

TOWN OF AMHERST
Zoning Board of Adjustment

March 21, 2023

APPROVED

1 In attendance: Doug Kirkwood (Chair), Danielle Pray (Vice Chair), Jamie Ramsay (Secretary),
2 Charlie Vars, and Tony Ortiz (alternate)
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 outlined the process and introduced
7 Board members and staff present.

8

9 *Tony Ortiz sat for Tracy McInnis.*

10

11 **EXTENSION REQUEST:**

12

13 **1. CASE #: PZ13589-011921 – VARIANCE**

14 **Paulo Caetano (Owner & Applicant), 6A Clark Island Road, PIN #: 008-108-000**

15 **– Request for relief from Article IV, Section 4.3, Paragraph D.1 to construct an**

16 **addition within the 50’ front setback. Zoned Residential Rural.**

17 Jamie Ramsay read and opened the case.

18

19 George Chadwick, Bedford Design Consultants, representing the applicant, stated that he had
20 represented the applicant in February of 2021, in front of this Board, regarding an addition in the
21 front yard setback. A variance was granted at that time. The applicant would now like to start the
22 construction of the addition to his home. The existing home is 15.4’ away from the property and
23 the addition would be 14.7’ away, a difference of 7/10 of a foot. George Chadwick asked if the
24 Board would like him to review the same criteria which were used for the granting of the
25 variance back in 2021.

26

27 Doug Kirkwood stated that he would like to hear the criteria again.

28

29 George Chadwick stated that the variance will not be contrary to the public interest as the
30 addition will only alter the front setback nonconformance by 7/10 of a foot. The ordinance
31 allows for expansion of non-conforming setbacks, per Section 3.2.D., as long as the alterations
32 do not increase the degree of nonconformance. The proposed addition does increase the
33 nonconformance by 1.4%, but the closest home is several thousand feet away and the area is
34 heavily wooded. In 2021, a Shoreland Permit was received for this expansion, as it is located
35 within the 50’ waterfront setback. Copies of this permit have been supplied to the Town, as it is
36 still current. There will be a decrease of 625 s.f. of impervious surface by removing existing
37 pavement at the end of the driveway. With the construction of a 305 s.f. addition, the net
38 decrease is 320 s.f. There will be no additional asphalt added to the property. The addition will
39 not alter any abutters’ view of the Lake. The addition will not alter the character of the
40 neighborhood, and no additional traffic, health, or safety, issues are created by this addition.

41

42 George Chadwick stated that granting the variance ensures that the spirit of the audience will be
43 observed because the purpose of the ordinance is to promote public health, safety, and welfare.

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44 One way this is accomplished is by grouping similar uses and imposing size restrictions. The
45 Residential Rural regulations for new subdivisions are reasonable, but many of these camp lots
46 created over 100 years ago cannot meet these regulations due to their small size. Due to the size
47 and shape of the existing parcel, the structure does not currently meet the setback. By allowing
48 the expansion of the home, the Board will not be threatening the spirit and intent of the
49 ordinance, or the Town Master Plan.

50
51 Regarding substantial justice, George Chadwick stated that, to be substantially just the
52 applicant's loss must not outweigh the benefit provided by the restriction. Continuing to allow
53 this parcel to be developed in a residential manner, consistent with the neighborhood, will benefit
54 the public. History has shown that expansions of parcels on the Lake have improved the area and
55 reduced impact to the environment by providing improved septic treatment and decreased direct
56 stormwater runoff discharge. In 2001, a new septic system was designed, permitted through the
57 Town and State, and has since been built.

58
59 George Chadwick stated that the value of surrounding properties will not be diminished by
60 granting the variance. The applicant plans to invest a great deal of money to improve his home.
61 A new, Clean Solution septic system has been constructed. There will be a decrease in lot
62 coverage, by removing 625 s.f. of pavement to accommodate the 305 s.f. addition. The property
63 does and will comply with NHDES and Amherst Building Codes. Granting the variance, to allow
64 for a decreased setback, will not alter the essential character of the neighborhood.

65
66 Regarding literal enforcement of the provisions of the ordinance resulting in an unnecessary
67 hardship, George Chadwick stated that no fair and substantial relationship exists between the
68 general purpose of the ordinance and the specific application of the provision, because the
69 purpose of the ordinance is to promote public health, safety, and welfare and there are similar
70 uses and dimensional violations in the Baboosic Lake area. The property in question is unique in
71 its surroundings, due to its size, shape, and location. The setback request does not alter the public
72 health, safety, and welfare, and there is no fair, substantial reason to prohibit this request. The
73 proposed use is a reasonable one because residential use is allowed in the Residential Rural
74 Zone.

75
76 George Chadwick noted that these were the criteria submitted originally for the request in 2021.
77 The applicant would like to square off his house by adding a 305 s.f. addition. A drip edge is also
78 being proposed, where possible. Regarding infiltration, the best area would be where the existing
79 septic system is located, so the infiltration must be designed around the existing property layout.

80
81 In response to a question from Jamie Ramsay regarding if this would include a rain garden,
82 George Chadwick stated that this will be a crushed stone infiltration trench. A previously
83 approved Shoreland Permit for the addition, septic system, and a retaining wall, was received.
84 The septic system and retaining wall were built, but then, due to the pandemic, the applicant
85 decided to sail the Caribbean with his family. The applicant has since hired New Hampshire
86 Builders to be the contractor for the project. George Chadwick explained that the applicant is

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87 now requesting a yearlong extension for this variance, in order to get through the building
88 season.

89

90 In response to a question from Doug Kirkwood, George Chadwick stated that no additional trees
91 are planned to be removed from the property. The existing property line splits two trees, a 15”
92 pine and a 30” oak, neither of which are proposed to be touched as part of this project. This
93 project looks to impact the front yard setback by 7/10 of a foot, and the property’s front yard
94 setback currently does not meet the requirements.

95

96 Danielle Pray noted that the addition is proposed to be L-shaped and only the front setback is
97 impacted by 7/10 of a foot. This is not an application for a new variance; this is a request for an
98 extension to a previously approved variance.

99

100 Jamie Ramsay noted that the proposed construction at this time is exactly what was approved by
101 variance two years ago. George Chadwick agreed and noted that the criteria he read through
102 were the same as in the original variance application.

103

104 Jamie Ramsay suggested that the Board could consider that the application being submitted for
105 an extension is exactly the same as the original application which was previously approved and
106 agree not to detail out each test. Doug Kirkwood stated that he believes the Board needs to run
107 through the tests to state that the information to qualify for each has not changed.

108

109 George Chadwick asked if the Board will be granting an extension or a new variance. Danielle
110 Pray stated that this is a conversation for the Board to have. George Chadwick stated that he has
111 been through this process in the past. Two other towns, via legal counsel, agreed that it was best
112 to grant an extension and not act as if they were new applications. He stated that he would
113 assume a new variance would be for two years. Danielle Pray asked if, in those other two cases,
114 the variances had expired. George Chadwick stated that that was not the case. Danielle Pray
115 stated that she believes this would be the issue in this case. It would then be an issue to discuss
116 this as an application for a new variance, as that is not how this was advertised and noticed.

117

118 Danielle Pray asked if the Board can extend a variance that has already expired. Nic Strong
119 stated that, through her experience on the Planning Board, if an extension is requested, the Board
120 has discretion to act on it. As this was posted and noticed as an extension hearing, abutters know
121 that the variance existed. There are no abutters present to speak to the proposed extension, so in
122 her mind, the Board can proceed.

123

124 Danielle Pray stated that the RSA does include language about the Zoning Board being able to
125 extend a variance, but the language in the ordinance clearly states that this previous variance is
126 null and void, as it has expired.

127

128 Doug Kirkwood asked the Board to vote to move into deliberations.

129

130 **Charlie Vars moved to enter into deliberations. Jamie Ramsay seconded.**

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131 **Voting: 5-0-0; motion carried unanimously.**

132

133 **Jamie Ramsay moved no regional impact. Charlie Vars seconded.**

134 **Voting: 5-0-0; motion carried unanimously.**

135

136 Danielle Pray stated that Nic Strong has received legal opinion from the NH Municipal
137 Association, which seems to state that the Board can grant this extension, but there is some
138 amount of confusion through the ordinance.

139

140 Charlie Vars asked what can be gained by going through the entire variance process again when
141 the information presented is exactly the same as what was previously approved two years ago,
142 instead of simply granting an extension. Danielle Pray stated that she believes the ordinance
143 needs to be updated. The only gain would be that a new variance would be for two years,
144 whereas the Board may choose to make the extension period shorter. Charlie Vars stated that, if
145 the Board decides to consider a new variance instead, it will have to make the applicant come
146 back at a future meeting for a vote, instead of simply finishing this item this evening. Charlie
147 Vars noted that four of the members present had sat on the original variance request and
148 approved it. Tony Ortiz was not previously on the Board for the approval of this variance.

149

150 In response to a question from Danielle Pray, Nic Strong stated that, if the Board decides not to
151 grant an extension, the applicant would need to come back for a new variance application.

152

153 Nic Strong explained that the Municipal Association recommended holding this as a public
154 hearing, instead of covering it under Other Business, in order to allow for notice to abutters and
155 the public.

156

157 Doug Kirkwood stated that this is not an application for an extension; it is an application for a
158 variance. Danielle Pray stated that this was noticed as an extension request. Jamie Ramsay stated
159 that it appears this is an extension for a lapsed variance and there is good legal counsel from the
160 Municipal Association.

161

162 Charlie Vars stated that he would be in favor of granting this extension, based on the fact that the
163 Board previously granted the variance with the same criteria.

164

165 Danielle Pray noted that the RSA states that a variance can be extended by the Zoning Board for
166 good cause. The Board should state this good cause. Charlie Vars noted that the pandemic is a
167 good cause.

168

169 Doug Kirkwood stated that he believes the Board should review each test, in order to cover its
170 bases. Danielle Pray stated that she would rather talk about the good cause for the extension
171 instead.

172

173 **Danielle Pray moved that the Board approve an extension for one year for good**
174 **cause, with the cause being the ramifications and effects of COVID-19 and the**

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175 **applicant being out of the country and not available to pursue this addition. The**
176 **applicant has done some work on this project, including building a retaining wall**
177 **and a new septic system. Charlie Vars seconded.**
178 **Voting: 4-1-0; motion carried [D. Kirkwood against].**

179
180 **Charlie Vars moved to exit deliberations. Doug Kirk declined the motion.**

181
182 Doug Kirkwood stated that the Board did not define “good cause.” Danielle Pray stated that she
183 stated this as part of the motion, including COVID-19, the owner being out of the country, and
184 some work being pursued on the property. Doug Kirkwood stated that good cause is a general
185 category, and anything could be included, including an applicant not wanting to pursue a project,
186 but this is not necessarily justifiable. Danielle Pray stated that every case is unique and in this
187 case, the applicant was out of the country on a sailboat. She believes the good cause enunciated
188 is appropriate. Jamie Ramsay stated that the effects of COVID-19 are hard to dispute. This
189 should not necessarily be written into the regulations but counts as a good cause demonstrated.
190 Danielle Pray stated that the applicant appears to have left on a sailboat during the pandemic for
191 his family’s safety, which is his choice.

192
193 Charlie Vars noted that this extension is within five weeks of its expiration date. He stated that
194 he is unsure if the applicant may have already met the initial construction date within that
195 variance time via the work that was done. Danielle Pray noted that a building permit may not
196 have been pulled though. Charlie Vars noted that there was no public comment or abutter
197 opposition to the project.

198
199 Charlie Vars noted that Tony Ortiz was not part of the original variance for this item, as Tim
200 Kachmar was sitting as an alternate at that time. Doug Kirkwood stated that Tony Ortiz did sit
201 through the criteria conversation this evening. Charlie Vars indicated that the language was
202 almost identical to the original approval.

203
204 Doug Kirkwood stated that the Board runs through the tests to establish the facts that were used
205 to support the decision. Findings of fact are needed for each application. Charlie Vars noted that
206 he would not object to going through the tests if there was concern by someone on the Board
207 about the application.

208
209 **Jamie Ramsay moved to exit deliberations. Charlie Vars seconded.**
210 **Voting: 5-0-0; motion carried unanimously.**

211
212 **OTHER BUSINESS:**

213
214 **1. Minutes: January 17, 2023**

215
216 **Jamie Ramsay moved to approve the meeting minutes of January 17, 2023, as**
217 **submitted. Danielle Pray seconded.**
218 **Voting: 4-0-1; motion carried [T. Ortiz abstained].**

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2. Any other business that may come before the Board

221

222 Danielle Pray stated that there is an upcoming training on April 29th that Board members may be
223 interested in. Nic Strong suggested that Board members register but could then watch the
224 recorded sessions at a later date.

225

226 Doug Kirkwood stated that OSI has released a handbook for ZBAs in the State. He encouraged
227 Board members to download and review it. Nic Strong stated that she would send a link.

228

229 **Charlie Vars moved to adjourn the meeting at 8:01pm. Danielle Pray seconded.**

230

Voting: 5-0-0; motion carried unanimously.

231

232 Respectfully submitted,

233 Kristan Patenaude

234

235 Minutes approved: May 16, 2023