

1                   **TOWN OF LYNDEBOROUGH**  
2                   **Zoning Board of Adjustment**  
3                   **Meeting Minutes**  
4                   **November 28, 2022**

5                   *Draft 1*

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8                   **7:37 PM      Call to Order & Roll Call**  
9                   **Meeting held at Citizens' Hall**

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11                   **Members Present:** Chairperson Karen Grybko, Vice Chair Rick Roy, Lisa Post, Ray  
12                   Humphreys, and Jon Lavoie

13                   Not present Alt. Pam Altner

14                   **Public Present:** Representing the applicant were Attorney Tom Quinn and Scott  
15                   Cornelius, Scott Cornelius Architects

16                   **New Business:**

17                   **Case 2022-03**

18                   **GS Mission Farms, LLC (Greg Strasburg)**

19                   **Dutton Road, Map 225, Lot 017-000**

20                   **Appeal of an Administrative Decision of the Building Inspector under Zoning**  
21                   **Ordinance 702.02. The applicant bases his appeal on Section 1302.00**

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23                   **Case 2022-04: Variance Request for relief from Zoning Ordinance Section 702.02:**  
24                   **Frontage Requirements.**

25  
26                   Representing the applicant, GS Mission Farms, LLC were Attorney Tom Quinn and  
27                   Scott Cornelius of Scott Cornelius Architects. *Authorizations forms were filed.*

28                   The applicant submitted two applications: a Variance and an Appeal of Administrative  
29                   Decision. Attorney Quinn decided to pursue the Appeal of Administrative Decision first.

30  
31                   **Case 2022:3: Appeal of an Administrative Decision**

32                   Tom Quinn addressed the Board and provided background information. The applicant  
33                   acquired the 50-acre Dutton Road property in 2021. It has 54 feet of road frontage. It is  
34                   zoned Rural Lands 1 (RR1) for residential uses and agricultural uses are permitted.

35  
36                   In early September the applicant submitted building permits. The Code Enforcement  
37                   Officer denied the permits due to zoning 702.02 frontage requiring minimum of 250-feet

of contiguous frontage on a public road. See letter dated September 22, 2022 from Leo Trudeau. The lot does not have the minimum road frontage.

Mr. Quinn referenced Zoning Regulation 1302.02 and said this is a lot of record.

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TOWN OF LYNDEBOROUGH  
ZONING ORDINANCE

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**1302.00 Lots of Record:**

Where a lot of record at the time of the effective date of this Ordinance has less area and/or frontage than herein required in the District in which it is located:

- 1) The lot may be used for a single family dwelling if permitted in that district subject to New Hampshire Water Supply and Pollution Control Division approval and subject to all district regulations applicable to lots within the District wherein the lot is located with the exception of lot size and/or frontage.
- 2) The lot may be used for any non-residential use permitted in the District in which it is located subject to New Hampshire Water Supply and Pollution Control Division approval and subject to all district regulations applicable to lots within the District wherein the lot is located with the exception of lot size and/or frontage.

**1303.00 Special Exceptions for Non-conforming Buildings. (3/10/98)**

Additions to existing residences or accessory buildings that lie wholly or in part within the lot setbacks designated for the zoning district may be permitted by Special Exception when no alternative is deemed reasonable by the Zoning Board of Adjustment, in accordance with any or all of the following:

- 1) the proposed addition will not be constructed in the setback area; or
- 2) the proposed addition will not be closer to the lot line than the most intrusive portion of the existing building; or
- 3) the proposed addition is necessary for the health or safety of the occupants of the building as determined by the Building Inspector at the time of permit application.

Mr. Quinn submitted copies of deeds from; 1921, 1953, 1957 and 1963, to become part to the official application record. In 1921, the lot did not have road frontage. In 1986, the lot was reconfigured, adding .7 acres to property from abutter Stanley Olsen. The deed was in the file and Mr. Stanley said the 1986 that deed was pursuant to an approved subdivision. He felt that technically the process could have been a lot line adjustment at that time. The subdivision created two parcels: one parcel was integrated to the parcel in the back and parcel 2 was integrated into the applicant's lot. It was made clear from minutes that it was not a separate lot of records but part of what is currently GS Mission Farm's lot. It was approved by Planning Board. Mr. Quinn presented a subdivision map.

Mr. Quinn discussed the regulation speaks to a lot of record at the time of zoning. Language interpreted across the state. It has to do with specific application of the zoning ordinance and if it was a lot of record at the time and if it becomes un-legal due to amendments. The Zoning Regulations from 1985-1986 was unavailable to review. The town office looked for the document. Mr. Quinn felt in the absence of the zoning document, he has to assume the creation of additional frontage was in compliant with

60 zoning with the Planning Board. "Our estimate this is a legal lot of record. The main  
61 portion of the lot, created in 1921 and amendment in 1986 was valued in lot of record.  
62 We added a piece, so it is more compliant. I think we meet the definition of lot of record.  
63 Lot of record can be used for building and agricultural. I think the permit should be  
64 approved."

65  
66 Mr. Quinn added, when the building permit was submitted the clear title was not clear.  
67 there was a discussion if it was a lot of record. I looked at the deeds to determine if it was  
68 a lot of record.

69  
70 Ray Humphreys asked if there was piece of land missing in reference to M/L 7-43 and if  
71 there was a "child" off that lot and asked what the original lot of record was. Mr. Quinn  
72 reviewed the map with the Board.

73  
74 Excerpt of 1985 Planning Board minutes:

75 *"Mr. Chrisenton moved, Mr. Sharcot seconded, that the following words be inserted into*  
76 *the map: Lot one, to be annexed to the land of Mr. Merrill and not construed as a separate*  
77 *lot; and lot two not to be construed as a building lot because of lack of [inserted in*  
78 *handwriting indicated by quotes] "sufficient" frontage on Dutton Road."*

79  
80 Mr. Quinn pointed out that GS Mission Farm's is Lot 2. A piece of property came out of  
81 Mr. Olsen's property to create lot 1, which was owned by Mr. Merrill off New Road. Mr.  
82 Quinn showed where Lot 2 is on the map and said it became part of GS Mission Farm's  
83 property, then the Tamposi portion. There is a line that joins the two of them. Mr. Quinn  
84 speculates that the reason there is not a deed of notice of merger at the Registry of Deeds  
85 is because the .7 acres never became an independent lot of record. It was next to that on  
86 the plan and was immediately merged.

87  
88 Mark Chamberlain said it didn't appear on the following deeds from Tamposi. Tom Quinn  
89 said that was probably due to a legal process. It tracks and adds that, and in his opinion,  
90 no one likes to change the historic description and it is carried forward. He said the plan  
91 is clear; it was next to and made part of separate parcel. Discussion continued.

92  
93 Rick Roy asked clarification regarding the Stanley lot.

94  
95 Leo Trudeau asked Madam Chair if he could ask a question and said, "When I got this  
96 application for the new home, I was told that the piece of land, 7/10<sup>th</sup> of an acre, was  
97 created by Planning Board in 1986. It was a lot created by the Planning Board, I viewed  
98 that as a lot by itself, as only momentarily. I didn't know when it was merged, it might  
99 have been a while after. For a brief time, it was created. Zoning was adopted. In my  
100 opinion, this is mute. Case law in New Hampshire exists to grant a variance for the  
101 frontage. I'm curious why so much effort is being put into appeal of administrative  
102 decision when the variance, could be granted." In his defense, he made the right decision  
103 with the information at the time.

104  
105 Architect Scott Cornelius said, we heard it's the simplest way to resolve the issue.

Mr. Trudeau added for the record, any lot greater than 5-acres, the minimum road frontage is 500-feet, and the large lot is well over 5-acres so it's 500-feet.

Ray Humphreys added that is because of soil based zoning.

Ray asked how far the proposed house is from Curtis Brook. He was shown on the map. They talked about other outbuilding with septic. Mr. Humphreys wanted to make it clear the applicant is aware that detached Accessor Dwelling Units (ADU) are not allowed. Ray asked about other proposed buildings and was told one is a spa. Ray said he would be more comfortable if the buildings are located more than 150-feet away from Curtis Brook. Scott Cornelius said are putting pavers. Mr. Humphreys responded that pavers change the CIA and asked what environmental precautions will be put in place. The response was their surveyor is putting a system in place. He said we are more than required from the wetlands. It was determined all the structures are within the wetlands.

Tom Quinn said with respect to what Leo Trudeau said, by filing an administrative appeal we are not saying he made a mistake or did something wrong with the information he had. The appeal is to bring forth more information.

Ray Humphreys said he agrees application meets Item #1 of Zoning Section 1302 but not necessarily #2 and noted, "...and subject to all districts subject to town...and located with lot size and frontage" and added you are deemed okay for lot size and frontage but you have to meet all others that fall under lot of record otherwise you would have to come back to the Planning Board for a site plan. Mr. Quinn replied that is not the issue we are talking now but is a site plan needed for an agricultural use. Ray Humphreys said, "I didn't say agricultural use. Is that noted in the meeting?" T. Quinn informed the Board this is only for a single family-agricultural use. There will be an office, personal spa, residence and a mentioned of a swimming pool.

Ray Humphreys made the comment because it's in our regulations. For example, if you decide to put a bowling hall in there, that is not part of agricultural use. Tom Quinn asked if they can do a commercial use, anything you collect money for. M. Chamberlain said that does include outdoor recreating. Examples are paintball and hunting.

R. Humphreys said he drove by the property and saw the "No Trespassing" signs and mentioned that is a dangerous spot and his concern is any activities over and beyond a single family will be a hazard to public safety. He wanted it clearly in the minutes they are voting on this application as a single-family dwelling.

Jon Lavoie had a concern about the woods road and wanted to know how long it is. According to the legend, it's close to 1,000-feet and worried it could become a cul-da-sac. Scott Cornelius said it's a logging road. Tom Quinn said they are not building there.

**VOTE: Rick Roy made a motion to grant the Administrative Appeal for Case 2022-03, Map 225, Lot 17 on Dutton Road, owned by GS Mission Farm, LLC. Ray Humphreys seconded the motion. Motion passed 5-0.**

**Case 2022-04: Variance Request for relief from Zoning Ordinance Section 702.02: Frontage Requirements.** Tom Quinn said the applicant requested to withdraw the application for the variance without prejudice.

Leo Trudeau asked if this Notice of Decision (NOD) in an administrative appeal is subject to the same 30-day waiting period as a variance. Jay Minkarah confirmed that it does but if they apply for the permit, they are assuming the risk. Tom Quinn responded, "We assume the risk and will take the building permit".

*Public hearing over at 8:40 p.m.*

**Other Business not on the Agenda:**

Ray Humphreys wanted to make the ZBA members aware that relative to the recent Brock case, 2022-02, the Planning Board were reluctant to change the lot numbers because the ZBA variance was approved with those specific lot numbers, which were not in the correct format. He asked if changing lot numbers is something we can do on the ZBA if this arises in the future. Jay Minkarah responded that the ZBA could have required the applicant change the lots numbers because it was an issue. It could have been a condition. It was messy regardless.

**Approve Minutes:**

**VOTE: Jon Lavoie moved, Rick Roy to approve the October 3, 2022 meeting minutes. Motion passed 5-0.**

The Board was reminded the **next meeting is December 7 at 7:30 p.m.** There are two cases related to the Kling property on Mountain Road.

**Adjournment:**

**VOTE: Jon Lavoie moved, Lisa Post seconded to adjourn at 8:59 p.m. Motion passed 5-0.**

Respectfully submitted,

Kathleen Humphreys  
ZBA Secretary