

TOWN OF AMHERST
Zoning Board of Adjustment

November 15, 2022

APPROVED

1 In attendance: Doug Kirkwood (Chair), Danielle Pray (Vice Chair), Jamie Ramsay (Secretary),
2 and Charlie Vars
3 Staff present: Nic Strong, Community Development Director, and Kristan Patenaude, Recording
4 Secretary (remote)

5
6 Doug Kirkwood called the meeting to order at 7:00pm. He explained that the new procedure
7 includes completing Findings of Fact and he is slightly unclear yet as to how this works. The
8 Board could decide it needs to consult with Town Counsel before making a decision. Danielle
9 Pray stated that the Board could still hear the case at this time. Doug Kirkwood noted that the
10 Board may decide not to vote on matters this evening, due to this new process. The result of the
11 Board's deliberation could lead to granting, denial, or tabling of the application.

12
13 Attorney Tom Quinn stated that he believes the Board has always made Findings of Fact.
14 Danielle Pray noted that the issue seems to be that the Board has not discussed how to deal with
15 this new aspect of the hearings. Attorney Tom Quinn stated, in Milford last week during a Board
16 meeting, that Board went into deliberations, and each Board member was called on to speak
17 regarding their view of each element of the case. Amherst's Board has perhaps not been quite as
18 formal with this procedure in the past but has done something similar.

19
20 Doug Kirkwood stated that the process, as previously followed, will be that the Secretary will
21 read the case. Each applicant will then be asked to present the case. Once completed, the Board
22 will be allowed to ask questions and make comments. Then, the public will have a chance to
23 comment. The input should be specific to what is presented this evening and not reflect the entire
24 project. All questions/comments must be addressed through the Chair. Someone wishing to
25 speak must be recognized by the Chair or are otherwise out of order. The applicant has a right to
26 due process. He explained that each variance test must be addressed by each applicant. Voting on
27 these tests will then be undertaken by the Board. He noted that an applicant has to pass all five
28 tests outlined in the RSAs and if any test does not get the required number of votes, it fails. Doug
29 Kirkwood asked if there were any questions about the process and, there being none, then
30 introduced members of the Board.

31
32 **PUBLIC HEARINGS:**

33
34 **1. CASE #: PZ16509-102522 –VARIANCE**

35 **David & Donna Goldstein (Owners & Applicants), 35 Greenwood Road, PIN #: 024-**
36 **062-000–Request for relief from Article IV, Section 4.3, Paragraph D to construct a**
37 **carport within the side setback on the north side of the building and within the front**
38 **setback being approximately 2 feet from the side setback and approximately 20 feet**
39 **from the front setback. Zoned Residential Rural.**

40 Jamie Ramsay read and opened the case.

41

42 Attorney Tom Quinn, on behalf of the applicants, addressed the Board. He noted that the
43 applicants, as they live out of state, will be joining the meeting via Zoom.

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44

45 In response to a question from Jamie Ramsay, Attorney Quinn stated that the applicant is aware
46 that the Board has four members this evening and will need three affirmative votes to be
47 approved and they are ready to proceed.

48

49 Attorney Quinn stated that the property consists of approximately 0.14 acres of land with an
50 existing residence situated at 35 Greenwood Rd. The property largely predates the adoption of
51 existing zoning and regulations. The lot has existed since at least 1913, and the property was
52 modified in 1963 by adding a strip of land approximately 70'x70'x12'x69', and again in 1982 by
53 adding approximately 2,632 s.f. of land. The property has approximately 78 ½' of frontage. The
54 existing structure was built in 1947 and consists of approximately 1,200 s.f. of living area. It
55 lacks a garage. Other structures on the site include a shed, back porch, and deck, all located
56 behind the main residence. There were two carports previously located on the lakeside of the
57 property, and there is no clear record as to when these were removed. A new carport is proposed
58 to be located at the northeast corner of the residence. It is proposed to be 11' wide and 19' deep.
59 Given the size of the property, it is not possible to place the structure within the building
60 envelope, as dictated by the literal interpretation of the zoning ordinance. The proposed location
61 of the structure does not comply with the side setback of 20' for accessory buildings and it does
62 not comply with the front setback requirement of 50', thus variances are being requested so that
63 the side setback be no closer than 2' from the north sideline and no closer than 19' from the front
64 sideline.

65

66 Attorney Quinn explained that the first two tests are considered together and the court has
67 instructed that, to determine whether a requested variance is not contrary to the public interest
68 and is consistent with the spirit of the ordinance, the Board must determine whether the granting
69 the variance would unduly and to a marked degree conflict with the ordinance, such that it
70 violates the ordinance.

71

72 Attorney Quinn addressed the tests. The first test is to determine whether the variance would
73 alter the essential character of the neighborhood, and the second is to determine whether granting
74 the variance would threaten the public health, safety, or welfare. He stated that he does not
75 believe that granting the variance will alter the essential character of the neighborhood. The
76 property is an undersized, nonconforming lot, which has existed for decades. The property is
77 used for residential purposes, which is a permitted use in the district. Many other properties in
78 the area are also nonconforming in size. The applicant is proposing to construct a carport, as
79 there is currently no garage on site. A carport is an accessory structure, making it a permitted and
80 reasonable use. The variance is only required due to the limited size of the lot. There is nothing
81 about this proposal that will alter the essential character of the neighborhood. Nor is there
82 anything about this proposal that will threaten the public health, safety, or welfare. There is an
83 existing adequate septic system, and a potable water system on site. Also sight distance is not an
84 issue for this project.

85

86 Attorney Quinn stated that the next test is that granting the variance would do substantial justice.
87 The only guiding rule in determining this factor is that any loss to the applicant caused by the

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88 strict application of the ordinance, that is not outweighed by a gain to the public, is an injustice.
89 The proposed use is consistent with the uses in the Baboosic Lake area and this neighborhood, in
90 particular. It is only the limited size of the property that necessitates a variance. Granting the
91 variance will permit the applicant reasonable use of the property. Attorney Quinn submitted a
92 picture of a similar carport three doors down on the same street. The plan is to replicate this type
93 of carport, but for a single vehicle rather than two. This is a modest proposal and is consistent
94 with the way this neighborhood has been developed. Denying the variance would deny the
95 applicant full reasonable use of the property, without a significant benefit to the general public.
96

97 Attorney Quinn stated that granting the variance will not diminish the value of surrounding
98 properties. He previously submitted an opinion letter from Jim Spellman, a local real estate agent
99 with over 40 years' experience. Jim Spellman's review included his opinion that there is nothing
100 about this proposal that would diminish values of surrounding properties in the neighborhood, in
101 the Baboosic Lake area, or the Town. The proposal is consistent with the neighborhood and the
102 carport will be built in an attractive manner so that there is nothing about it that would detract
103 from the value of surrounding properties. This will actually be an improvement to this property
104 and, by extension, an improvement to the neighborhood.
105

106 Regarding the last test for hardship, Attorney Quinn stated that there are special conditions of the
107 property that distinguish it from other properties in the district. The property has existed in its
108 current form since 1992 and is only 0.14 acres. Given the small size of the lot and the application
109 of the various setbacks, it is difficult to build anything on this site. There is no place on the lot
110 that a carport or garage could be built to be in compliance with the regulations. The minimum lot
111 size, frontage, and setback requirements make sense in regard to a new subdivision but applying
112 those same rules fairly and reasonably to a neighborhood such as the Baboosic Lake area, which
113 has existed since the beginning of the last century is very difficult. The test also looks to show
114 that no fair and substantial relationship exists between the general public purposes of the
115 ordinance provision and the specific application of that provision to the property. It is not
116 possible on this lot to meet the setbacks and develop the full and reasonable use of the property.
117 The property is located in a neighborhood made up of generally small lots. This variance can be
118 granted without undermining the objectives of the ordinance. In this neighborhood, it is not
119 uncommon to see properties with sheds and garages built right up to the property line. The last
120 part of the test is that the proposed use is a reasonable one. This property does not have a garage
121 and would like to add a carport. There is nothing excessively unreasonable about this proposal.
122 The purpose of allowing variances on individual properties is to provide a relief valve for special
123 circumstances where the objectives of the zoning ordinance can be largely respected without
124 causing injury to or damage to abutters or the neighborhood.
125

126 Charlie Vars noted that the Meridian Land Services survey plan shows the lot at 0.15 +/- acres.
127 The lot size is shown as 0.4 acres on the Staff Report. He asked about these discrepancies.
128 Attorney Quinn stated that he believes the 0.4 acres is a mistake. Amherst Survey Associates
129 completed a survey in 1991. This showed the original area of the lot to be 3,495 s.f., with an
130 additional 2,632 s.f. added to it at that time, for a total of 6,127 s.f. or 0.141 acres. Most of the
131 lots in this area are similarly sized. Charlie Vars noted that the owners more recently received a

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132 survey from Meridian Land Services showing the lot size to be 0.15 +/- acres, and this should
133 likely be referred to on the plans.
134

135 In response to a question from Charlie Vars regarding an area of the plot plan that shows what
136 looks to be gravel, Attorney Quinn stated that this is broken up, decaying concrete. He believes
137 this may have originally been the location of one carport.
138

139 In response to a question from Charlie Vars regarding if this carport was proposed to be turned
140 into a garage in the future, Attorney Quinn stated that he does not believe this would change the
141 equation much. This application is only for a carport. If someone wanted to enclose it to become
142 a garage, he believes that applicant would need to come back before the Board. He stated that the
143 issues would not change, the arguments would not change, but visually it might be a little
144 different.
145

146 Charlie Vars stated that it appears the back of the carport is proposed to be parallel with the front
147 of the house. He noted that he does not believe the carport could be placed back further on the
148 lot, as the lot rapidly drops off from there.
149

150 Charlie Vars asked if the owner has communicated with the owner of Lot 63 regarding the
151 proposed carport. David Goldstein, owner and applicant, stated that the owner of this lot lives in
152 Massachusetts. He stated that he has communicated with the owner's daughter regarding the
153 plan, and she has not expressed any concerns. He has also communicated with his neighbor to
154 the north, who also expressed no concerns.
155

156 In response to a question from Danielle Pray, Attorney Quinn stated that Lot 63 is 0.171 acres.
157 David Goldstein noted that the abutting property to the south contains a two-car garage with a
158 second floor 30' from his house. The abutting house to the north does not have a garage but that
159 lot owns a piece of land on the north side of Greenwood Road, in order to park vehicles on.
160

161 Danielle Pray asked for more information regarding the special conditions of this property.
162 Attorney Quinn that there is a mixture of lots in this neighborhood. This test should look at a
163 larger area than simply to the right and left of the residence. The Residential Zone calls for 2 acre
164 lots, which is not possible on this lot. Some lots in the neighborhood own additional lots across
165 the street to park their vehicles. There is no other reasonable space on this lot to place the carport
166 due to locations of existing buildings. The carport could be moved further south on the lot, away
167 from the sideline, but that would place it directly in front of the house. Meridian Land Services
168 recommended the proposed location in order to keep the area in front of the house open for a
169 new septic system in the future.
170

171 Danielle Pray asked if the owner would consider a condition that the carport could not be
172 converted to a garage in the future. David Goldstein agreed to this proposed condition. He stated
173 that he does not need a garage and thinks it looks better to have a carport. He reiterated that he
174 was comfortable if this limitation was added to the approval.

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175
176 There were no other comments or questions from the Board at this time.
177

178 **2. CASE #: PZ16510-102522 –VARIANCE**
179 **Philip & Melissa Damiano (Owners & Applicants); 15 Green Road, PIN #: 005-125-**
180 **001–Request for relief from Article IV, Section 4.3, Paragraph D.3. to construct a**
181 **detached garage approximately 6 feet from the sideline where 20 feet is**
182 **required. *Zoned Residential Rural.***

183 Jamie Ramsay read and opened the case.

184
185 Attorney Tom Quinn stated that the property is located in the Residential Rural District and
186 consists of approximately 3 acres of land, with approximately 180’ of frontage on Green Road.
187 The lot meets all the dimensional requirements of the district. The property is improved by a
188 single-family residence, consisting of approximately 7,700 s.f., a swimming pool, shed, and
189 playground. The existing residence also includes a three-car garage under it, which was built as
190 part of a substantial addition between 2011 and 2012. The property is served by a paved
191 driveway, with an apron for entering and exiting the garage. The proposal is to construct an
192 additional garage on the property in the area as shown on the plan. The location of the proposed
193 garage does not meet the side setback requirement of 20’. The proposed garage will be
194 approximately 6’ from the side setback.
195

196 Attorney Quinn reviewed the tests. The first test is that the variance will not be contrary to the
197 public interest and will be consistent with the spirit of the ordinance. This test reviews that the
198 variance will not alter the essential character of the neighborhood, nor threaten the public health,
199 safety, and welfare of the community. He stated that his view is that granting the variance will
200 not change the essential character of the neighborhood. The property is located in the Residential
201 Rural Zone and used for residential purposes. The proposed garage is an accessory structure and,
202 although the proposed setback is less than the 20’ required, the proposed location is significantly
203 set back from Green Road, making it difficult to observe from the road. As Green Road is a
204 scenic road, there is a 100’ setback on it, and the proposed location of the garage is an additional
205 60’+ from there. The structure will not be regularly visible from abutting properties and will not
206 encroach in any way visually. The abutters to the north support the application and they are the
207 ones that would be most directly impacted by it. As this is only a setback issue, the proposal will
208 not threaten the public health, safety, and welfare.
209

210 Attorney Quinn stated that granting the variance would do substantial justice. The applicants
211 desire additional garage space and the most suitable location for this is shown on the plan. He
212 explained that it is difficult to back out from the existing garage in a conventional way due to a
213 severe drop off in topography at the edge of the pavement. As a result, more space is needed
214 between the existing garage and the proposed garage. The location of the proposed garage
215 suggested itself given the configuration of the property. The purpose of the side setback
216 requirement is to prevent encroachment of structures on one property upon structures on an
217 adjacent property. This is not an issue due to the layout of abutting properties. 11 Greenwood

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218 Road, an immediate abutter, has approximately 35' of frontage and a strip of land approximately
219 450' long behind the subject lot that extends well beyond to the main portion of the property
220 where the existing house is situated. To the north of that property is another property with
221 approximately 17 ½' of frontage for a 35' common driveway. Another abutting lot contains 35'
222 of frontage, encumbered by a private driveway easement. Thus, even though the proposed garage
223 encroaches into the setback, this can be done without compromising the abutters' use of their
224 property. The owner of three of the abutting lots has submitted a letter of support for this
225 application. This letter shows that their interests are not being compromised in any way.
226

227 Attorney Quinn stated that granting the variance will not diminish the value of surrounding
228 properties but will improve the applicant's property. This project will be completed in such a
229 way that it is largely unobtrusive from Green Road, and unobtrusive from the immediate
230 abutters. Jim Spellman, a local real estate agent with 40 years' experience, has stated in a letter
231 submitted to the ZBA that he sees no diminution in value to surrounding properties. The request
232 is a permitted use and consistent with the neighborhood.
233

234 Attorney Quinn addressed the special conditions of this site. The proposed location for the
235 garage is the best one and, practically speaking, the only suitable location, due to the way the
236 existing three car garage and the addition to the house are laid out and the drop off from the
237 pavement. This garage cannot be brought any closer to the existing structure. To the rear of the
238 driveway is a very steep slope with a substantial drop off. There would be a lot of additional
239 work and expense to try to build retaining walls and drainage to address the grade in this area.
240 There is no fair and substantial relationship between the general public purposes of the setback
241 requirement and the specific application of that provision to the applicant's property, as this
242 proposal will not dominate the landscape or the neighbors' either visually or in terms of limiting
243 abutters' ability to build on their property. Due to the way adjacent properties have been
244 developed, this variance can be granted without jeopardizing the public purpose of the ordinance.
245 This is a very nice property which has been expanded and upgraded, in a way that keeps with the
246 neighborhood. The proposed garage will also be attractive and will not undermine the character
247 of the neighborhood.
248

249 In response to a question from Charlie Vars, Attorney Quinn stated that there is a row of trees
250 that will need to be removed on the north side of the wall. The doors to the proposed garage will
251 face the existing garage.
252

253 Charlie Vars noted that, due to the space between the two structures, there will be no space for
254 parking in order to back out. He suggested that the structure could be rotated 90 degrees, with the
255 doors facing out to the road. This would be in the slope of the area, and there could be storage
256 underneath. Philip Damiano, owner and applicant, stated that the drop off in this area is
257 approximately 10' and he was concerned with the retaining wall being the focal figure.
258

259 In response to a question from Charlie Vars, Philip Damiano stated that the intention as part of
260 this project is to remove an existing temporary canvas carport.
261

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262 Charlie Vars stated that the proposed garage will not be seen from Green Road due to
263 landscaping on the site.

264

265 In response to a question from Danielle Pray regarding if the existing pavement extends into the
266 setback, Philip Damiano stated that this appears to be true, based on the plan.

267

268 In response to a question from Danielle Pray regarding the lots to the north, Attorney Quinn
269 explained that those lots have a combined 35' strip running down them along the side of this lot
270 before those lots open up.

271

272 Danielle Pray asked about a propane tank that was mentioned. Philip Damiano indicated the
273 1,000-gallon propane tank and noted that from the edge of the driveway there was an 8' drop the
274 playground level and the bottom of the slope was more than 10' from driveway level.

275

276 There were no other comments or questions from the Board at this time.

277

278 **Charlie Vars moved to enter into deliberations. Jamie Ramsay seconded.**
279 **Voting: 4-0-0; motion carried unanimously.**

280

281 **CASE #: PZ16509-102522 –VARIANCE**

282 **David & Donna Goldstein (Owners & Applicants), 35 Greenwood Road, PIN #: 024-**
283 **062-000–Request for relief from Article IV, Section 4.3, Paragraph D to construct a**
284 **carport within the side setback on the north side of the building and within the front**
285 **setback being approximately 2 feet from the side setback and approximately 20 feet**
286 **from the front setback. Zoned Residential Rural.**

287

288 **Danielle Pray moved no regional impact. Jamie Ramsay seconded.**
289 **Voting: 4-0-0; motion carried unanimously.**

290

291 Jamie Ramsay stated that this is a fairly typical Baboosic Lake area variance request. There are
292 many preexisting, nonconforming lots in the area. The request is not an unusual one for the
293 Board to consider.

294

295 Danielle Pray suggested that Board members include findings of fact in with the vote. Board
296 members can still agree with what was stated previously by other Board members but should
297 make it clear what these items are.

298

299 Doug Kirkwood addressed the five variance tests.

300

1. The Variance will not be contrary to the public interest.

301

- C. Vars – true, there is more to be gained by the applicant than any impact it would
302 have on the public interest. This is essentially on a dead-end road, and this is the only
303 placement for this structure on the lot both aesthetically and practically. This will not
304 alter the character of the neighborhood and will not affect the public health, safety,
305 and welfare.

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- 306 • J. Ramsay – true, his decision is based on the facts presented. He echoed Charlie
307 Vars’ statements that this does not alter the character of the neighborhood, nor the
308 health, safety, and welfare of the public. Past cases are not precedent setting, but this
309 is a reasonable request for this very tight neighborhood.
- 310 • D. Pray – true, the applicant’s lot size is 0.15 acres, as presented this evening. The
311 Residential Rural Zone requires a front setback of 50’ where 19’ is being applied for,
312 and a side setback of 20’ where a 2’ setback is being applied for. She does not find
313 that those setback reductions alter the essential character of the neighborhood, and
314 nor do they threaten the public health, safety, or welfare. She agreed with previous
315 comments made by her colleagues regarding the location of the property. Facts were
316 presented tonight that there are other properties in the area that also have accessory
317 structures, lending to the proposal being in compliance with the character of the
318 neighborhood.
- 319 • D. Kirkwood – true, there will be no adverse impact to the neighborhood and thus the
320 spirit of the ordinance is observed. The health, safety, and welfare of the general
321 public will not be harmed by this proposal.

322 **4 True**

323

324 Danielle Pray noted that, in past practice, the Board has addressed the second test, that “the
325 Variance is consistent with the spirit and the intent of the Ordinance.” However, as Attorney
326 Quinn has previously pointed out, this is often combined in the language of the first test. She
327 stated that she would like the record to reflect that she would use the same arguments made for
328 the first test, for this second test. Jamie Ramsay stated that he believes merging the two tests is
329 appropriate. Doug Kirkwood stated that the same facts submitted for the first test were also used
330 to support the vote for the second test regarding the spirit of the ordinance.

- 331
- 332 • J. Ramsay – true, same facts as used to support the first test.
- 333 • D. Pray – true, same facts as used to support the first test.
- 334 • C. Vars – true, same facts as used to support the first test.
- 335 • D. Kirkwood – true, same facts as used to support the first test.

336 **4 True**

337

338 3. Substantial justice is done.

- 339 • D. Pray – true, the case presented tonight showed no harm to the general public. As
340 there is no harm shown, there is no harm to outweigh the potential benefits to the
341 owner.
- 342 • C. Vars – true, he is convinced, with the evidence shown this evening, that the
343 proposal is a reasonable use of the property that outweighs any negative impact to the
344 public.
- 345 • J. Ramsay– true, his opinion is based on the facts presented and echoed Charlie Vars’
346 opinion. The proposed use is reasonable. The applicant has a right to protection of
347 property. This lends itself to enjoyment of property by the owner.

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- 348 • D. Kirkwood – true, he agrees with the facts presented by his colleagues. Based on
349 those facts, substantial justice would be done.
350 **4 True**
351
- 352 4. The values of the surrounding properties will not be diminished.
353 • C. Vars – true, based on the evidence, in his opinion, the adjacent property values will
354 not be diminished. This is better than one of the original canvas carports which was
355 on site.
356 • J. Ramsay – true, he echoed Charlie Vars’ opinions.
357 • D. Pray – true, the letter from Jim Spellman agreed that there will be no reduction in
358 housing prices. There was no evidence shown from anyone else this evening.
359 • D. Kirkwood – true, he echoed his colleagues’ opinions. Jim Spellman has an
360 extensive history of real estate in Amherst.
361 **4 True**
- 362
- 363 5. Literal enforcement of the provisions of the Ordinance would result in an unnecessary
364 hardship.
365 • J. Ramsay – true, the proposed use is reasonable. Many properties in the Baboosic
366 Lake area have quirks, none are the same as the others, and all are encumbered by
367 setback issues. Setback required cannot be reached by many of these lots, leading to
368 the hardship for this applicant. He included facts presented in this case as part of his
369 opinion.
370 • D. Pray – true, the applicant has satisfied the special conditions requirement. There is
371 a diversity of lots in this area, with various sizes. Some properties in the area own
372 land across the street. This property is different from those in that it does not have any
373 room for a carport or vehicle storage, aside from the location proposed. There were
374 two previous carports on the property. No two properties in this area are the same,
375 likely in terms of setbacks as well. The general purposes of the ordinance are for the
376 health, safety, and welfare of the public and she finds that there is no fair and
377 substantial relationship between those purposes and applying that to this particular
378 property. This is a reasonable use for the property.
379 • C. Vars – true, his opinion based on the information submitted tonight is that it would
380 be a hardship not to grant this variance. There are special conditions of this property
381 that others do not have. He echoed previous Board members comments.
382 • D. Kirkwood – true, the applicant has shown that unnecessary hardship is easily
383 distinguished on this property. The zoning ordinance was adopted in 1963 and many
384 of the properties in this area existed before that time. It is more than reasonable to
385 request a place to store one’s car.
386
- 387 **The Chair stated that the application, as it passed all of the tests, is granted, with the**
388 **condition that the carport shall not be converted into a garage, as agreed to by the**
389 **applicant during the presentation. A building permit shall not be issued for**

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390 **enclosing this structure until an additional application is reviewed by the Board of**
391 **Adjustment.**

392
393 **CASE #: PZ16510-102522 –VARIANCE**

394 **Philip & Melissa Damiano (Owners & Applicants); 15 Green Road, PIN #: 005-125-**
395 **001–Request for relief from Article IV, Section 4.3, Paragraph D.3. to construct a**
396 **detached garage approximately 6 feet from the sideline where 20 feet is**
397 **required. Zoned Residential Rural.**

398 **Jamie Ramsay moved no regional impact. Charlie Vars seconded.**
399 **Voting: 4-0-0; motion carried unanimously.**

400
401 Doug Kirkwood addressed the five variance tests.

- 402 1. The Variance will not be contrary to the public interest.
- 403 • D. Pray – true, the applicant proposes to build a garage that will be set 6.7’ from the
 - 404 side setback, where 20’ is required. She does not find that the proposal is contrary to
 - 405 the public interest. A garage does not alter the character of the neighborhood, nor
 - 406 does its proximity to the sideline. It does not threaten the public, health, safety, or
 - 407 welfare of the Town.
 - 408 • C. Vars– true, his opinion is that, based on the evidence presented, that the spirit of
 - 409 the ordinance is being observed. He echoed comments made by Danielle Pray.
 - 410 • J. Ramsay – true, his opinion is based on the applicant’s presentation and Charlie
 - 411 Vars’ previous comments.
 - 412 • D. Kirkwood – true, he agreed with his colleagues. He used the facts presented to
 - 413 support this opinion.

414 **4 True**

- 415
416 2. The Variance is consistent with the spirit and the intent of the Ordinance.
- 417 • C. Vars – true, based on the facts presented and excessive grade to the rear of the
 - 418 driveway, this is a reasonable request. It will not have an impact on the value of
 - 419 surrounding properties.
 - 420 • J. Ramsay – true, based on the facts presented, this proposal does nothing to impact
 - 421 the public health, safety, or welfare of the general public.
 - 422 • D. Pray – true, the spirit of the ordinance is observed and there is no threat to the
 - 423 public health, safety, or welfare from a 6.7’ setback, rather than a 20’ setback, which
 - 424 the ordinance requires.
 - 425 • D. Kirkwood – true, based on the facts presented by the applicant and those
 - 426 comments made previously by his colleagues in their decisions.

427 **4 True**

- 428
429 3. Substantial justice is done.

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- 430 • J. Ramsay – true, based on the presentation made, his opinion is that this proposal
431 further the applicant’s enjoyment of the property without impinging on the rights of
432 abutters or the public.
- 433 • D. Pray – true, substantial justice is done because the only harm presented to the
434 public during the presentation would be potential minimal view of the garage from
435 the street. There is a private driveway on the side and a line of trees as well. The harm
436 to the general public does not outweigh the benefit to the property owner to build a
437 garage. The owners have a right to build.
- 438 • C. Vars – true, based on the testimony, this is a reasonable use of the property, and
439 the owner of the abutting driveway has indicated no issue with the proposal.
- 440 • D. Kirkwood – true, he echoed the reasons stated by his colleagues. The applicant’s
441 representative pointed out that denial of the variance would deny the owner
442 reasonable use of the property, without significant benefit to the public.
- 443 **4 True**
- 444
- 445 4. The values of the surrounding properties will not be diminished.
- 446 • D. Pray – true, no evidence was presented that the values of surrounding properties
447 would be diminished. A letter from a real estate expert echoed the opinion of the
448 applicant, that the values of surrounding properties would not be diminished.
- 449 • C. Vars – true, his opinion is that adding a two-car garage 6.7’ from the property line
450 will not diminish the value of any property in the neighborhood.
- 451 • J. Ramsay – true, based on the arguments presented by the applicant. His opinion
452 would be different if the proposed structure would take away from the aesthetics of
453 the existing house. This is an appropriate detached structure, however. It would be
454 less appropriate if attached to the existing structure.
- 455 • D. Kirkwood – true, the evidence submitted by the applicant shows that, if the
456 variance was denied, an unnecessary hardship would be created as the applicant
457 would be denied a reasonable use, and this would also not benefit the general public.
- 458 **4 True**
- 459 5. Literal enforcement of the provisions of the Ordinance would result in an unnecessary
460 hardship.
- 461 • C. Vars – true, based on the evidence given, it would be an unnecessary hardship. The
462 property has special conditions with the existing severe drop-off. There is no
463 substantial relationship existing between the driveway to the rear of the property and
464 the location of the proposed garage being 6.7’ from the property line. This is a
465 reasonable use.
- 466 • J. Ramsay – true, his opinion, based on facts presented in the applicant’s statements,
467 is that there are likely other places on the property that a two-car garage could be
468 built, but this would not be reasonable. These would be far from the house and make
469 it look like a satellite garage. There is no place to put this reasonably on the property,
470 other than to the left/north of the house. This will not be seen from the road. This
471 meets all the criteria for a hardship.

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- 472 • D. Pray – true, there are special conditions for this property, as previously mentioned
473 by her colleagues. The location of the current driveway and garage impacts the
474 location of the proposed additional garage. The drop off behind the existing garage
475 does not make it feasible to place the new garage there. This particular house’s
476 driveway was built very close to the lot line, which is an additional special condition,
477 as it constrains placement of a new garage. This property is located next to a property
478 with only a driveway abutting, which cannot be built on. This is an additional reason
479 that the proposed location is reasonable. There is no fair and substantial relationship
480 between the general public purposes of health, safety, and welfare that should deny
481 the garage being built in the proposed location. The use is a reasonable one as most
482 everyone has a garage, with some people having more garages than others.
- 483 • D. Kirkwood – true, he agreed that the evidence presented indicates that there is no
484 fair and substantial relationship between the general public purposes of the ordinance
485 and application of that provision to the property. The proposed use is a reasonable
486 one. This lot indicates one area that would be reasonable to place the garage. The
487 location will be almost invisible from Green Road and the applicant has the right to
488 do what s/he wants with the property. Reasonable use of the property will only be
489 possible through placing the garage in the proposed location.

490 **4 True**

491
492 **The Chair stated that the application, as it passed all of the tests, is granted, as**
493 **submitted.**

494
495 **Charlie Vars moved to exit deliberations. Jamie Ramsay seconded.**
496 **Voting: 4-0-0; motion carried unanimously.**

497
498 **OTHER BUSINESS:**

499
500 **1. Minutes: July 19, 2022 & August 16, 2022**

501
502 **Danielle Pray moved to approve the meeting minutes of July 19, 2022, as submitted.**
503 **Jamie Ramsay seconded.**
504 **Voting: 4-0-0; motion carried unanimously.**

505
506 **Danielle Pray moved to approve the meeting minutes of August 16, 2022, as**
507 **submitted. Charlie Vars seconded.**
508 **Voting: 4-0-0; motion carried unanimously.**

509
510 **2. Any other business that may come before the Board**

511
512 The Board discussed the Findings of Fact issue. Danielle Pray stated that she would like the
513 Board to present a set of facts for each hearing, that each Board member could then base his/her
514 vote off. Charlie Vars stated that he believed this would add a lot of time to each meeting. He

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515 stated that he believes the Board is already doing what is being required. A controversial
516 application could include additional information regarding the facts of the hearing. He does not
517 see any value of how the meeting was run this evening. Danielle Pray stated that she believes the
518 meeting this evening was run very similarly to other meetings. She believes the votes took
519 approximately the same amount of time. Charlie Vars stated that he does not enjoy this end of
520 things. Danielle Pray stated that she believes this new requirement likely placed a similar burden
521 on a lot of boards. Doug Kirkwood stated that he would like to check with Town Counsel
522 regarding the Board's interpretation of the Findings of Fact. Charlie Vars noted that the Board
523 has not had many cases taken to court. The Board could spend additional time on each aspect of
524 an application if it seems to be controversial. He does not believe anything is gained from the
525 way the meeting was run this evening. Danielle Pray noted that any case can be appealed by
526 anyone in the general public, thus the decision needs to be clear during the vote process. She
527 stated that she believes the votes this evening were perhaps voiced slightly stronger than in the
528 past. She suggested sending a copy of the minutes from this meeting to Town Counsel to see if
529 the Board's interpretation of the Findings of Fact was appropriate.

530

531 **Danielle Pray moved to adjourn the meeting at 9:40pm. Charlie Vars seconded.**

532 **Voting: 4-0-0; motion carried unanimously.**

533

534 Respectfully submitted,

535 Kristan Patenaude

536

537 Minutes approved: December 20, 2022