Lancaster Zoning Board
Location: Lancaster Town Hall
April 26, 2023

Call To Order: Chair Linda Ogle opened the meeting at 1832H and led the Pledge of Allegiance.

Roll Call:
Regular Members Present: Chair Linda Ogle, Vice Chair Tricia Frenette, Steve Young, Les Hilton
Absent: Nate Kenison
Alternate Members Present: Donald Freddette, Melissa Potter
Absent: Chris McVetty
Others Attending: Land Use Coordinator Robin L Irving, Denise Boynton (Applicant Boyd Representative), Brad Griswold (Griswold Landowner), Hunter Griswold (Applicant), Sharen Robertson (Boyd Abutter)

Chair Ogle stated that the Board should vote to move the alternates to voting members for purposes of this meeting and public hearing. Les Hilton moved to shift both Don Freddette and Melissa Potter to full voting members for the meeting. Steve Young seconded the motion. All members of the Board voted to move Don Freddette and Melissa Potter to full voting members for the meeting, no objections. *Motion passed.*

Minutes:
Steve Young moved to approve the March 29, 2023, meeting minutes as written. Don Freddette seconded the motion. All members voted to approve the March 29, 2023, meeting minutes as written, no objections. *Motion passed.*

Public Hearings:
Chair Ogle OPENED the PUBLIC HEARING for ZBA Case #544:

Case# 544 – Griswold, Hunter d/b/a Griswold Logging LLC for a Special Exception concerning Article 5, Section 5.04, "Uses Permitted by Special Exception in the Agricultural District." Applicant/Owner seeks special exception approval to construct and operate a firewood processing facility/sawmill having a footprint of approximately 1 acre on land situated in the Agricultural District. Land Zoned Agricultural. (Tax Map R16-Lot 034, 98.60 acres, off Reed Road).

LUC Robin Irving announced that it was brought to her attention that there was an issue with standing. She explained that, in part due to the fact that a special exception or variance goes with the land, the landowners should be the applicant. In this case, Irving failed to list the landowners in a clerical error. The landowners also had submitted a written statement confirming their intent to be the applicant and a request to amend the application to include them as applicants.

Les Hilton moved to amend the application and notice(s) to include Brad and Valerie Griswold as additional applicants for Special Exception in ZBA Case #544. Don Freddette seconded the motion. All members voted to amend the application and notice(s) to include Brad and Valerie Griswold as additional applicants for Special Exception in ZBA Case #544, no objections. *Motion passed.*

LUC Irving further announced that the landowner/applicant(s) have submitted a written request to table the public hearing until June. While working with the applicants, Irving said that it became more apparent throughout the process that the applicants may not have prepared sufficiently detailed documentation in

order to proceed, so tabling the hearing would give them time to draw up a plan and address concerns that have arisen.

Don Freddette moved to table and continue Public Hearing ZBA Case #544 until Wednesday, June 28, 2023, at 1830H in the 2nd-floor conference room of the Town Offices building located at 25 Main Street. Tricia Frenette seconded the motion. All members voted to table Public Hearing ZBA Case #544 until Wednesday, June 28, 2023, at 1830H in the 2nd-floor conference room of the Town Offices building located at 25 Main.Street, no objections. *Motion passed.*

Chair Ogle CLOSED the PUBLIC HEARING for ZBA Case #544.

Chair Ogle OPENED the PUBLIC HEARING for ZBA Case #545.

Case# 545 – Boyd, Brandon for an Equitable Waiver of Dimensional Requirements concerning article 5.04, "Building Setbacks in the Agricultural District". Applicant/Owner completed the foundation to a single-family home assuming it met all required setbacks. Owner/Applicant later found the foundation was placed ~~15'~~ <13'2"/13.08'> [5/31/23 RLI] from the side property line when 40' is required. All other setbacks have been met. Lot Zoned Agricultural. (45 Buffalo Road, Tax Map R15-Lot 052, 4.26 acres).

Chair Ogle read the Applicant's responses to the Equitable Waiver for review and comment:

Q1: Does the request involve a dimensional requirement not a use restriction?
Applicant's response: *YES*

Q2: Explain how the violation has existed for 10 years or more with no enforcement action, including written notice, being committed by the town.
Applicant's response: *N/A-purchased the vacant land on 3/19/2020, Tax Map R15-Lot 052*

OR

Q3: Explain how the nonconformity was discovered after the structure was substantially completed or after a vacant lot in violation had been transferred to a bona fide purchaser.
Applicant's response: *The abutter, Sharen Robertson, thought the existing foundation was on her property (Map R15 Lot 038). Both the builder and the excavation contractor said it was not. Since then, Ms. Robertson said it was OK.*

AND

Q4: How the violation was not an outcome of ignorance of the law or bad faith but resulted from a good faith error in measurement or calculation.
Applicant's response: *I hired a professional excavation company and builder to install a gravel driveway plus dig the foundation. They had the survey and blueprints for the dwelling. They apparently made a good faith error in measurement from the left survey line.*

Q5: Explain how the nonconformity does not constitute a nuisance nor diminish the value or interfere with future use of other property in the area.
Applicant's response: *Since the foundation for the dwelling and septic system are on my property, the abutter's property rights are not compromised. Upon completion of the log cabin, the current fair market value of the dwelling on 4.26 acres would be +/- $380,000.*

Q6: Explain how the cost of correction far outweighs any public benefit to be gained.
Applicant's response: *Wetlands on the property restrict the construction area and septic system installation area. The cost to demolish the existing foundation and possibly move the septic system and rebuild would be astronomical. The abutter, Sharen Robertson (Map R15, Lots 037 and 038) was only*

concerned my foundation was on her land. The plot plan proves otherwise. Also, the location of a drilled well will still be within the State-approved well radius. See letter from septic designer.

The applicant's submittal of a variance application was acknowledged. LUC Irving explained that she had requested that the applicant include a Variance application in the event that the Board decided that the facts of the case did not fit within the Equitable Waiver. The Board agreed that the facts presented fit within the purview of an Equitable Waiver and did not address the information related to the variance application.

Denise Boynton, Brandon Boyd's representative, presented the case on behalf of Brandon Boyd. Boynton stated the following:

Mr. Boyd, while going through the sales process of listing his home, was made aware of a possible encroachment by the abutter Sharen Robertson who owns the lots above him. It is hearsay, but Ms. Robertson apparently said she was satisfied as long as the structure was not on her property. Ms. Robertson also allegedly expressed the same thing to the builder, Tim Blake, and the septic installer, Jim Wells. Right now, there is just the existing foundation, footings, and the septic system. If one is standing on Buffalo Road looking toward the property, the boundary in question is on the left side. The subdivision developer, Janet Savage did have a driveway permit for the lot. When the driveway was constructed, there may have been a little gravel that went onto the abutter's property as it is really close to the line.

Boyd was unable to get a renewed building permit until the alleged zoning violation was resolved. It has been very hard to find an available surveyor to verify the plot plan. Recently, the original Surveyor, Gardner Kellogg from Littleton, confirmed the lot lines and drafted a new plot plan that confirmed that the foundation was ~~15'~~ <13'2"/13.08'> [5/31/23 RLI] feet and not the required 40' from the left border. All other setback are met. Before Boyd purchased the lot, the land appeared to have been clear-cut which has resulted in runoff/drainage issues that caused loss of backfilled sand so Boyd had a perimeter drain installed. The house is in a pretty level spot but when it rains, the water does travel down the slope into the wetland area. These wetlands between Buffalo Road and the foundation limit where the septic system could go, which is installed and approved by the State. Jim Wells, the septic installer, wrote a letter addressing where a well could go on the property as a result of this error in boundary calculation; the letter says that there is enough distance between the installed septic system and a proposed relocated well to accommodate the 75-foot well protection radius. The entire log cabin kit is on premise and the site is construction-ready. Boyd is asking that, because the construction of the foundation was done in error within the 40-foot setback, the equitable waiver be granted. The property is on the market and there is a buyer with a closing scheduled for May 12th. The buyer is aware that the structure is a little too close to the boundary and any future structures cannot be constructed near the wetlands; in short, he knows that there are limited places on the property to build.

Tricia Frenette asked if the locations of the wells and septic per lot were strict locations because some lots are like that. She also asked if Boyd had looked for his pins when he bought the property and that Boyd could have even run a rope around the perimeter from pin to pin in addition to a survey. Frenette stated that it is not an oversight, but lack of due diligence, to start building something without knowing the boundary lines. Boynton explained that the original survey existed at the time of purchase; he was also told where his pins were. Frenette emphasized that any new property owner should make sure that they know where their pins are. Boynton said that one can see a pin on the back left of the lot and another at an angle. She felt that it was understandable that a mistake was made due to the orientation, especially because there were no trees to blaze and no middle marker for line sighting.

LUC Irving interjected and said 1) NH Administrative Code WE 602.08 for wells, that "the protective well radius shall be contained…wholly on lot." Irving explained that protective well radius extending into

abutter property does occur, but it is not supposed to. In this case, the abutter Sharen Robertson has a proposed protective well radius drafted on the original survey that would be impacted if the Boyd radius goes over her property line or is closer than originally laid out, 2) only structures are subject to the zoning ordinance, so the driveway can be within the setback. As a rule of thumb, the driveway should be able to maintained, graveling and plowing, etc., without having any impact on the abutter, and 3) the validity of the updated plot plan showing that the structure is within the setback, although not signed and stamped by the surveyor, was verbally confirmed per telephone conversation to have been drafted by Gardner Kellogg.

Boynton responded that the well radius can be relocated within the lot. Don Freddette asked if the landowner is planning to put a well in? Boynton said that the anticipated installation is September 2023. Freddette said that the septic design should go back for approval if the well is going to be moved. LUC Irving said that she counseled the landowner to resubmit. She also said that if the Board has any concern about the protective radius, they could make it a condition of approval.

Melissa Potter asked when the foundation was put in and who put in the foundation? Boynton responded that the septic, gravel driveway, and foundation was installed by Jim Wells but she did not know who the builder was. LUC Irving stated that the builder is Tim Blake from Blake Builders. Irving had searched for the construction date on the tax card but there is no date. There is, however, a note from Irving in the property folder that outlines that the abutter (Sharen Robertson) and the builder came to see her on December 29, 2021, at which time 1) the abutter notified the office that there was a question of zoning compliance of the Boyd foundation, if not encroachment, and 2) the builder requested from her a copy of the survey plan. Irving surmised that, as of the end of December, 2021, the foundation was in the ground, but apparently the builder did not have in his possession nor base his installation on the Savage subdivision survey plan. Boynton countered that it is likely that the builder was just following up on survey dimensions. From this date forward, LUC Irving's recommendation to potential buyers was to ask the landowner whether this boundary dispute had been resolved. Irving further advised Boyd to get a survey at this time; Boyd refused to get the survey done and responded that it was the abutter's burden to prove the alleged encroachment.

The Board had no further questions for the Applicant/Boynton.

Chair Ogle **OPENED TO THE PUBLIC** Public Hearing ZBA Case #545.

Abutter Sharen Robertson brought full-sized prints of the original 2018 Savage subdivision survey plan and pointed out, Boyd's property line, Buffalo Road, and her property line. Robertson had relied on this plan for staking, which are still in the ground, of her proposed septic area situated where it is according to PERC testing. She then pointed out where Wells had staked the Boyd well, which she notified Wells that the well stake overlapped with her septic. Wells' response was that the stake was old and to ignore it.

Robertson focused on the updated plot plan and pointed out that Gardner Kellogg surveyed and drafted both the original Savage subdivision plot plan and that the updated version, however, the updated version, even though it shows that the foundation is ~~15 feet~~ <13'2"/13.08'> [5/31/23 RLI] from her boundary, omits the well radii for her lot as well as Boyd's lot, which would show the impact on her parcel now that the foundation and septic are moved. The updated version does show the location of the Boyd leach bed which is closer than in the original plan. Her abutting lot has been engineered and PERC tested and was bought with the intention of building on the lot but now her zone of separation is being encroached upon by Boyd's protective radius and the house foundation is closer to the boundary creating an issue with her right to privacy. She was frustrated because the boundary was marked AND she repeatedly warned Boyd that there was a setback issue which should have flagged Boyd from proceeding any further. She claimed that Boyd knew from the get-go that the septic was in the wrong spot and moved the foundation

accordingly to avoid being closer to the wetlands. LUC Irving suggested that the Board compare the approved septic design plan to the original subdivision plot plan and notice that the location of the driveway and topo lines do not match showing that the proposed septic and foundation outline are closer to the boundary. Robertson pointed out the location of her test pit marking; Boyd staked his well right next to it and claimed the extra land.

Boynton explained that when people subdivide property in the State of New Hampshire, if there is over 5 acres, the landowner is not required to do a PERC test. In this case, the lot is under 5 acres and the subdivider (Savage) did her duty and PERC tested *somewhere* on the lot to show that it is PERCable and therefore capable of being built on. The marking for the PERC test simply indicates that the soil is PERCable rather than a hard-lined location; the actual location of the septic can be moved around so long as it is within the PERCable land and the plan is approved by NHDES. Boynton pointed out that the leach field is on the bottom side of the house within this PERC zone and the only thing in question is the well radius which is an imaginary line, not an encroachment by the foundation. What she thinks is reasonable to say is that Jim Wells had a State-approved septic system which was installed accordingly as was the foundation, and due to a calculation error, the potential location of the well has to be moved; Wells has determined that there was plenty of room to move the well and still have the radius within the lot and have no effect on the septic. Robertson countered that given that there was 'plenty of room' to move things around, then the foundation could have been situated at or on the setback of 40 feet rather than ~~15 feet~~ <13'2"/13.08'> [5/31/23 RLI] when the septic was moved. Her stakes were in the ground.

Robertson mentioned that after Boyd bought the property, he started clearing and leveling this land. Because this property is not a homestead for Robertson, she noticed during a visit that there were huge piles of debris pushed up on the hill onto her property. She showed the Board pictures of the debris piles and the stakes marking that it was her land. These piles stopped the water from draining off her driveway and going down the hill. By Christmas of 2021, she noticed that the foundation had been poured. Robertson talked to the builder, Tim Blake, on site. She pointed out to the builder that the foundation appeared to be too close to her boundary based on the stakes that were in the ground. He denied that it was too close, not based on the subdivision survey plan but based on a copy of the septic design plan which he signed with his name and contact number for Robertson.

Robertson spoke with the septic installer and designer, Jim Wells in person at the site and on the phone several times and asked him how he determine the property line. He simply responded that the landowner had told him where the pins were located and the approximate line. Robertson walked the land with Wells and showed him her stakes and the recorded survey plan showing her proposed septic location. Wells apparently responded that those stakes were old and were left there from years ago. Robertson claimed that Wells installed septic system without first verifying the nearest property line which is referenced on the design. In fine print in the notes on the design, is says "before installation installer must verify all elevations and distances."

Robertson notified Boyd that the foundation was too close to the property line. Boyd became very belligerent, verbally abusive, and threatening. Robertson asked Boyd how he calculated the boundary line and he responded that Real Estate Agent Brandon Field told him where it was. Both Robertson and Blake visited the Lancaster Land Use Office on December 29, 2021, to notify the Town of the potential zoning violation and search available records. Robertson claimed that Blake requested a copy of the subdivision plot plan at this time, which she thought he should have already had. Robertson called Brandon Field and invited him to come to the property; they walked the land and Robertson showed him the stakes and where she thought the property line was. Field allegedly told Robertson, that as the one disputing the boundary, she needed to get a survey done to prove the alleged encroachment. Robertson hired Gardner Kellogg to re-flag her property.

After December 2021, despite knowing that there was a problem with the foundation in the wrong place, confirmed by everyone now in possession of the 2016 subdivision survey plot plan, Boyd put his house on the market. He ignored the boundary dispute and still put the property on the market. Boyd never contacted Robertson to rectify the situation or admit that there was a boundary issue. Boyd remained resistant to getting a survey because he claimed to both Robertson and LUC Irving that he had financial hardship. Robertson claimed that Boyd bought the property, built a house knowing that it violated the zoning laws, and put it up for sale hoping that no one would notice. Potential buyers have even contacted Robertson saying that they were told by Boyd that she wanted to sell her property. Boyd has called Robertson to intimidate her when potential sales had fallen through

Robertson read a statement (attached). Robertson felt that when Boyd bought the property, he would have clearly known where to do his work if he had bothered to adhere to the 2018 Savage subdivision survey plan drafted by Gardner Kellogg and that there was plenty of room for him not to be ~~15 feet~~ <13'2"/13.08'> [5/31/23 RLI] from her property line. She asserted that this was not a mistake but an intentional and deliberate installation to avoid the wetlands, and he figured that no one would oppose. This boundary dispute persisted for nearly two (2) years and things that were said and done, or not done, were very upsetting to Robertson. Robertson said that she systematically spoke with all of the people involved from the landowner, septic installer, builder, surveyor, and realtor and each person told her that she was mistaken and dismissed her objection. This was a source of great distress and was very demeaning. These interactions left her feeling scared and intimidated. Not one of these individuals produced a plot plan or survey to prove how they determined the accurate property line.

Les Hilton asked Robertson whether moving the well radius and keeping the foundation in place would be an acceptable solution? Robertson asserted that the foundation in place impacts her property. To have a 1200 square foot house only ~~15 feet~~ <13'2"/13.08'> [5/31/23 RLI] from her property line impacts her ability to sell her property as it is devalued by having a structure that close to the lot line. The point is that each individual lot was surveyed in 2018. The survey was recorded and available. The focus is that the landowner did not do his due diligence. Tricia Frenette explained that, usually when you close on a piece of subdivided property, you get the survey plan. One can see the front pin on Buffalo Road, and the landowner can follow the deed description to the back pin...it is clear, X feet from point to point. He had access to an accurate survey which should have been provided to the septic designer/installer and the builder. These are people who do this for a living and details are not conveyed by word of mouth. Frenette felt that it was not a mistake and they did it on purpose because they determined the line wherever it could be, even if they didn't have the survey. It seems like the lack of due diligence was on several different levels. Robertson said that even if the foundation construction were to be deemed an error, it would still devalue her property because its proximity interferes with her right to reasonable enjoyment of her property, impacts her right to privacy, and restricts the future use and/or sale of her property due to the drawback of a structure within ~~15 feet~~ <13'2"/13.08'> [5/31/23 RLI] of the boundary. Robertson felt like the construction and subsequent rapid listing for sale of the Boyd property was undertaken in a highly suspicious, questionable, and negligent manner and it seems obvious based on the facts that this request for a waiver is an underhanded, intentional, and devious attempt to skirt around zoning laws. The Board has a duty to preserve the integrity of the zoning laws that Boyd so carelessly undermined. This is not a victimless so-called error.

There were no further comments from the public.

Chair Ogle asked the Board if they wanted to table the discussion or if they felt informed enough to vote. Les Hilton responded that he felt that the Board could proceed. The rest of the Board members agreed.

Chair Ogle **CLOSED TO THE PUBLIC** Public Hearing ZBA Case #545.

LUC Irving recommended that the Board revisit the Equitable Waiver questions in the application. Based on the record, and Gardner Kellogg's updated version of the plot plan, the question of whether the foundation is not where it is supposed to be is not in dispute. All members of the Board agreed. The key questions to address and articulate findings are 1) how the violation is not an outcome of ignorance of the law or bad faith but resulted from good faith error, and 2) explain how the nonconformity does not constitute a nuisance nor diminish the value or interfere with the future uses of the property or other properties in the area.

The Board revisited the application.

Q1: Does the request involve a dimensional requirement not a use restriction?
Applicant's response: *YES*
The Board accepted the answer as written.

Q2: Explain how the violation has existed for 10 years or more with no enforcement action, including written notice, being committed by the town.
Applicant's response: *N/A-purchased the vacant land on 3/19/2020, Tax Map R15-Lot 052*
The Board accepted the answer as written.

OR

Q3: Explain how the nonconformity was discovered after the structure was substantially completed or after a vacant lot in violation had been transferred to a bona fide purchaser.
Applicant's response: *The abutter, Sharen Robertson, thought the existing foundation was on her property (Map R15 Lot 038). Both the builder and the excavation contractor said it was not. Since then, Ms. Robertson said it was OK.*
The Board agreed that the nonconformity was discovered before the structure was substantially completed and evidence of such was ignored. Not only are the boundary pins in the ground, but Robertson's stakes for her proposed septic were in the ground before Boyd's installation(s) and these stakes were disregarded.

AND

Q4: How the violation was not an outcome of ignorance of the law or bad faith but resulted from a good faith error in measurement or calculation.
Applicant's response: *I hired a professional excavation company and builder to install a gravel driveway plus dig the foundation. They had the survey and blueprints for the dwelling. They apparently made a good faith error in measurement from the left survey line.*
The Board agreed that 1) not one professional verified what they needed to verify leading to negligence, 2) that this lack of due diligence was not made in good faith because there were three tiers of irresponsibility, and 3) they were provided sufficient notice to address and/or rectify and ignored the notice, if not brazenly refused to address it. This is supported by the landowner's deliberate construction of the foundation in the wrong location despite information that the stakes indicated otherwise and immediate listing of the property to dump it upon notice of the zoning violation.

Q5: Explain how the nonconformity does not constitute a nuisance nor diminish the value or interfere with future use of other property in the area.
Applicant's response: *Since the foundation for the dwelling and septic system are on my property, the abutter's property rights are not compromised. Upon completion of the log cabin, the current fair market value of the dwelling on 4.26 acres would be +/- $380,000.*
The Board agreed that due to the professionals' failure to exhibit best practices and failure to construct the foundation based on the existing accurate subdivision survey, the abutter should not suffer 1) loss of value nor compromised ability to sell, 2) not be able to use the land in the manner that she planned by survey, or 3) be required to endure an infringement of her right to privacy that is supposed to be afforded by the setback requirements. The Board agreed that the foundation should be moved out of the 40-foot setback.

Q6: Explain how the cost of correction far outweighs any public benefit to be gained.
Applicant's response: *Wetlands on the property restrict the construction area and septic system installation area. The cost to demolish the existing foundation and possibly move the septic system and rebuild would be astronomical. The abutter, Sharen Robinson (Map R15, Lots 037 and 038) was only concerned my foundation was on her land. The plot plan proves otherwise. Also, the location of a drilled well will still be within the State-approved well radius. See letter from septic designer.*
The Board agreed that the abutter bought this piece of property relying on the ability to use it in a planned and pre-engineered manner and with expectation that Boyd's actions on the abutting property would not alter that ability. The inability to come to an agreement over the course of 2 years while aggression, abuse, and gaslighting by Boyd of the abutter Robertson occurred without recourse is inappropriate. If the abutter had been agreeable to have the well radius moved as a condition of approval of the waiver, the issue of infliction of distress remains. Because the abutter is not agreeable to the waiver AND that the survey was available to the landowner and was ignored, abiding by the zoning laws is the only resolution. The only benefit that would be to the landowner as cash when he is able to sell a non-conforming lot. Mr. Boyd can become whole through a lawsuit against the service providers. Ms. Robertson cannot become whole without removal of the structure even if the protective radius is situated within the Boyd lot.

Les Hilton moved to **DENY** the applicant's request for Equitable Waiver as presented. Steve Young seconded the motion. All members of the Board voted to **DENY** the applicant's request for Equitable Waiver based as presented, no objections. *Motion passed.*

Chair Ogle reminded Ms. Boynton that the applicant has 30 days to appeal this decision.

Chair Ogle CLOSED THE PUBLIC HEARING Zoning Case #545.

Land Use Permits: LUC Irving announced the most recently issued land use permits: 1)Dolores Bell at 513 Elm Street; extend 4' stick-built open porch on posted located on side of existing building, 2) Boo's Storage LLC at 13 Mechanic Street; demolition of existing 16'x25' side building, 3) Thomas & Anne Paquin at 9 Burnside Street; installation of a rooftop solar array, 4) Derek Champagne at 193 Prospect Street; renewal of permit to demolish and existing deck and replace with a mudroom and remove asphalt driveway, 5) Kenneth & Heidi Chester at 13 Governor's Terrace; to construct a shed-stye addition to the existing bar. This was an after-the-fact permit with completion in Fall 2020, 6) Ashley Mattos at 14 Sunny View Drive; to install a roofed metal carport on gravel next to the home, 7) Paul & Jill Martin at 131 Pleasant Valley Road; renewal of permit to construct single family home with a couple of lean-tos, 8) Benjamin & Suzanne Gaetjens-Oleson; to demo existing siding and replace with vinyl siding, 9) Zina Schmidt at 260 North Road; to construct a storage shed on a slab, 10) Andrew Nadeau at 260 Elm Street, SIGN permit for "Hilldale Farm the Nadeaus"

Over the past year, LUC Irving has revised the process to require permits for demolition. Board members asked if permits need to be filed for replacing a structure in kind in the same foot print? Irving responded yes because replacement changes the value even in the same footprint. For example, with the carport situation, the structure itself is likely 4-6 poles mounted into the ground, but it is assessable and creates a footprint even though it is not on a foundation. An example of a permitting catch-22 is Gaetjens-Oleson wherein the zoning ordinance states that maintenance projects like replacement of roofing, siding, and windows are exempt from permitting, however, requiring a permit for demo makes the exemption moot.

Planning Board Decisions: The Planning Board approved the site plan for the solar generating facility on the Rexford lot.

Training Topics/Materials: The draft Lancaster Housing Needs Assessment generated by Resilience Planning was distributed. The Board discussed results briefly. The next meeting of the Housing Committee is scheduled for Wednesday, June 7th.

Announcements/Correspondence: None

Other business: Tricia Frenette asked why Joel Dupuis had to go before the Planning Board with his site plan. LUC Irving explained that Dupuis had come to the ZBA for a use variance to conduct commercial business within the agricultural zone. Due to his being along the Route 3 frontage, scale of operation (not a home occupation), and impact on the site due to filling with gravel and moving the location of the firewood etc., the ZBA approved with the condition that Dupuis go to the Planning Board with a site plan. Frenette asked if the applicant has to pay the fees again since this originally went out for advertisement over a year ago. Irving explained that typically the applicant would not be responsible for the fees if it were a continuance, however, the Planning Board made an error in the continuance decision and erroneously closed the hearing, AND, the applicant through none of his fault could not contract an available surveyor to do the plan—so Irving feels it is prudent to waive the fees.

Tricia Frenette asked if the plan for the cabin community on Page Hill still moving forward. LUC Irving responded that the office had not been contacted again by the surveyor nor the applicant.

Don Freddette moved to adjourn the meeting at 2004H. Steve Young seconded the motion. All Board members agreed to adjourn the meeting at 2004H, no objections. ***Motion passed.***

Respectfully submitted,
Robin L. Irving, Land Use Coordinator

RL

Approved:
Linda Ogle

Linda Ogle, Chairman of the Lancaster Zoning Board of Adjustment

April 26, 2023

BUFFALO ROAD PROPERTY VARIANCE DISPUTE STATEMENT

Sharen Robertson

Property location: 99 Buffalo Rd. Lancaster

- The original plot plan/survey from 2018, which was performed by Mr. Gardner Kellogg, has clearly marked boundary lines, test pit locations, and proposed well locations, etc. I bought my property in December 2019 with the understanding that it would not be encumbered or encroached within the limits of existing zoning laws.

- There are still a number of stakes on my property in place marking these locations which are referenced on the survey.

- The plot plan/survey is readily available at the Registry of Deeds. I went there on Monday to acquire a larger copy for $7.00.

- The "new plot plan" submitted for this meeting by Mr. Boyd is simply an altered and revised version of the original plot plan/survey. This altered version does not include the proposed well locations and other markings for proposed septic locations from the original plot plan/survey. These specifics have been removed.

- Mr. Boyd acquired his building permit on February 22, 2020, roughly one month before he became the actual owner of the property, which occurred on March 19, 2020.

- At some point within the next year Mr. Boyd began clearing and leveling his land. I noticed on one of my returns to Lancaster from MA that there were huge piles of debris pushed up the hill of my property. These piles have impaired the drainage of water to flow off my property down the hill.

(Robertson, conti.)

- On a return to Lancaster the week of December 26, 2021 I noticed a foundation had been poured. On December 29, 2021 I was out walking my dog on my property and noticed Mr. Boyd's foundation seemed close to the property line. The builder, Tim Blake, and some of his crew were there. I politely called to him and pointed out that I thought the foundation seemed really close to the property line. He said, "You're wrong. The property line goes up that way." I asked him how he knew that and if he had a survey. He said, "No, I have this." And he handed me a copy of the septic design by Mr. Wells.

- I spoke with Mr. Wells, the excavator and septic designer/installer, in person on the site and on the phone several times. I asked him how he determined the property line and he said, "The owner told me where the pins were located and the approximate line."

  I walked around and showed him the stakes that were in the ground from the survey done in 2018 marking the property line and the septic test pit. He said, "Those are just really old stakes and not accurate and probably put there a very long time ago."

  Mr. Wells installed the septic system without first verifying the nearest property line, which was referenced on his design. It is required by law to verify all distances before installing the septic (see septic design notes).

- I called Mr. Boyd on December 29, 2021 and told him I thought the foundation was too close to the property line or possibly over it. He was very angry. I asked him how he figured where the property line was and he said, "That's what Brandon Fields told me!" Brandon Fields is the realtor.

- I went down to the Zoning Dept. at town hall. I met with Robin and discussed all this. Mr. Boyd called her. The builder went down there too, and asked Robin for plans for the property.

(Robertson, continued.)

- I called Brandon Fields (the realtor), and he came out to the property. He walked the property line with me, and I pointed out the stakes on the line. I asked him if Mr. Boyd should get a survey done. He said, "No, you should, because you're the one disputing the property line."

- I asked Mr. Boyd if he would be getting a survey done, and he also said, "No. You're the one disputing the line so that's you're responsibility. And I don't have the money." This was a financial hardship for me. This fact did not concern Mr. Boyd.

- I was a good neighbor and talked to Mr. Boyd, Mr. Wells, and Mr. Blake before going to talk to Robin at the Zoning Dept. I welcomed the construction. All I wanted to see was a plot plan/ survey for how they determined the property line. Each person (Mr. Boyd, Mr. Wells, Mr. Blake, and Brandon Fields) told me I was mistaken and then dismissed my objection. This caused me great distress and was very demeaning. These interactions left me feeling scared and intimidated.

- Not one of these gentlemen produced a plot plan/survey to prove how they determined an accurate property line.

- Since that day, Mr. Boyd has had possession of the survey.

- At some point over the next several months, Mr. Boyd put his property up for sale. He never contacted me to rectify or admit there was an issue. In fact, he remained adamant and resistant about not getting a survey done because he said he didn't have the money. Yet, he was actively looking for a buyer. Mr. Boyd bought his property, violated existing zoning laws to build a house, put it up for sale, and hoped no one would notice.

(Robertson, conti.)

- Potential buyers of his property have called me saying they were told I wanted to sell my property.

- Mr. Boyd has called to intimidate me when his potential sales fall through.

- The first or second week of January 2022 I contacted Gardner Kellogg and hired him to reflag the property line. He is the person who did the original survey in 2018. He went out a few months later. I was at my home in MA. I called him from MA, and he said I was all set. I thought, "Great. I'll go back up as soon as I can." I mailed him a check for $500.

- I went back up to Lancaster a few months later and found that Mr. Kellogg had surveyed the wrong lot line (it was supposed to be the one at the bottom of the property and not at the top), even though we'd had a fairly thorough conversation about which line needed to be reflagged and why.

- I subsequently made numerous attempts to reach Mr. Kellogg to have him come back to reflag the correct line. Several times he said he would, but never did, until last Friday.

- The proposed location of the Mr. Boyd's well, which you can see from the septic design plans, is on my property. This disregards the fact that I have a septic area marked on the original survey. I had pointed this out to both Mr. Wells and Mr. Blake, but they were not interested in that detail. My son has expressed interest in building on this lot. He will be using the approved test pit area for the septic.

My property will be severely impacted if Mr. Boyd is allowed to install a well within the 75 ft. perimeter of the lot line regulation.

(Robertson, conti.)

- I came up for a short get-away trip to Lancaster last Tuesday, April 18, 2023; just till Sunday. As a last ditch effort, I decided to give Mr. Kellogg a call to see if he could come out and reflag the correct line. He said, "Sure, I can do that tomorrow afternoon (Friday)." I was very happy about that. I was unaware that Mr. Kellogg had done a new survey for Mr. Boyd, which was submitted for this meeting by Mr. Boyd.

  I called Robin after Mr. Kellogg left and happily told her that Mr. Kellogg had finally reflagged the line. She asked me if I'd gotten the letter. I said, "No, I've been up here since last Tuesday."

- Mr. Boyd has a location which is specified on the original plot plan/survey of 2018 for his septic and well. These do not encroach on my property.

(Robertson, conti.)

This setback variance will be a financial and emotional hardship for me for several reasons:

1) **erecting a 1200 sq. ft. dwelling 13 ft. from the property line will devalue my property**
2) **this is a severe encroachment on my right to reasonable enjoyment of my property**
3) **it impacts my privacy**
4) **limits and restricts what my future use of my property may be**
5) **would be a major drawback to potential buyers if I ever wanted to sell my property**
6) **is contrary to my best interest and harms my intentions for my property**

(Robertson, conti.)

The stress of Mr. Boyd's actions, which were completely avoidable, has caused me much distress. It has negatively impacted the peace I sought through purchasing this property after my youngest son died in a car accident. I'm a semi-retired, single woman, living on a fixed income. I love this town already, have made some good friends, attend church when I am here, pay my taxes before they are due, and unlike Mr. Boyd, I plan to stay. It matters greatly to me to be a responsible and respectful citizen of this lovely town, whereas Mr. Boyd seems to lack that same conscientiousness. To illustrate this point, I'd like to point to the drain pipe at the back of his property which drains into a fragile brook that runs the length of the hill. This was done intentionally, with disrespect and malice toward our treasured and vulnerable ecosystem. It also affects abutters to his property.

I have not impinged or infringed on Mr. Boyd's rights, nor have I created situations where I expect the town to waive rules, laws, and regulations for me. In contrast, Mr. Boyd is requesting that this board infringe on my rights on his

behalf (keeping in mind that this is not a property he intends to even live in). He seeks to have my rights waived and make money off that action.

- **I wholeheartedly object to granting Mr. Boyd a setback variance.**
- **He should be required to adhere to the 75 ft. perimeter of a property line rule for a well.**
- **He should be required to remove the utility pole he had installed on my property.**
- **He should be required to move his driveway, which, in certain places, is also similarly over the property line.**
- **He should be required to remove the piles of debris and regrade the hill on my property**

In my opinion, this project was undertaken in a highly suspicious, questionable, and negligent manner. It seems obvious, based on an analysis of the facts, that this request for a variance is an underhanded and intentionally devious attempt to skirt around zoning laws. The board has a duty to preserve the integrity of the very zoning laws which Mr. Boyd so carelessly undermined. This is not a victimless so called "error."