

**Board of Adjustment
Canterbury, NH
Minutes of Hearing
13 September 2023**

Case No. 2023-9 Variance

Present were: Chairman Joe Halla, Web Stout, Calvin Todd, Christopher Evans, and Sean O'Brien (Alternate). Also present were: Eric Glines, Peter and Nicole Glines, Kate and Jake Mason, Ann Dowling,

Chairman Halla advised those present that **Peter and Eric Glines** are seeking a variance. The application involves Tax Map 248, Lot 25 located at 31 West Road in the Agricultural/Conservation zone. The proposed use states "We intend to build a 1700 square foot cape house approximately 800 feet from primary dwelling". The application references Article 18, Accessory Dwelling. Chairman Halla gave a detailed description as to the conduct of the hearing procedure.

Eric Glines presented a visual overview of the farm property on the overhead screen. He pointed out the primary dwelling, a pasture area, and the location of where they want to build the house. It would be just outside one of their most productive hay fields and pieces of land. Disturbing that would be a hardship. They would use the shared driveway with the primary dwelling so there wouldn't be an additional driveway. One distance mentioned would be 480 feet from the primary dwelling. 755 feet at the top of the most productive hay field they have on the farm and would be out of the way of their operations of farm work. It's also, the inside of the building envelope, the conservation easement. He showed where the boundary marks are depicted on the map. If they did a subdivision, it would have to be 5 acres out of their building envelope. He showed where the 5 acres would fall on the map. Calvin asked how many acres do they own that are out of conservation? Between 15 and 20 acres. There is something like 58 total acres. Eric went on to show 5 acres that would be a chunk of that it would be a hardship to subdivide that off of the farm property because it would limit future infrastructure, disrupt it. Chris asked him to point again to where the house would be. He showed where on the map it would be located. Chris asked how would subdividing cause irreparable harm to that which is being hayed and you could hay it anyway? Eric replied if there was another equipment barn or other infrastructure to the business on that because it would be a separate lot. Web asked if they could put the infrastructure on the other side. Eric advised you cannot see on the map but there is a slope there. Web went on, you said this is fairly valuable because of growing and stuff so why would you try to put infrastructure on it if it's that valuable....for haying and stuff. Eric concurred, it's productive farmland on all sides. Kate spoke saying just for the longevity of the farm and if they were to expand the facilities for milking and for the farm to be sustainable that would be the ideal area versus down in the small area. Nicole spoke, unlike farms growing vegetables, with dairy farming your barns all need to be in some proximity to one another to be able to move animals to and from the parlor. Cows don't stand in a straight line, if there is a gate....so building close to the existing buildings is the only way to expand the farm. The idea to use the prime farmland, we want to use it as farmland for now, but not knowing what it looks like 20 years, 30 years down the road, what the next generation is going to want to do, if there's a house right there, there's no ability to develop the farm. Chris stated I just don't understand what that has to do with subdividing. Jake spoke up if you have a subdividing line right across your dooryard, what would the setback requirements be from the Town of Canterbury, maybe you ought to take just a 500 foot long barn, a barn 100x400, the setbacks.....Chris said he thought it was 20 feet....further discussion about distances over speaking each other. If you are trying to be close to your other barn, maybe 100 feet away from your other barn and then try to get 400 feet in there.....it is all speculation obviously. Web spoke,

saying he did the survey for the easement, and he did take a look at this to see what would fit. The 5 acres comes to, he thinks it was about 150 feet from the barn that's closest to this. So, there'd be like 150 feet between the lot line and that barn that's closest to what you are proposing, or where you are proposing to build out there. So, it does leave a little bit of room in there. Chairman Halla asked how far away would the house actually be? 800 feet.

Chairman Halla asked if there were any other questions from board members. Sean asked, are you saying the 30 acres is in current use? No, it is in the conservation area. Eric said the other subject was the 1,000 square feet for an accessory dwelling, it's not reasonable to think a family could live in that square footage. There are two owners on the farm, myself, and my brother Pete, we own the farm equally and there is only one residence, so we want to put a second home on the farm. Chairman Halla asked if there were any other questions from board members. He asked if anyone present wished to speak in opposition. No one spoke. He asked Eric if he had anything further to add to their testimony or from the board. Web spoke saying, you said a shared driveway. Yes. Probably along the road? Eric advised a driveway on the very edge of the field beside West Road on the edge. Sean asked why a shared driveway, isn't there an opening in the stonewall? Eric responded there is, it's the state, what it is, is the number of driveways you are allowed. When the golf course went in, he recalled he thought the farm lost a driveway. Web said you have enough frontage that they would allow three. Web asked is that little house part of this property, it's not, is it? It is not, it's separate. Web went on, so the state would allow you because of all that frontage would give you three driveways. Jake noted there are two at the farm. Web asked the state says it's two. Jake confirmed this. Jake said it's been more than twenty years; they could go back and ask, maybe they would see something different. Web advised the state is changing their tune on that a little bit, they are. Eric said that would be really nice. Web said, you may not have the same site distance. Chairman Halla asked if anybody else wished to speak in favor. No one spoke. He asked Eric again if he had anything further or if the board had anything else to ask. He closed the testimony part of the hearing.

Chairman Halla spoke saying he was referencing page 27 in the Table of Uses: "Accessory dwelling unit designed for and occupied by a person employed primarily on the same premises as a farm laborer". He stated when that was put in the ordinance, it was to leave somebody in an agriculture situation be able to attract somebody to work there. When the new accessory dwelling unit language was added, they never looked at this. There is only one case, one precedent, up at Kathy Berry's house, so it's never discussed, never talked about. He remembers talking with Ginger (Wayne) Mann about it before he passed away and that was the whole purpose of this. He is theorizing that when they put in this thing. For accessory dwelling units, they never considered this part of the ordinance. And it was never intended, two years ago, he could have come in and built a 10,000 square foot house. There was no restriction on size. Chris asked, so you're talking about the 1,000 square foot restriction. Yes. Chairman Halla went on, and then I looked at that and then if you look at that, it's a lot closer to 500 square feet because it includes a basement. So, unless you pour a slab, you're not going to have 1,000 square feet. You're going to have 500 square feet or less because you are measuring the outside of the building. So, I'm looking at this and I'm saying is it reasonable to restrict him to a house or anybody else, where it's an allowed use, to 500 square feet. Chris stated he does not have a problem with the square footage aspect of it, just from the farm aspect, no. The increase of square footage I don't have an issue. I don't think I understand the hardship relative to the subdivision. That's what I'm not clear on, that subdivision is not possible. Chairman Halla replied, oh a subdivision is possible, but what I'm saying is that there is a hardship here because this is an allowed use. It's not a special exception, it's an accessory dwelling unit designed for an employee on the farm it's an allowed use in this zone. And to expect somebody to come and live at their farm or there was a farm

manager or one or two of them in a residence that's basically 500 square feet, that's smaller than this room. Chris replied, okay, I understand what you are saying. Chairman Halla stated to me that's a hardship. Now, if this was not an allowed use, then I would say that's entirely different. It's an allowed use, in this zone, and it's only an allowed use in an agricultural zone. Everywhere else it's a special exception. To be frank about the whole thing, when I looked at this further and it includes the basement, who is going to build something with 500 square feet unless it's an Air B and B. 500 square feet is 20x25. And then it says you can't have any more than two bedrooms. How are you going to have more than two bedrooms.....Chris noted they are asking for a larger space and I am totally ok with that. Calvin asked what happens if the house is built in 30 years the farm ceases to exist. What happens to the two structures on one farm? They would have to subdivide it at that time. Chairman Halla said no they wouldn't have to subdivide it. If someone came and bought the farm from the Glineses and kept the same use it would remain the same. The other reason this is somewhat unique is because under normal situations, I doubt if you could borrow money to do this from a bank. He is not sure. It used to be way back if you went for a loan to build a second house on a property that already had a house, the bank would say we don't want any part of that. Web concurred it's got to be on its own lot.

Chairman Halla made a motion to **GRANT** the variance for the following reasons:

1. The variance would not be contrary to the public interest. The public interest in Canterbury has always leaned towards agriculture and preserving farms. This would help do that.
2. The spirit of the Ordinance will be observed because this is an allowed use in the agricultural zone.
3. Substantial justice will be done because it is an allowed use in that zone.
4. The values of the surrounding properties will not be diminished.
5. Literal enforcement of the provisions of the Ordinance would result in unnecessary hardship.

An unnecessary hardship is based on the fact that the restriction to a thousand square feet including a basement is not a realistic requirement in this particular situation. Special conditions of the property are that it is in the agricultural zone. It's different from other properties in that area. No fair and substantial relationship exists between the general public purposes of the Ordinance provision and a specific application on that provision to the property. The proposed use is a reasonable one. We decided it is a reasonable one. It's an unnecessary hardship to limit the space to basically what boils down to 500 square feet.

Conditions attached because of the wording of the Accessory Dwelling Unit include:

1. The application states 1700 square feet. It would be limited to 2500 square feet in case they want to put an addition on at some point.
2. The restriction of the Ordinance that says no more than two bedrooms doesn't apply.

Web spoke saying he thinks maybe you ought to add what you were saying earlier this really was not thought of when they did the new accessory dwelling unit. Chairman Halla concurred, saying when he talked with Wayne Mann who was the head of the Agricultural Commission, but the whole purpose of that was this or Windswept Farm wants to hire a horse manager and they want to build a house for him. Is it reasonable to expect in that zone, which is also agricultural, that you could say well, we'll build you a house and you will have 500 square feet. Show me a house that's been built in Canterbury that's 500 square feet or anywhere else. Chris spoke,

saying a motion has been made, he seconds the motion. The Board vote was a unanimous decision to **GRANT** the variance. Chairman Halla explained the thirty-day appeal process.

Web reminded the Glines to check with the state about the driveway.

The Board unanimously approved as written the minutes of previous hearings.

Respectfully submitted,

Lisa Carlson, Clerk
Board of adjustment