

July 10, 2025

Nicholas Livesay
Chair, Brunswick Zoning Board of Appeals
85 Union Street
Brunswick, Maine 04011-2418

RE: David Norton's and Melinda Titus's Request for an After-the-Fact Variance from Brunswick Zoning Ordinance § 4.2.5.B.4.f. at 50 Blackstone Club Road (Tax Map MP 3, Lot 26).

Dear Chairman Livesay and Members of the Zoning Board of Appeals,

I represent Seth Holbrook. Mr. Holbrook and his brother, Dwight Holbrook, own property at 57 Gallows Island Road in the Town of Brunswick ("Town"). The Holbrooks' property abuts the southerly boundary of Applicants David Norton's and Melinda Titus's (collectively, the "Applicants") 48-50 Blackstone Club Road property (Tax Map MP 3, Lot 26) (the "Property").

I write to express Mr. Holbrook's concern with the Applicants' after-the-fact request for a disability variance to permit a driveway only a few feet from the lot line Mr. Holbrook shares with the Applicants' Property. Mr. Holbrook is sympathetic to the need for infrastructure that will facilitate Mr. Norton's son's access to the Applicants household. If the Applicants sought a disability variance to, for instance, permit the installation of a ramp that would enable Mr. Norton's son to access the Applicants' house, then Mr. Holbrook would fully support this application. However, the Applicants concede that they are not seeking a variance to "to make a dwelling accessible to a person with a disability who resides in or regularly uses the dwelling." Brunswick Zoning Ordinance § 5.2.7.B.4.a.i. The Applicants have already installed a ramp that facilitates wheelchair access to the Applicants' house. Rather, the Applicants seek a variance to allow them to park cars on a newly constructed driveway that encroaches on Mr. Holbrook's lot line.

The Zoning Ordinance does not authorize the Zoning Board of Appeals ("ZBA") to grant a disability variance for this purpose. Therefore, the ZBA must deny this application.

The Property contains two residential structures. One is identified as 48 Blackstone Club Road, and the other is identified as 50 Blackstone Club Road. There is a driveway located between the 48 and 50 Blackstone structures. The Property's owner has historically parked cars in the driveway between the structures, and in front of the 50 Blackstone Road structure. For reference, the Blackstone Club Road is a private road that ends in front of the 50 Blackstone Road structure.

Over the past several months, the Applicants have (1) expanded the width of the driveway between the Property's two structures and added a ramp to the 50 Blackstone Road structure to

facilitate wheelchair access to the house, (2) paved the lawn area in front of the 50 Blackstone Road property with gravel, (3) clear cut the trees located behind the two structures, and (4) clear cut the trees that naturally screened Mr. Holbrook's adjacent parcel from the Property, and developed a driveway in place of those trees. Pictures of the Property, before and after these improvements were made, are attached to this letter as **Exhibit A**.

Section 4.2.5.B.4.F of the Zoning Ordinance requires a twenty-foot setback from side lot lines in the zone in which the Property is located. Section 5.2.7.B.1.c. authorizes the Board to grant disability variances provided that the disability variance "is necessary to make a dwelling accessible to a person with a disability who resides in or regularly uses the dwelling," and that the disability "[v]ariance only permits the installation of equipment or the construction of structures *necessary for access to or egress from the dwelling* by the person with the disability." Zoning Ordinance § 5.2.7.B.4.a.i-ii (emphasis added).

Here, the Applicants' requested variance is neither necessary to make a dwelling accessible to a person with a disability, nor would the requested variance permit the installation of equipment or structures necessary for access to or egress from the Applicants' residence.¹ Instead, the Applicants, in essence, are seeking an after-the-fact variance to permit a 3rd driveway on the Property. The Applicants have already installed a ramp that facilitates wheelchair access to the 50 Blackstone Road structure. Moreover, one parking space is available between the 48 and 50 Blackstone Club Road structures, and the Applicants currently use the newly paved driveway in front of the 50 Blackstone Club Road to park vehicles, as evidenced by the photographs included in Exhibit A to this letter. In other words, the Applicants' requested variance is not necessary to make a dwelling accessible to a person with a disability, rather the request is necessitated by the Applicants desire to create additional parking within a setback mandated by the Zoning Ordinance. The Zoning Ordinance, plainly, does not permit a disability variance for this purpose.

It appears that the Applicants may also be requesting that the ZBA consider whether they are entitled to an "undue hardship" variance from section 4.2.5.B.4.F of the Zoning Ordinance. In short, there is little question that the Applicants do not meet the criteria for an undue hardship variance. In order to grant an undue hardship variance, the ZBA must find, in addition to other criteria, that "the land in question cannot yield a reasonable economic return unless a Variance is granted," and that "the hardship is not the result of action taken by the applicant." The Applicant cannot satisfy either of these requirements. "The reasonable return prong of the undue hardship test is met where strict application of the zoning ordinance would result in the practical loss of all beneficial use of the land." *Toomey v. Town of Frye Island*, 2008 ME 44, ¶ 15, 943 A.2d 563. In this case, the denial of the Applicant's variance will not result in the practical loss of all beneficial use of the Property. Additionally, the Applicant's actual or constructive knowledge of the Zoning Ordinance's restrictions is a self-created hardship that precludes the grant of an undue hardship variance.

I appreciate the ZBA's time and attention to the points raised in this letter. My clients and I look forward to answering the ZBA's questions at its public hearing on this matter.

¹ The Holbrooks are fully sympathetic to Mr. Norton's son's condition and the related difficulties, but it should also be noted Mr. Norton's son does not live at the Property. Rather, he lives elsewhere and comes to visit the Property.

July 10, 2025

Page 3

Sincerely,

A handwritten signature in dark ink, appearing to read 'Benjamin J. Plante', with a stylized, flowing script.

Benjamin J. Plante



Figure 1: Before clear cut. Photos from 2024 Listing for 48-50 Blackstone Road.



Figure 2: Before clear cut. Photos from 2024 Listing for 48-50 Blackstone Road.



Figure 3: After clear cut and driveway construction. Photos taken in May 2025. After gravel and drainage installation.



Figure 4: After clear cut and driveway construction. Photos taken in May 2025. Gravel driveway in front of 50 Blackstone Road Property.



Figure 5 and 6: After clear cut and driveway construction. Vehicles parked on gravel driveway in front of 50 Blackstone Road Property.