

**Lancaster Zoning Board**  
**Location: Lancaster Town Hall**  
**July 27, 2022**

**Call To Order:** The meeting was called to order at 1830H by Chairman Rick Bernier.

**Roll Call:**

**Regular Members Present:** Chairman Rick Bernier, Vice Chair Tricia Frenette, Les Hilton, Linda Ogle, Steve Young

**Absent:** None

**Alternate Members Present:** Donald Freddette

**Absent:** Nathan Kenison, Chris McVetty

**Others Attending:** Land Use Coordinator, Robin L. Irving, Josh Rivard (Applicant), Tricia Eastman, Derrick Felch (Applicant), Joel Sanford (Abutter), Mary Benkert (Abutter)

**Minutes:**

Linda Ogle moved to approve the minutes from the June 29, 2022 meeting. Les Hilton seconded the motion. All members voted to approve, no objections. *Motion passed.*

**Public Hearings:**

Steve Young moved to change Alternate Donald Freddette to a voting member for the meeting. Tricia Frenette seconded the motion. All members voted to move Freddette to voting member for the meeting, no objections. *Motion passed.*

**Case# 538 – Rivard, Josh** 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 a garage and operate a treescaping/landscaping business on land situated in the Agricultural Zoning District. Land Zoned Agricultural. (Tax Map R17-Lot 033, 3.47 acres, 222 Portland Street).

Applicant Josh Rivard explained that he owns and operates a tree service business. He has three (3) employees including himself and four (4) trucks. The business would not be running vehicles all day because they typically roll out with trucks and equipment in the morning and return at the end of the day. Also, not all trucks/equipment are dispatched for jobs. He proposes to construct a building on the property at 222 Portland Street that is intended to warehouse his trucks and equipment, e.g. chipper, and function as an office. The uphill entrance serves this property and his driveway would follow the gravel way under the existing cabin, through the wetland area, and past the tree buffer to an area that would be cleared for the garage. There will be no disposal of hazardous waste, which he will not generate much of at this site. Rivard intends to give or sell used oil to those that use it. His plan is to install a loop so that all trucks can drive in as opposed to backing in. This location is approximately 300-400 feet behind the barber shop. He also

proposes putting up a sign near the road. Construction of the building is not likely to happen for a couple of years while he prepares the site in the meantime.

Linda Ogle asked if the tree buffer would remain between the abutting properties. Rivard confirmed that they would, not only to provide a noise buffer but also to maintain the natural surrounding in an attempt to retain the character of the zone.

Donald Freddette asked how the sewer was connected. LUC Robin Irving explained that the sewer connection is directly in front of the barber shop, then it branches off and goes up the gravel way to the cabins. Because Frank Pecze owns all of the properties even after they were subdivided, sewer was not an issue until one of the lots is sold.

Chairman Bernier emphasized that a full-blown logging business, because it is part of forestry and timber management, is an acceptable land use under the Lancaster Zoning Ordinance. Rivard explained that his business includes logging but the scale of operation is very small. LUC Irving stated that she classified this application under 'special exception' and she pointed out the difference between a variance being a request for a non-permissible use to be approved versus special exception which is a permissible use if certain threshold conditions related to the zoning ordinance are met. Irving submitted the State's statutory definition of forestry to the Board so that the members could determine whether the nature of Rivard's business was derivative of that statutory definition as it did not strictly meet the definition. The Board agreed that Rivard's proposed use is a form of forestry, distinguished from the statutory definition by its scale of operation, and was a permissible use that should proceed under the special exception criteria.

Chairman Bernier opened the meeting to the public:

Abutter Mary Benkert asked where the road is and if the applicant would need to get a permit from the State for the driveway. Benkert stressed that vehicles go VERY fast up the hill and are typically speeding when the crest, that creates a safety issue for vehicles turning in and out of Route 2. Benkert mentioned that the speed limit there is too high at 50 mph if trucks are going to be going in an out—she felt that the speed limit should be moved as the 30 mph zone starts after the barber shop.

Abutter Joel Sanford pointed out that the lot is too small for a business that manages forestry lands like a full-scale logger so the argument that a logger could locate there has no merit. Sanford disagreed with the Board's decision that Rivard's use was related to forestry; he felt the operation was akin to vehicle and equipment maintenance which is a commercial use unrelated to forestry. Because Sanford did not agree that the use was forestry-related, he expressed that the business should be located in a commercial district especially since those districts have not been fully developed. Sanford objected to any noise from running or even idling vehicles and equipment because sound will carry from this site to the Sanford residence situated behind this lot. Sanford repeated the same traffic issues as Benkert did, focusing mostly on the significant safety issue due to excessive speed in that area. He understands that there is high traffic volume by virtue of being US Route 2, but the risk for accidents is heightened when there are more vehicles, especially large vehicles and heavy equipment as opposed to residential/family vehicles, turning on and off of the highway. He felt that the best situation would be to reduce the

speed limit and post it at the bottom of the hill (from Roger's campground going into town). Sanford submitted a written summary of his concerns and objections (attached).

Steven Young expressed that he did not see a problem with traffic in this area as it was or is permitted by NHDOT. He thought that perhaps the Board would consider making the driveway permit a condition of approval.

Rivard stated that NHDOT requires the current landowner to file the driveway permit application therefore he cannot file it until he owns the property, and his purchase is contingent upon whether he can use the property for his business. LUC Irving explained that, if the Zoning Board approves the Special Exception, the conditions will be 'conditions subsequent.' When the applicant submits his building permit application to the land use coordinator, LUC Irving makes getting a driveway permit a prerequisite to any construction, so this can be done either by making it a condition or making the applicant abide by the terms and conditions of the Zoning Board Decision. In either case, the applicant can purchase the land first, then submit the driveway permit application to the State; the State's approval must finally be submitted to the Town.

Abutter Benkert wanted to make everyone sure that her concerns were not necessarily about the business but that she wants to protect the area. Benkert felt that a dumpyard of businesses has sprawled along the approach into town and this is another business that will contribute to constant noise and heavy traffic. She mentioned the danger to vehicles due to lack of visibility when large vehicles are turning.

Tricia Eastman pointed out that Rivard is meticulous and residents can be assured that Rivard will keep the property looking tasteful and nice.

The Board read Sanford's written comments before entering deliberation.

Chairman Bernier closed the meeting to the public.

Chairman Bernier criteria for Special Exception:

1. Would the use be detrimental to the public health of Lancaster residents or the general public? All Board members agreed that the proposed use would NOT. There was no discussion.
2. Would the use be detrimental to the safety of Lancaster residents or the general public? All Board members agreed that the proposed use would NOT. Donald Freddette stated that anyone who lives on Portland Street knows that speeding and traffic volume are an issue. He said that the speed limit used to be 50mph throughout that whole section coming into town and it was reduced to 30mph because it is a residential zone after the Cabot. Recently there has been discussion within NHDOT to raise it to 40mph. These decisions are controlled by the State. Chairman Bernier pointed out that Route 2 is one of the major state roads and connectors going through Lancaster. He said that the kind of vehicles that route include all types including eighteen wheelers to passenger cars. The issue with turning cannot be any worse than campers and cars with trailers coming and going out of

Rogers Campground which is just over the hill. Tricia Frenette said that passenger cars are not the only vehicles that need to take caution when turning; oil delivery trucks that go to each residence also are aware of the areas that have high traffic volume, speeding, and compromised visibility. Chairman Bernier stated that Rivard's number of trucks will not add to the already existing risk.

3. Would the use be detrimental to the character of Lancaster? All Board members agreed that the proposed use would NOT.
4. Would the use be detrimental to the welfare of Lancaster? All Board members agreed that the proposed use would NOT.
5. Is the granting of this Special Exception in harmony with the purpose of the Zoning Ordinance? Les Hilton stated that it is in harmony with the zoning ordinance both as a form of forestry and lumbering to be located in the agricultural zone but also when comparing the use to other businesses in that immediate area of approach, this use is more agriculturally related than those. All Board members agreed that granting the special exception IS in harmony with the purpose of the Zoning Ordinance.
6. Is the granting of this Special Exception in harmony with the intent of the Zoning Ordinance? Tricia Frenette said that the intent of the Zoning Ordinance is to encourage agricultural uses which this use is. All Board members agreed that granting the special exception IS in harmony with the intent of the Zoning Ordinance.
7. Will the character of the area be adversely affected? All Board members agreed that it would NOT.
8. Will the value of adjacent property be adversely affected? All Board members agreed that it would NOT.
9. Will the character of the lot be affected? Chairman Bernier emphasized that a logging operation would be able to locate on this property without having to come to the Zoning Board. Given that this operation is very small, it will not affect the character of the lot. Bernier also said that Rivard wants to keep the tree buffer and situate the building significantly off the road behind the existing barber shop, and that contributes to the agricultural character. As the lot currently exists, there is a brightly colored pink, blue, purple, rainbow cabin and the tree service building should be an improvement from that. All Board members agreed that the character of the lot will NOT be affected.
10. Will hazardous waste be disposed of on the property? All Board members agreed that it will NOT. Donald Freddette reminded Rivard that the sewer line needed to be separated.
11. Will traffic in the area be adversely affected? The Board members agreed that the answer to this question had been addressed in a previous question. Chairman Bernier stated that any driveway and turning issues will be addressed by the State. All Board members agreed that traffic in the area will NOT be affected.

Les Hilton moved to approve the application as written with 2 conditions: 1) Applicant shall receive and shall be compliant with conditions of a State driveway permit; and 2) Applicant shall construct and maintain separate from Tax Map R17-Lot 032 its own permitted sewer/septic connection. Steve Young seconded the motion. All members voted to approve the application for Special Exception as written with the stated conditions, no objections. *Motion passed.* Special Exception is granted. Chairman Bernier reminded everyone that there is a 30-day appeal period.

**Case# 539—Felch, Derrick--** for an Area Variance concerning Article 5, Section 5.04, "Agricultural District-Setbacks and Frontage." Owner/Applicant wishes to construct/install a pre-fab 12'x20' shed on a block foundation situated off the existing driveway approximately 32' from the right boundary line when 40' is required. All other setbacks will be met. Land Zoned Agricultural. (Tax Map R11-Lot 047, 1.92 acres, 49 Garland Road).

Applicant Derrick Felch explained that he wants to put a shed on his property. The shed will match the house in color and style. To put the shed anywhere else on his lot is either too far away or situated upon ledge. By keeping the style similar to his house, his objective is to build something that looks nice because it is visible.

LUC Irving had submitted the shed photo from the land use permit application and the Board members agreed that the shed was an attractive building that matched the character of Felch's house and area.

Chairman Bernier opened the meeting to the public:

There were no abutters present. There were no objections.

Chairman Bernier closed the meeting to the public:

Considering that there were no abutters and no objections, the Board agreed that each of the Applicant's answers to the Variance application criteria were adequately addressed. Donald Freddette moved to approve the application as written. Linda Ogle seconded the motion. All members of the Board voted to approve the application as written, no objections. *Motion passed.* Variance granted from 40 feet to 32 feet on right boundary. Chairman Bernier reminded everyone that there is a 30-day appeal period.

**Training Topics/Materials:** None

**Announcements/Correspondence:**

LUC announced the most recently issued land use permits: 1) Emil Jr. & Joyce Dupont/Dupont's Auto Clinic at 334 Portland Street are replacing the existing 12'x20' deck with a stick-built 12'x20' enclosed porch on piers with metal roof and 2-foot wide running deck, 2) Chamberlin Electric on behalf of John Brooks Sr. at 7 Robin Lane is installing a 14kW automatic standby 25.3"x48.3"x29.25" LP Generac Guardian series generator onto picture-framed PT timber pad approximately 4' off house on right and 200SE transfer switch attached to existing panel, and 3) Petros Hatzigeorgiou d/b/a SMS Pizza LLC aka Lancaster House of Pizza at 281 Summer Street Construct is constructing A) a stick-built 6'x16'x8' vestibule with metal roof on concrete pad over front glass-door entry; and B) a 6'x16'x8' stick-built framed-in pre-fab walk-in on concrete pad with doorway cut into exterior of existing building. LUC Irving said that there several conditions imposed on the LHOP application because Fire/EMS personnel expressed concerns with the potential haphazard, noncompliant code construction of a building that is a very busy food operation with many customers going into the building etc. For instance, staff has made it very clear to the owner that the vestibule must be on a pad. Unfortunately, the owner installed a pad,

but he poured it on top of the asphalt instead of digging the asphalt up and framing in a pad. Tricia Frenette expressed that she had seen the work and was disgusted with the workmanship and it she felt that it certainly did not meet code. Board members also did not understand the need for a walk-in when the building is basically one big walk-in with cooler doors.

**Other business:**

LUC Irving stated that she would like to increase revenues from fees because the current fees are not meeting costs. She feels that the shortfall should be paid for by the applicants and not the taxpayers. Irving explained that postage is invoiced at cost, but the cost of advertising the notices is billed at a flat rate of \$50.00. In some circumstances, bills from the newspaper can reach \$300. The turnaround cycle of billing between the newspaper and the Town is too long to wait to invoice an applicant, therefore the solution is to change the flat fee. The Board members agreed that the fees should be increased to cover this shortfall. Chairman Bernier proposed that advertising be billed out at the maximum invoice so that the cost is covered by one applicant. If there are multiple applicants, then it is revenue. There should be no allowance for multiple applicants and everyone should be billed the same.

Donald Freddette moved to change the fees to: 1) \$125.00 for the application, 2) postage at cost, and 3) \$300.00 for the advertising costs. Tricia Frenette seconded the motion. All Board members voted to approved the proposed fee schedule, no objections. *Motion passed.* This fee schedule will go into effect immediately and the applications should be changed to reflect the approved changes.

**Les Hilton moved to adjourn the meeting at 1945H. Donald Freddette seconded the motion. All Board members agreed to adjourn the meeting at 1945H, no objections. *Motion passed.***

Respectfully submitted,  
Robin L. Irving, Land Use Coordinator

Approved:

Richard Bernier, Chairman of the Lancaster Zoning Board of Adjustment

To: Lancaster Zoning Board

From: Joel Sanford & Karen Peabody  
224 Portland Street  
Lancaster, NH

Date: July 27, 2022

Re: ZB #538 - Request for a Special Exception to the Agricultural Zoning District  
222 Portland Street  
Lancaster, NH

This memo is in response to the request for a special exception to the Agricultural Zoning District for the property located at 222 Portland St. We request that this be added to the record in opposition to granting the special exception.

Our reasons for opposition to the special exception are as follows.

1. Re-zoning:

- a. The proposed use in the application does not meet the agricultural Forestry definition outlined in the Lancaster Agricultural Zoning District (AZD). Headquartering the operation of a treescaping/landscaping business is not similar to the practice of forestry in this district. We contend that the proposed use is more in line with the Commercial/Industrial Zoning District and that granting this special exception would essentially re-zone the property to Commercial/Industrial.
- b. Granting this exception would not be in line with the 2011 Lancaster Master Plan. The expansion of Commercial/Industrial businesses into the AZD is discouraged in the 2011 Town Master Plan that specifically states as an objective to “not scatter new development throughout the AZD without full development of the commercial districts”. We would disagree that the town has fully developed the Commercial/Industrial Zones.
- c. Declining to approve this request would be in line with Town Master Plan that expresses the desire of residents to “restrict commercial uses from Route 2 East and Route 3 South ends of town due the the scenic nature of these approaches to Lancaster.”
- d. In the above points, we agree with the Town Master Plan. We feel strongly that allowing a new industrial business to be located in the Agricultural Zoning District of town would alter the rural and scenic aesthetics of this end of town and loosen the requirements for future requests of this nature.

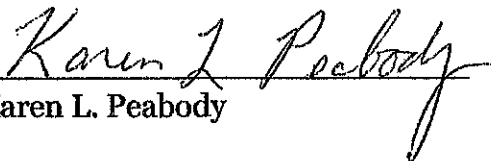
2. Noise Pollution & Property Value:

- a. The proposed use would subject area properties to substantial noise pollution due to the constant running of and maintenance of the potential equipment that granting this variance could include.
- b. As abutters to the property we feel strongly that our property value, as well as the property value of others in the neighborhood, will be negatively affected due to the noise pollution and loss of rural aesthetics that is a consequence of operating the proposed business at this site.

3. Road Safety:

- a. We feel that adding the movement of equipment in and out of the proposed site will add a significant risk of collision to this stretch of road.
- b. The property entrance is located behind a row of trees/brush and in the westbound direction, there is a blind crest where high speed traffic is merging to a single lane. Our driveway parallels this entrance and often the traffic speed and road conditions make it unsafe for us to pull into our driveway from the West. We must go past it to turn around and come back from the East.
- c. Additionally, the Lancaster Police Department shared that a single officer stops in excess of 50 cars per month exceeding 55 mph in this stretch of road.

We would also like to add that we specifically purchased our abutting property with the knowledge that this area of town is zoned as agricultural. The agricultural uses outlined for this district are uses we agree with. For reasons listed above, approving the special exception would alter the future of the rural and scenic aesthetics of this area and submit that this is not in the best interest of the town as a whole. We do agree that the town does need new businesses and industries, however, the town has already dedicated areas for this type of business. We respectfully request that the zoning board not approve the special exception.

  
Karen L. Peabody

  
Joel A. Sanford

7/25/22