

TOWN OF AMHERST  
Zoning Board of Adjustment

December 20, 2022

**APPROVED**

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

Doug Kirkwood called the meeting to order at 7:00pm. He addressed the applicant to explain that there are only four Board members present. If there was a tie vote, the application would not be granted. Jamie Ramsay stated that the applicant can choose to table to a future meeting. The applicant agreed to move forward at this time.

Doug Kirkwood outlined the process and introduced Board members and staff present.

**PUBLIC HEARINGS:**

**1. CASE #: PZ16665-112822 – VARIANCE**

**Robert C. Houvener & Lisa Houvener Dimare (Owners & Applicants); 13 Washer Cove, PIN #: 025-021-000 & Bruce Bowler & Lynn Stratton (Owners & Applicants); 9 Washer Cove, PIN #: 025-023-000 – Request for relief from Article III, Section 3.2; Paragraph F to increase nonconformity of Map 25, Lot 23 from 13,913 square feet to 9,050 square feet while simultaneously equally increasing Map 25, Lot 21 from 4,493 square feet to 9,356 square feet. Zoned Residential Rural.**

Jamie Ramsay read and opened the case.

Bob Houvener stated that he has lived next to Bruce Bowler for 45 years. Mr. Bowler has an L-shaped lot. Bob Houvener stated that his lot sits in front of the corner of the L-shape. A variance is being requested to make two rectangular lots. There were a couple of paper roads which have previously been taken care of. There was an overhang of the property onto one of those paper roads.

Doug Kirkwood asked if there are deeds to the paper roads. Bob Houvener stated that back in the 20's and 30's, these lots were sold as swamp lots. Behind Mr. Bowler's property and in front of his own is the intersection of two paper roads. He stated that he went up to Concord and worked through the archives to determine the ownership of these roads. He then worked with the Board of Selectmen to have the paper roads removed. This means that the owners on either side of those paper roads take over the land.

Bob Houvener addressed the variance tests.

1. Will granting of the Variance not be contrary to the public interest?

Bob Houvener stated that the purpose of the ordinance is to ensure that lot lines do not create greater nonconformance than currently exists. In this case, the proposed lot line changes create one lot that is more conforming and one that is less conforming, but by the same amount as the existing lot. Hence, the request is not creating any more nonconformance than currently exists.

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The proposed lot line change creates a better balance of nonconformity between the two lots, honoring the purpose and spirit of the ordinance.

Bob Houvener stated that the proposed lot line change enhances public safety, health, and welfare, as it enables off-street parking for Lot 21. This increases safety considerably, as there is currently almost no parking and the small amount of existing parking has significant challenges, due to the lines of sight. This change will allow the owners to be able to park in the back of the lot, as opposed to out by the road.

2. How will granting the variance ensure the spirit of the ordinance?

Bob Houvener stated that the proposed lot line change creates one lot that is more conforming, and one lot that is less conforming by the same amount. Thus, it does not create any more nonconformance than currently exists. In addition, a lot line change creates better balance between the two lots. This variance is not intended to support additional construction but to facilitate better use of existing structures. The variance will not create overcrowding or unreasonable density. Thus, it addresses the spirit of the ordinance.

3. How will substantial justice be done?

Bob Houvener stated that, in this case there is no injustice to any individuals. In addition, the owner of Lot 21 is granting an easement to the owner of Lot 23 for access to their property via the driveway area of Lot 21. This is a benefit to both lot owners. Further, an easement is being granted as part of this overall process by the owners of Lots 18, 20, and 21 to enable future access to Town lands. There are two Town-owned lots located in the swamp in front of the property. Owners of the property, including their guests, will obtain safer parking of vehicles, allowing for more access to the area currently limited by parking, and allows for more maneuverability of the general public on Washer Cove Road.

4. How will the value of the surrounding properties not be diminished?

Bob Houvener stated that there are no impacts to the surrounding properties by the proposed lot line changes, as these only impact the associated parties to the transaction. On the contrary, improved parking may enhance the value of surrounding properties by reducing parking congestion in the area.

5. Literal enforcement of the provision of the ordinance would result in unnecessary hardship because A) for the purpose of this subparagraph unnecessary hardship means that owing to special conditions of the property that distinguish it from other properties in the area. i.) no fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to this property, because:

Bob Houvener stated that these lots and the property in question were plotted and developed prior to the Town having land use ordinances. The public purpose of these ordinances is to ensure lot sizes and building setbacks meet certain minimum standards to prevent overcrowding and related issues. Due to the pre-existing nature of these properties, there is no substantial relationship between the ordinance and the properties in question.

ii). The proposed use is a reasonable one because:

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89 Bob Houvener stated that, due to the subdivision of these lots before the regulations were  
90 initiated, it is not possible to create lot sizes and setbacks that strictly conform to the ordinance.  
91 Thus, a variance is required in order to allow for reasonable use of the property. Denying this  
92 variance would be denying a reasonable solution to parking deficiencies. It would also deny a  
93 reasonable adjustment to the property boundaries, which creates a more balanced use of the yard  
94 areas, with no net increase to nonconforming areas.

95  
96 Charlie Vars noted that there is no topographical map of the area provided. He explained that  
97 there is an area in the rear of these lots which dips down dramatically from Clark Avenue. There  
98 is a large swath of swampland in the back of one of these lots. He wanted to see the topographic  
99 map for Lot 23, showing building setbacks, as this would show an area that appears buildable,  
100 but a structure would have to be on stilts. Bob Houvener explained that a dotted line was placed  
101 on the plan to show the high watermark. This shows the 100-year high watermark. The rest of  
102 the area is dry land. These lots are right on the border of the drop into the swamp. This is the  
103 result of fill placed 80 years ago.

104  
105 Doug Kirkwood asked if topographical maps exist for this site. Bob Houvener stated that there  
106 are maps that can be accessed by anyone through the University of New Hampshire database.  
107 These were reviewed by Earl Sandford to create the plan.

108  
109 Doug Kirkwood asked if the Board requires the topographical map to be submitted for this  
110 application. Danielle Pray stated that she does not need it for her decision. Jamie Ramsay stated  
111 that this map could be easily researched if needed. Doug Kirkwood suggested that submittal of a  
112 topographical map could be entered as a condition of approval. Bob Houvener stated that he  
113 could easily supply this to the Board as a condition. Jamie Ramsay stated that it is better to have  
114 this information contained in the file and not need it, than need it and not have it.

115  
116 Charlie Vars noted that, in this particular case, the lots have frontages of 65' and 63', for a total  
117 depth of approximately 120'. He explained that this proposal is for the movement of a lot line  
118 and the acceptance of a right of way. Beyond these lots, there is Town-owned wetland area. It  
119 would be very expensive to build a road through this area.

120  
121 Doug Kirkwood asked why the setback line is drawn as it is. He asked if the area around it is  
122 significantly lower. Bob Houvener stated that Earl Sandford told him, for setback purposes, as  
123 there is dry land except when it floods in the spring, the edge of the lot should be used for that  
124 setback. Once the two properties are consolidated, the area that could potentially be built on  
125 changes. This proposal is not to move the house, but simply to consolidate the lot. Charlie Vars  
126 stated that a structure 20' x 28' or 20' x 30' could potentially be built on the remaining land, but  
127 the applicant would then have to come back before the Board for another variance.

128  
129 Jamie Ramsay asked if nonresident parking in this area is an issue. Bob Houvener stated that this  
130 is an issue, especially during the summer. Many cars park in the road and obstruct it. This  
131 proposal will allow for cars from both properties to be completely away from the road, freeing  
132 up more space for others. This proposal will also allow for an easement along the property line to

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let Bruce Bowler access his backyard. An easement is also proposed out front to ensure there is access to the Town-owned land.

Jamie Ramsay asked if there is any concern regarding the septic pumping stations located near the proposed easement at the southern property line. Bob Houvener stated that only liquids are pumped to the field located where Washer Cove Road was discontinued. Both of the septic systems for these properties were constructed with heavy duty septic tanks and covers to support heavy vehicles running over them. Especially in the winter, it is important to have cars removed from the road.

In response to a question from Danielle Pray, Bob Houvener explained that Bruce Bowler has a non-permanent shed located on the property that is proposed for the lot line adjustment. He stated that he will help Bruce Bowler to move the shed and clean up the lot. Bob Houvener pointed out the existing septic system and well on the plan. This proposal will not have any impact on these items. The well on Bruce Bowler's property is located on the other side of the house. He pointed this out on the plan.

There was no public comment at this time.

**Danielle Pray moved to enter into deliberations. Charlie Vars seconded.  
Voting: 4-0-0; motion carried unanimously.**

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Charlie Vars asked if the Board will be combining answers to variance tests 1 and 2, as has been previously done in meetings. Doug Kirkwood stated that he would like to keep them separate, as he has not yet heard from Town Counsel with regard to findings of fact. Danielle Pray stated that she believes the Board can use the same reasoning to approve these, with any additions needed. Doug Kirkwood stated that he would rather hear this from Town Counsel.

**Danielle Pray moved that this application has no regional impact. Jamie Ramsay seconded.  
Voting: 4-0-0; motion carried unanimously.**

Doug Kirkwood addressed the five variance tests.

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

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- D. Pray – true, this application does not threaten the public health, safety, or welfare, nor does it change the character of the neighborhood. This is simply a lot line adjustment, which does not affect either of those parts of the test.
- C. Vars – true, this proposal does not create any additional nonconformance, as the total square footage of the lots is the same.
- J. Ramsay – true, per the applicant’s statement, this proposal will reduce congestion, which would not impinge on the rights of the public in any way, and would improve safety, especially in terms of heavy summer use and snow removal and storage.
- D. Kirkwood – true, he echoed the comments previously made by Board members.

**4 True**

2. The Variance will ensure that the spirit of the ordinance will be observed.

- C. Vars– true, this is true based on the information provided and the fact that the Board of Selectmen recommended, with a vote of 5-0, to proceed with the proposal. This proposal increases safety regarding off-street parking.
- J. Ramsay– true, the applicant’s missive for this proposal is accurate. The result of this proposal is nothing but an improvement for public health, safety, and welfare.
- D. Pray – true, these lots are already nonconforming. This proposal does not change that, nor does it affect the minimum lot size requirements. The density of these lots will not be changed. This proposal will change the congestion of cars in the road by allowing for vehicles to be parked on the lots. This is helpful to the Town’s Fire and Emergency vehicles, as well as other homeowners in that area. The proposal only changes the lot sizes and is an improvement for public health, safety, and welfare.
- D. Kirkwood – true, he echoed the comments made by other Board members.

**4 True**

3. Substantial justice is done.

- J. Ramsay – true, the language in the case uses the verbiage ‘increase nonconformity,’ but this is a moot point. Nothing will truly change on these lots from this proposal. The conditions of health, safety, and welfare will be improved. The only change he can envision is a driveway on the south side of the applicant's property to reach the new section of his property.
- D. Kirkwood – true, this will allow for a reasonable parking area for these lots.
- D. Pray– true, this test for substantial justice is a balancing test between the benefits to the applicant and any harm to the general public. The benefit to the applicant is more room to enjoy the property and to get vehicles off the road. There has been no demonstration of any harm to the public. She would contend that there is a benefit to the public, as the intent is to use the land to park cars and get them off the road. This is a benefit to the general public. The balance is in the applicant's favor.
- C. Vars – true, this proposal solves numerous potential legal problems, as it defines the Town access, whereas before there was encroachment onto the Town-owned lots and it also eliminates the need to build a piece of road through the lots.

**4 True**

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4. The values of the surrounding properties will not be diminished.

- D. Pray true, the applicant has stated that he does not believe property values in the surrounding area will be diminished and there has been no evidence presented this evening that would indicate that.
- C. Vars — true, this proposal will not change anything visually on these lots. It will, instead, eliminate many of the potential problems that currently exist. This will have no effect on any of the surrounding properties from a value diminution standpoint.
- J. Ramsay— true, this will not have any imposition on any abutting properties, one way or the other. This also cleans up a lot of legal issues and gives the Town an important easement.
- D. Kirkwood – true, he echoed his colleagues’ opinions.

**4 True**

5. Literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship.

- C. Vars— true, this is a unique situation. The proposal is simply a lot line change and granted easements which will resolve many long-term issues. This is not in opposition to any kind of general public purposes.
- J. Ramsay— true, this proposal sanitizes the property ownership and use issues for these lots. This is a proposal between two amicable neighbors. Every property near the Lake has hardships cast upon them. These lots generally predate the ordinance and are all much smaller than the two-acre minimum lot size.
- D. Pray – true, there are special conditions of the properties, identified by the applicant, including the size, because the existing zoning was not imposed when the properties had their boundaries designated, and the location to wetlands and the Lake. She stated that she did not feel that any public purposes would be served by making the property conform to current zoning and that it would not be fair and would not help the situation. The proposal is a reasonable one, as it will give the applicant more room to enjoy his property and will allow for parking efficiencies for the entire area.
- D. Kirkwood – true, nonconforming uses are sometimes created through lot line changes, but this proposal will not cause that.

**The Chair stated that the application, as it passed all of the tests, is granted, with the condition that a topographical map be submitted to the Community Development Office, to be attached to the plan.**

**Jamie Ramsay moved to exit deliberations. Danielle Pray seconded.  
Voting: 4-0-0; motion carried unanimously.**

**OTHER BUSINESS:**

**1. Minutes: November 15, 2022**

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**APPROVED**

**Danielle Pray moved to approve the meeting minutes of November 15, 2022, as submitted. Jamie Ramsay seconded.**

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

## **2. Interview for Alternate Member**

Doug Kirkwood asked that the Zoom meeting be turned off. Danielle Pray asked why. Doug Kirkwood stated that the Board will next be interviewing an alternate member and it is within the Board's purview to do this privately. Danielle Pray stated that she believes interviews for new members are typically done in public session. Nic Strong agreed.

Danielle Pray introduced Tony Ortiz.

In response to a question from Jamie Ramsay, Tony Ortiz stated that he has not been before the Board in the past. He has a general interest in helping and understands that the Board needs alternate members. He understands that RSA 674 has extensive language regarding zoning. He has reviewed past Board decisions and feels comfortable with the Town's regulations. He specifically reviewed the Board's decisions from the past year.

Charlie Vars noted that he does not believe a past Board decision on Colonel Wilkins Road is being enforced as it should have been. He asked how the conditions can be enforced. It was noted that this could be done through the Board of Selectmen.

In response to a question from Charlie Vars, Tony Ortiz explained that his background is in office administration, human resources, payroll, and procedures and regulations. Charlie Vars asked if Tony Ortiz has any construction background or feel for land use items the Board may deal with. Tony Ortiz stated that he has reviewed past cases, including a specific one for a waiver. He has gained a familiarity for the Board's process.

Jamie Ramsay stated that the Board deals with very similar cases, but there is no precedence set. Each case stands on its own.

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**Charlie Vars moved that Tony Ortiz be asked to serve as an alternate member on the Zoning Board of Adjustment. Jamie Ramsay seconded.**

**Discussion:**

**Danielle Pray asked the Board to discuss the term for the position. Tony Ortiz stated that he would agree to a three-year term. Charlie Vars noted that the Board of Selectmen is often the one to make this decision. Danielle Pray explained that there is only one position open to fill and thus, the Board can make this decision.**

**In response to a question from Charlie Vars, Tony Ortiz stated that he understands this is an elected position.**

**Charlie Vars AMENDED his motion that Tony Ortiz be asked to serve as an alternate member on the Zoning Board of Adjustment, for a term ending in March 2026. Jamie Ramsay seconded.**

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

The Board thanked Tony Ortiz for his interest in volunteering.

**3. Any other business that may come before the Board**

Charlie Vars asked about the process for an elected member of the Board who has not attended any recent meetings and has not communicated with the Community Development Office as to the absences. This is putting the Board in a difficult position, as it is leaving applicants with a four-member Board. This is not fair to applicants. Danielle Pray noted that this is a good reason to have an alternate member.

Doug Kirkwood stated that he would write a letter to Tracy Lee McInnis, asking about her absence. The Board agreed with this approach.

**Charlie Vars moved to adjourn the meeting at 8:23pm. Jamie Ramsay seconded.  
Voting: 4-0-0; motion carried unanimously.**

Respectfully submitted,  
Kristan Patenaude

Minutes approved: January 17, 2023