted,

Sarah LoGiudice  
Secretary to the Zoning Board of Appeals  
Town of Pompey