

TOWN OF AMHERST  
Zoning Board of Adjustment

May 16, 2023

**APPROVED**

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

Doug Kirkwood called the meeting to order at 7:00pm. He outlined the process and introduced Board members and staff present.

**PUBLIC HEARINGS:**

**1. CASE #: PZ17270-042623 – VARIANCE**

**Scott McEttrick (Owner & Applicant); 6 North End of Lake, PIN #: 008-066-000 – Requesting relief from Article III, Section 3.5, Paragraph C to allow construction of an accessory dwelling unit on the second floor of a proposed detached garage on a nonconforming lot. Zoned Residential Rural.**

Jamie Ramsay read and opened the case.

Daniel Muller, Attorney at Cronin, Bisson, & Zalinsky, P.C., explained that Scott McEttrick owns a property located right below Camp Young Judaea. Historically, it consists of two lots of record, including a half-acre lot that was originally Tax Map 66 and a smaller lot of over 1/4 of an acre. In 2007, a previous owner voluntarily merged the two lots of land, so the existing lot is currently approximately 3/4 of an acre. When Scott McEttrick purchased the property, there was a single-family residence on the property, located closer to Baboosic Lake and a detached garage, located closer to North End of Lake Road. Scott McEttrick considered an accessory dwelling unit (ADU) which could be rented on occasion but will generally be used for visiting family members. The property is encumbered by two rights of way, one directly in front of the house and the other up along the boundary with an abutting property. An attached ADU is allowed by right, but the issue on this property is placement on the lot due to existing features. Scott McEttrick consulted with Meridian Land Services to create a proposal for a detached garage instead. The second detached garage would be two stories, with an ADU on the second floor. As part of this project, the septic system would also be improved on the property.

Attorney Muller explained that this concept went before the Planning Board for a Conditional Use Permit (CUP) because detached ADUs are only permitted by CUPs. The Planning Board discussed whether this property qualified for a CUP due to the existing nonconforming lot. The Planning Board decided to deny the application and ask that the applicant seek a variance from the Zoning Board of Adjustment (ZBA). The proposal before the ZBA is for a variance to allow this detached ADU which the Planning Board does not feel meets the CUP criteria bylaw. In this State, the board that wishes to grant Special Exception or CUP proposals cannot waive any of the requirements, so the applicant's only option is to seek a variance. The ZBA has the ability to grant relief from any provision of the Zoning Ordinance, including uses which would not otherwise comply with Special Exception or CUP requirements. Attorney Muller stated that because the CUP is considered an innovative land use control, there was no direct appeal to the

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ZBA. Per RSA 676:5 III, if the Planning Board makes a decision relative to an innovative land use control there is no direct administrative appeal to ZBA. However, there is a case called Bartlett vs. City of Manchester and also a statute, RSA 674:33 II, which gives the ZBA the same authority that any administrative official would have in terms of interpreting the zoning ordinance and determining whether a variance is required in the first instance. This is not an administrative appeal, but a separate statutory power. Bartlett vs. City of Manchester dealt with the issue and the City, in that case, determined that a variance was required for a particular use. The case went to the Zoning Board based on that position and then was appealed to the Superior Court. The case went up to the Supreme Court and the Supreme Court said that the Court and the Board before it did have the power to determine whether a variance was required in the first instance.

Attorney Muller stated that, for this application, a variance should not have been required. Under the Zoning Ordinance, Article 4, Section 4.2, allows nonconforming lots to be used in this Town. The language the Planning Board considered provides that property in question is in conformance with the dimensional requirements of the zone. However, Zoning Ordinance Section 4.2 allows for a nonconforming lot, if deemed to be in compliance, to be allowed to be used. If nonconforming lots are not eligible for that relief, this would eliminate a significant number of properties in Town from being able to add detached ADUs. Much of the housing stock in Amherst dates back to the 1970s and these houses predate the current standards. Attorney Muller stated that, from a legal perspective, it does not make sense to say that there is a provision that allows for a more intensive use on a property, but somehow disqualifies lots from an accessory use, particularly an accessory use. The law in this State has changed, such that it wants to promote ADUs as a way to increase housing stock.

Regarding the vested rights issue, Attorney Muller explained that this lot has been used since the 1940s for a principal use and for accessory uses. The owner has the right to use it. Attorney Muller asked, in the first instance, for the ZBA to find that a variance is not required. If the ZBA rules that it is required, he requested that the Board grant a variance. This property is located on Baboosic Lake, in an area of Town where there are a large number of smaller lots with less than adequate frontage per the current standards. This property has been improved since the 1940s and has had accessory structures constructed on it, such as the existing garage. Scott McEttrick is proposing to add another accessory structure. This is not unusual, as many residential properties have a range of accessory structures, such as sheds, patios, gazebos, etc. An attached ADU on this lot would result in a setback violation or be located too close to Baboosic Lake. The New Hampshire Department of Environmental Services takes the position that an attached ADU constitutes a portion of the principal use of the property, thus leading to some limitations for extending principal uses closer to the shoreland, per Section 483-B. There are rights of way that cross this property, making an attached ADU difficult. A detached ADU on this lot will not alter the essential character of the area. Likewise with respect to the public health, safety, and welfare. The intended principal uses are for family members or friends who are visiting. This may also be leased on occasion. As part of this project, there is a proposal to upgrade to the septic system, which is important for these Lake lots.

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89 Attorney Muller explained that the Planning Board had an issue regarding the stormwater  
90 drainage on the site. The project has been designed to avoid impacts from stormwater. Some of  
91 the areas that were previously disturbed on the site will be reclaimed as part of this proposal.  
92 This ADU will only be used on occasion and there will be no safety concerns in terms of  
93 increased traffic. In terms of the spirit of the ordinance, for the same reasons just given for public  
94 interest, granting of the variance will not be contrary to the spirit of the ordinance. In terms of  
95 substantial justice, this weighs the interests of the owner versus the public. Scott McEttrick is  
96 looking for an opportunity to add a modest dwelling unit to his property. In the event it is rented  
97 out, this gives extra help toward affording the cost of the property. It would also allow a place to  
98 house friends and family. The existing house is modestly sized, and more space is needed. There  
99 is not much of a contrary public interest in this case. This is located in the Rural Residential  
100 Zoning District, in an area that contains many smaller lots. This lot, with its configuration and  
101 size relative to some of the other lots, offers a place for the detached garage with ADU. This will  
102 not be located within any of the setbacks and will not present an issue of overcrowding with the  
103 other structures on site. This project also offers an upgraded septic system. There is a lack of  
104 public interest as opposed to the interests of the owner, so substantial justice would be done.  
105 Regarding surrounding property values, the new proposed structure will not go into any of the  
106 setbacks and will not encumber any of the rights of way which might impact the rights of others  
107 to cross. There is no relief being sought from the height of the proposed two-story structure  
108 which is 792 s.f. in size. Given all of these considerations, there is not an adverse impact arising  
109 from this proposal that would affect the value of any of the surrounding properties. The ADU is  
110 proposed to be located centrally on the property and relatively away from other surrounding  
111 properties. Regarding hardship, there are special conditions for this lot. It is located in a part of  
112 the Rural Residential District that contains smaller lots, commonly referred to as camp lots. This  
113 lot, compared to many of the other camp lots, is significantly larger and has a different  
114 configuration, allowing for a spot to build this detached ADU without crowding up next to the  
115 existing garage or the house. It also allows for some areas to be reclaimed around the property,  
116 which is always of interest near a body of water, and it gives room for a new septic system. All  
117 without encroaching upon any of the setbacks and other properties. The lack of overcrowding  
118 allows for the space to make sure there is not a fire safety issue on the site. The requirement that  
119 a lot meets the zoning ordinance is designed to make sure the lot is not overcrowded and allows  
120 for access across the frontage for emergency vehicles. There is no fair and substantial  
121 relationship between the general purposes of the relevant provision and its specific applications  
122 for this property. In terms of reasonableness, ADUs are a type of accessory structure and  
123 accessory use of the property. Accessory structures of this type are generally very common with  
124 residential properties. Given the practical difficulties of an attached ADU, a detached ADU and  
125 use is reasonable and, therefore, the hardship standard has been met.

126  
127 Charlie Vars asked about the bedrooms included in the septic system design. Taylor Hennas,  
128 Meridian Land Services, stated that the septic will service the existing house and the proposed  
129 ADU. The primary existing house is a three-bedroom unit, and Subsurface Bureau evaluates  
130 ADUs as a bedroom and a half. The septic system will be sized for a 4.5-bedroom unit.

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In response to a question from Charlie Vars, Taylor Hennas explained that there is a driveway shown on the left side of the property to service the proposed garage, which is under the ADU. There is currently an existing gravel driveway within that area. Part of the proposal that went in front of the Planning Board was to reclaim some gravel areas to reduce the overall driveway width to 12' for a standard residential driveway.

Charlie Vars stated that there was a question from the Planning Board regarding if the proposal landlocks an abutting property. However, it appears that the driveway would lead into the existing right of way, which is adjacent to the abutting property, and this would not be a problem. Attorney Muller explained that there are two existing access easements on the property. Taylor Hennas explained that there is an existing access easement that comes across the lot and one that leads down to the Lake. There is currently an existing driveway that is approximately 18' wide that comes down to the abutters' property. The intention is only to reduce the width of the driveway to 12'. Attorney Muller noted that the rights of way have to be left open as there are private property rights. Charlie Vars stated that this seems to be better access for the abutter.

Attorney Muller explained that the Enviro-Septic system was designed specifically to deal with smaller lots along waterfront properties. Taylor Hennas stated that this septic design has been locally, and State approved by the Subsurface Bureau. The proposed loading is 4.5 bedrooms and calculations were provided regarding the size and capacity for the leach field.

Charlie Vars asked the number of square feet in the existing house. He noted that the septic design only leaves 1.5 bedrooms for the ADU. Taylor Hennas explained that there is a two-bedroom maximum within an ADU. The proposed ADU will not exceed 70% of the 1,603 s.f. of the existing main house.

Jamie Ramsay stated that he has never heard of a septic system being designed around 1/2 a bedroom. Taylor Hennas explained that ADUs are designed based on 1.5 bedrooms. A bedroom is typically evaluated at 150 gallons per day and ADUs are evaluated at 225 gallons per day.

Tracy McInnis asked the maximum number of people that could occupy both structures at the same time. The applicant stated that she believes this to be 5-6 total for both dwelling units.

Jamie Ramsay asked about the retaining wall and concrete pad. Taylor Hennas stated that these are existing structures.

Tracy McInnis asked if additional boats will be brought onto the property if the ADU is rented or other people use it. Scott McEttrick stated that he did not believe so.

Danielle Pray asked if any approvals would be needed for the garage itself, without the ADU. Attorney Muller stated that he did not believe so.

Danielle Pray asked for the specific ordinance citation that a variance is being requested from. Attorney Muller explained that a variance is needed under Sections 3.5.C.6 and 3.18. These

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require a CUP for the detached ADU, and that the property in question is in conformance with the dimensional requirements of the zone or meets Planning Board standards with dimensional requirements for the reduction in dimensional requirements. The proposed use also must be consistent with the Amherst Master Plan, per Section 3.18.C.1.a. The Planning Board denied the application because it was unclear whether a nonconforming lot could be permitted for this. This is a nonconforming lot, as it does not meet the current size or current frontage requirements. The applicant's position is that, under Article 4 Section 4.2, there are protections that allow for the use of nonconforming lots. A variance should not be required because Section 4.2 allows for use of a nonconforming lot, while still complying with setbacks, etc. This nonconforming lot, originally from 1966, was merged with another lot to make it less nonconforming in 2007.

Doug Kirkwood noted that the Amherst Zoning Ordinance was enacted in 1963.

Regarding CUPs and Special Exceptions, unless the ordinance provides for a waiver, each element has to be satisfied in order to get relief. If these elements cannot be satisfied, due to special conditions, the only option is to seek a variance. The proposal is for a variance that would allow the applicant to build a detached ADU on a nonconforming lot. The Planning Board denied the application stating that a nonconforming lot does not satisfy Section 3.18.C.a. The applicant's argument is that it does, but in case the ZBA does not agree, a variance is being requested. The variance is for a detached ADU on a nonconforming lot. The relief is only needed from the ADU, not the garage. An attached ADU is generally allowed as a matter of right. Municipalities generally have to allow ADUs where they allow residential development, but the statute provides that additional relief is needed for a detached ADU. The Planning Board stated that this does not meet one of the requirements for a CUP, so the applicant came before the ZBA to seek a variance to allow for the use of a detached ADU.

Danielle Pray asked if the applicant believes the ZBA can grant relief from the CUP process from the Planning Board. Attorney Muller explained that statute 674:33.I.b. provides the ZBA's ability to vary the terms of the zoning ordinance and does not limit this in any way. The variance standard is generally higher than the CUP standard in most cases. The statute in terms of ruling in the first instance is RSA 674:33.II. and the case that interprets that is Bartlett vs. City of Manchester.

In response to a question from Jamie Ramsay, Taylor Hennas explained that the new septic system is being proposed due to the expanded load.

Charlie Vars asked about the proposed 33' dimension for the new garage. Taylor Hennas stated that there is no particular reason for this size, and it may be reduced as the floor plan is finalized.

Tony Ortiz noted that the applicant stated that he may choose to lease the ADU to third parties from time to time. He asked if this would be a short-term lease, similar to an Airbnb, or a long-term lease. Scott McEttrick stated that this would likely be a private rental. Tony Ortiz asked if changing this to a third-party rental down the line would require the applicant to come back

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before the ZBA under a home occupancy. Doug Kirkwood stated that this would be a question for Town Counsel.

Doug Kirkwood asked for public comment.

Rick Boyd, abutter, asked if the ZBA completed a site walk of the property. Tony Ortiz stated that the Planning Board did. Rick Boyd suggested that the ZBA would benefit from the feedback received from the site walk. The lot is rather small, and this proposal could see multiple families living on the lot. The applicant has cut down quite a few trees and the runoff from the property is horrible. This small lot is not suited for multiple families.

Jamie Ramsay noted that, in history on the ZBA, this Board does not usually perform site walks. The deliberation of this Board is based on the evidence that is given to it during a hearing and there is some risk that the Board could deem there not to be sufficient evidence in the applicant's submission with a chance of the Board ruling against the proposal.

Tracy McInnis asked Rick Boyd if the tree removal and runoff are affecting his property detrimentally. He stated that it affects his property and another abutter, Mike Isabelle, a lot more so.

Cathy Boyd asked if this will be a State approved septic system or just an extension of the leach field. She asked about how many bedrooms it will be loaded for. The Lake is dealing with cyanobacteria and there is concern regarding runoff from a new structure. There was previously a problem with runoff from the Camp Young Judaea property through the applicant's property and out into the Lake. Now that the trees have been removed, there is nothing to stop water running directly onto hers and other abutting properties.

Danielle Pray asked why the existing garage was not considered for the ADU. Attorney Muller explained that the existing garage is used for the applicant's parking. The applicant wants to maintain that garage and provide parking for their guests. The existing garage is a single-story garage. Danielle Pray asked about building an ADU above the existing garage. Attorney Muller explained that this would not leave parking for their guests. This might lead to guests parking in the driveway instead.

Jamie Ramsay asked how the garage bays in the proposed garage would be accessed. Taylor Hennis explained that there is a turning radius on the modified gravel driveway that would turn into the new garage. Jamie Ramsay asked if this would create a second curb cut and Taylor Hennis stated that it would not.

Tony Ortiz asked where guests currently park. The applicant stated that this usually occurs in the grass.

Tracy McInnis stated that abutters have expressed concern regarding runoff and asked how this will be addressed. Taylor Hennis stated that, within the CUP application, the applicant was

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seeking a permit for impact within the wetland buffer, including reclaiming the gravel and reducing the overall width of the driveway. The applicant also proposed to implement hedges surrounding the proposed garage and the existing garage to minimize runoff. Drip edges will be used for the runoff as well.

Mike Isabelle stated that he recently put a small addition on his property and the largest issue was the septic system. He installed an Advanced On-site Solution System through Meridian Land Services. This is a state-of-the-art system. There is a hope to keep the Lake clean. Taylor Hennas stated that the McEttrick proposal is not for an Advanced On-site Solution system, as these can be quite costly, but instead for a standard Enviro system which will still meet all requirements.

Mike Isabelle noted that he shares a driveway with the applicant. The existing gravel driveway which runs through a right of way he has on the applicant's property goes straight to his garage. The concern is with the runoff from this driveway, as it is right next to a retention pond. He asked if there will be anyone living in the ADU constantly. Scott McEttrick stated that this would only be used when family comes to stay.

Mike Isabelle expressed concern with accessing the new garage from the existing driveway, especially if the width of the driveway is reduced further. He asked about formalizing the right of way to allow for access to his property into the future. Doug Kirkwood noted that this is an issue for a lawyer and not the ZBA.

Tracy McInnis read from the Planning Board minutes of February 1, 2023. Line 124 stated that 'the existing [septic] system is proposed to be used for the existing structure with another system proposed which will service the detached garage and the proposed ADU. These will be entirely separate systems, with one new leach field to service both the existing house and the detached garage. Each building will have its own tank and pump exchange system.' She asked if this has changed on the plan since that meeting. Taylor Hennas stated that the plan has not changed since it was before the Planning Board. The existing tank will remain in use for the primary house. There will be a new tank for the new garage and ADU. These will both pump to the leach field which is sized for both units. Tracy McInnis noted that Planning Board member Bill Stoughton also asked for calculations for the 50-year storm. Taylor Hennas stated that she provided calculations, showing that the overall runoff on the site will be reduced for the 1-, 2-, 10-, 25- and 50-year storms, as well as the volume requirements. These calculations show a reduction in runoff patterns on this site.

Charlie Vars noted that the only thing the ZBA is voting on tonight is a variance. Other items, such as existing right of ways, should be addressed with the Planning Board. The Planning Board's concern with the application was regarding the size of the property and it not meeting the current zoning requirements. The ZBA needs to decide whether this meets the criteria for the additional dwelling unit proposed, and the other items need to be resolved subsequently with the Planning Board. The Planning Board basically stated that it would not make a decision on this

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unless the ZBA agreed that it is okay to put this detached ADU on a nonconforming lot. The ZBA could condition this on that there be no more than two bedrooms in the ADU.

Tracy McInnis noted that the Planning Board also stated that the proposed drip edges do not quite meet the requirements for nitrogen removal and may not be feasible on the lot due to the 75' setbacks. She asked if the proposal was abandoned, and the applicant considered an ADU above the existing garage if this would meet the 75' setbacks. Taylor Hennas stated that the drip edges are proposed as small compact solutions to runoff and water infiltration. A waiver was requested of the Planning Board from the required 60% nitrogen and phosphorus removal and 90% total suspended solids (TSS) removal, as the drip edges proposed meet 60% phosphorus, 55% nitrogen, and 90% TSS removal. These do meet the intent of the Amherst Stormwater Regulations, which are based off the MS-4 regulations.

**2. CASE #: PZ17271-042623 – VARIANCE**

**Louise Norwood (Owner & Applicant); 89 Chestnut Hill Road, PIN #: 011-007-001 – Request for relief from Article III, Section 3.15, Paragraph D to operate a private wedding venue as a Home Occupation. Zoned Northern Rural.**

Jamie Ramsay read and opened the case.

Tom Burns, TF Moran, stated that the property in question has been owned and maintained by the applicants for over 50 years. This is a 22-acre parcel in the Northern Rural Zoning District. It is a beautifully landscaped and meticulously maintained property. The applicant is proposing a limited number of wedding events on the property, allowing friends, family, associates, and others interested, the opportunity to use this land as a backdrop. A variance is being sought from Article 3 Section 3.15.D, to allow for a wedding venue of this nature to be considered as a home occupation and to be permitted at this location. This is being considered a home occupation instead of a commercial business operation because of the proposed limitations on it. This will not be a full-time operation or a primary business. The applicants are proposing potentially 5-10 events per year on the site. Given the size of the property and the nature of this type of event, it is not much different than holding a large family function on a site. The applicant is proposing approximately 1-2 events per month, held during certain months of the year. Guests would be able to park in a field on the west side of the home, with an additional area to place a tent. It is the responsibility of the party using the site to bring in portable toilets, so there is no impact proposed to the existing septic system. Guests will not be using the house for these functions. There is no on-street parking proposed, and no signage proposed. There will be no employees involved in this project. This project will be screened from the roads by more than 100'. There is an existing bridge and gazebo on the property which guests will be able to use to take wedding photos or hold their ceremony at. Due to the limited capacity and timing of this proposal, it is believed to fall within the spirit and the intent of being considered a Class B or C Home Occupation. There will be approximately 20-30 cars on average for a function at this time, which will not be material different from a large family event or graduation party.



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Tom Burns stated that granting a variance will not be contrary to the public interest and will ensure the spirit of the ordinance would be observed as there are no changes proposed to the existing structure and no permanent changes to the lot. Guests are responsible for raising and lowering a tent and removing all trash. There is no onsite food preparation proposed. There is no alteration to the rural character of the property, or the neighboring properties proposed. Due to the infrequency of the events, the lack of employees, the lack of signage or advertising visible from the street, and the fact that the functions themselves will not be visible, this proposal would be a less impactful use than those typically allowed under a Class B or C Home Occupation. Relative to the matter of substantial justice being done, due to the limited impact of this use and the fact that it does not alter the neighborhood, the scenic nature of this property, or the surrounding properties, and instead allows the property to exemplify the character of Amherst itself and of this district, the benefits for the applicant far outweigh any potential harm to the general public. There will be no diminution in the value of surrounding properties, given that the proposed use does not detract from the character of this neighborhood, and is less impactful than other potential uses that are allowed under a Class B or C Home Occupation. The literal enforcement of the provisions of the ordinance would result in an unnecessary hardship because the proposed use would comply with all the requirements and limitations typical of a Class B or C Home Occupation. The proposed use is a reasonable one and similar to activities commonly held in a rural neighborhood or on a residential property, in terms of the size and scope of a gathering that could be held by right without a variance request.

Tracy McInnis asked how alcohol usage will be addressed, as this could potentially affect the public safety. Tom Burns stated that this is the homeowners' property, and they will be trying to control the nature of, and the size and scale of these events. The applicant will be proposing restrictions and very conscientious of what happens on the property during these events.

Jamie Ramsay asked if these events will be controlled by an assembly permit or through the Police Department. Tom Burns stated that someone hosting a large event on their property could see volumes and similar items to this proposal. He is unsure if a resident would typically have to provide a police detail or have an assembly permit for those events. The applicant will take all necessary steps required. Jamie Ramsay noted that this will be a business and a venue for this function, so there should be some mechanism in place as a consideration for neighbors and abutters. The applicant stated that she has held large family gatherings on the site for years and never considered these items necessary. Jamie Ramsay noted that this item is likely beyond the purview of this Board.

Tracy McInnis asked about the proposed operating times. Tom Burns stated that the Class C Home Occupation hours of operation are typically 8:00AM to 6:00 PM, Mondays through Fridays, and 9:00AM to 8:00PM on Saturdays. Given the proposed use is for weddings or similar events, there is a proposed stop time of 10:00 PM. There would not be more than one event a day.

In response to a question from Tony Ortiz, Tom Burns stated that the proposal is for 5-10 events per year.

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In response to a question from Danielle Pray, the applicant stated that she would anticipate not having more than approximately 70 people at any given event. Danielle Pray noted that the Class C permit allows for up to 10 clients or customers per day on average.

Charlie Vars noted that Norwood Real Estate and Vars Associates have transacted in a fair number of sales over the years with this applicant. He noted that he does not have any conflict of interest in this case. He asked about the proposed catering building and the applicant stated that there is an existing pool house building that could be used.

Charlie Vars noted that there is a notice of violation associated with this property. The applicant stated that someone approached the Town with this information. She spoke to her neighbors, and no one seemed to have an issue. She believes this was brought up by a competitor.

Danielle Pray asked how the business is advertised. The applicant stated that this is usually done by word of mouth and a website. There are no paper advertisements.

Danielle Pray asked about the fifth variance criteria, regarding the special conditions of the property that distinguish it from others in the area. Tom Burns stated that, relative to the proposed use, this is a very picturesque property, which already contains a number of structures that lend themselves to a wedding venue. The site allows for the ability for vehicles to park on the site in a field. There is gated access to the site, allowing for the events to be kept private.

In response to a question from Jamie Ramsay, Tom Burns stated that there are no improvements proposed to the existing parking areas. There are no proposed alterations to the site or the character of this neighborhood.

Tracy McInnis asked about the drainage currently in the field parking area. The applicant stated that there is currently fairly good runoff from the area.

Danielle Pray asked if there have been any complaints from neighbors about noise. There is a noise section in the permit which states that the noise should be no more than 65 decibels on the property line.

Eleanor Szum, 82 Chestnut Hill Road, stated that she is the nearest abutter and has never heard any noise from any of the previous parties.

Tom Burns stated that the proposed tent location is approximately 300-400 feet away from the closest home. There is a wooded perimeter around the property.

**Charlie Vars moved to enter deliberations. Jamie Ramsay seconded.  
Voting: 5-0-0; motion carried unanimously.**

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**CASE #: PZ17270-042623 – VARIANCE**

**Scott McEttrick (Owner & Applicant); 6 North End of Lake, PIN #: 008-066-000 –**  
**Requesting relief from Article III, Section 3.5, Paragraph C to allow construction of an**  
**accessory dwelling unit on the second floor of a proposed detached garage on a non-**  
**conforming lot. Zoned Residential Rural.**

**Jamie Ramsay moved no regional impact. Tracy McInnis seconded.**  
**Voting: 5-0-0; motion carried unanimously.**

Charlie Vars stated that the application is substantially appropriate and proposes better access, and a better septic system that enhances the property. There is no other place to put an ADU without encroaching on the existing easements. The request to place it in the proposed location is valid. The septic system and site work will have to meet all current regulations. He stated that he believes this should be approved, with a condition that there be no more than two bedrooms in the ADU. He did some calculations based on the 0.78 acres and 15% of that acreage would allow for 2,178 s.f. of occupied buildings. The two units add up to 1,852 s.f. The proposed location of the ADU, with the garage under, allows for additional parking. This will be built into an embankment, with an 8–10-foot grade differential, and the front side of it will likely be on grade level. The current garage is likely 2”x4” framing and it would be very difficult to design an ADU to sit on top of it.

Doug Kirkwood stated that the variance request seeks relief from Article 3.5 paragraph C. The problem is that this situation could be remedied by more than just what Article 3.5.C says. The application is not written properly for this relief. The application states that relief is requested for the provisions of Article 3 Section 3.5 paragraph C, in order that he/she may construct an accessory dwelling unit on the second floor of a proposed detached garage on a nonconforming lot. Danielle Pray stated that there are two requests. One for relief from 3.5 paragraph C.6. and the other from Section 3.18 C.1.a., which is what the Planning Board denied the application on. Section 3.5 paragraph C.6. is to construct the accessory building detached from the principal dwelling, which may be permitted as a conditional use in accordance with the provisions of Section 3.18. Her understanding is that the applicant is seeking relief from the CUP process. If the ZBA grants a variance, this request would not go back to the Planning Board and the work could move forward through the variance. The applicant’s attorney seemed to think that the ZBA has the authority to do away with those CUP requirements. She would like to hear from Town Counsel if the ZBA has the authority to do this. There are several items in Section 3.18 that discuss groundwater resources not adversely affecting the area, filing a nonresidential site plan, and that the use will not be more objectionable to nearby properties. If the ZBA has the authority, she would want to consider if the ZBA does not want to then send this back to the Planning Board. The applicant is also seeking relief from Section 3.18. C.1.a. The Planning Board denied the application on the dimensions for a nonconforming lot per this Section.

Jamie Ramsay stated that the only item that rises to the level of a variance request for this application is the ADU. He did not realize that this could release the applicant from the responsibility of going back to the Planning Board. This is a sensitive site, and he would like to

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hear how the Planning Board would propose to monitor the construction of this proposal. Charlie Vars stated that he believes the ZBA would only address the ADU, with the rest of the items to go back to the Planning Board. Danielle Pray stated that there are two requests for relief at play and she would like to hear from Town Counsel.

Tracy McInnis noted that there is likely a well on the site and she asked if there would be a second well dug for the ADU, or if both will operate off the same well. She asked how this might affect groundwater on the property.

Charlie Vars asked if the ZBA could approve the ADU and turn down the request for the applicant not to go back to the Planning Board. Danielle Pray stated that she has a threshold question of whether the ZBA has that authority. She would like this answered by Town Counsel.

Jamie Ramsay asked Nic Strong the timeframe for getting answers from Town Counsel. Nic Strong stated that he is very responsive.

**Danielle Pray moved to refer questions on this application to Town Counsel and continue this hearing to June 20, 2023, at 7pm, at Town Hall. Jamie Ramsay seconded.**

**Discussion:**

**Danielle Pray stated that one of the main questions for Town Counsel is what authority the ZBA has to grant a variance from Article 3.5 paragraph C.**

**Charlie Vars asked if the applicant could consider withdrawing the request. An applicant can withdraw at any time, but to proceed on this item he would like it to be clear as to what the ZBA can do. This is not clear from what came out of the minutes of the Planning Board meeting.**

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

**CASE #: PZ17271-042623 – VARIANCE**

**Louise Norwood (Owner & Applicant); 89 Chestnut Hill Road, PIN #: 011-007-001 – Request for relief from Article III, Section 3.15, Paragraph D to operate a private wedding venue as a Home Occupation. Zoned Northern Rural.**

**Danielle Pray moved no regional impact. Charlie Vars seconded.  
Voting: 5-0-0; motion carried unanimously.**

Charlie Vars stated that he does not believe the parking area will be able to be seen off Chesnut Hill Road, due to the tree line and the way the road sits.

Jamie Ramsay stated that drainage does not seem to be an issue on the site.

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Tracy McInnis stated that this is a beautiful site, buffered naturally by trees and shrubbery, the proposed tent site sits approximately 400' back from the road, and the proposal will not likely impact the neighbors.

Danielle Pray asked if a separate alcohol license is needed for the site. This could be included as a condition if approval is needed. Jamie Ramsay stated that this would likely come under the purview of the Town Health Inspector. The timing of operations could also be conditioned. Jamie Ramsay noted that most responsible vendors have at least one State licensed bartender. Danielle Pray stated that she was asking about an Amherst license. Tracy McInnis noted that this likely would be included in a permit encompassed with the vendor's licensing.

The Board reviewed the criteria tests:

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

- T. McInnis – true, granting the variance would not be contrary to the public interest because the property is well treed so there is a noise buffer, and the owners of the property are going to be on site for every party. She expressed concern about the health and safety in regard to how alcohol on site is handled.
- C. Vars – true, he has attended other events of this type with alcohol and not seen it get out of control. This proposal will not do anything to diminish the character of the neighborhood.
- J. Ramsay– true, he stated that the best testimony was from the neighbors who have not seen or heard events on the property in the past.
- D. Pray – true, she stated that granting this will not threaten the public health, safety, or welfare. There do not appear to be any noise issues. There is no change in character of the neighborhood; in fact, the venue takes advantage of the picturesque countryside. All items will be brought on site for the event and then removed.
- D. Kirkwood – true, as previously stated by other Board members.

**5 True**

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

- C. Vars – true, this home occupation is proposed to have strict, self-imposed limitations. All items will be brought on and off site for each event. There will be no signage and little to no noise. This application meets the spirit of the ordinance.
- J. Ramsay– true, this does not impact the neighborhood or abutters if at all, or only in a very minor way. The spirit of the ordinance is observed.
- D. Pray – true, the purpose of a home occupation is to protect the character of a residential neighborhood and not detract from the rural character of the Town, nor create traffic, environmental, or aesthetic impacts substantially different than the impacts created by other permitted uses. She does not find that any of those occur on the temporary event days as discussed. The Board could consider limitations on the number of event days, and the applicant has stated this to be 5-10 per year.
- T. McInnis – true, the proposal will not affect the neighbors. Any noise will be buffered by existing trees and only 5-10 events are proposed over the course of a year.

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- D. Kirkwood – true, as previously stated by other Board members.

**5 True**

**3. Substantial justice is done.**

- J. Ramsay – true, substantial justice is the applicant’s enjoyment of the property. There was no impact on any abutters shown. The applicants would not propose this if it somehow negatively impacted their home’s reputation.
- D. Pray– true, the proposed Home Occupation is consistent with the area. This is an expansion of a residential use, as the applicants have previously held private parties on the site. The property seems to be set up perfectly for this type of venue.
- T. McInnis – true, this site is perfect for the proposed venue type. The applicants will be able to share their beautiful property with others and will be able to add a bit of supplemental income.
- C. Vars – true, there is no harm to the general public.
- D. Kirkwood – true, as previously stated by other Board members.

**5 True**

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

- D. Pray – true, no evidence was presented that values would be diminished. The applicant makes the case that the rural character of the neighborhood remains intact and impacts, such as noise, are nonexistent. The limited number of days that this venue would be operating would not severely impact any traffic, environmental, or aesthetic issues.
- T. McInnis – true, this will not diminish the surrounding properties, as nothing is being permanently built and the area is secluded and well buffered.
- C. Vars — true, the proposed use is less impactful than what is allowed under the Class B and C Home Occupations.
- J. Ramsay– true, if this use was somehow impactful to the neighborhood, the Board and Town would have heard about it long before now.
- D. Kirkwood – true, as previously stated by other Board members.

**5 True**

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

- T. McInnis – true, denial would give the applicants an unnecessary hardship, as this is a beautiful piece of property, and it would not be fair to not allow the applicants to share it and gain some supplemental income. The proposed use will not affect any of the surrounding homes or families.
- C. Vars — true, there is no impact on the Town or the general public by what is being requested, and thus it is a very reasonable request.

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- J. Ramsay– true, this is a unique piece of property. He does not see it having a huge impact on the neighborhood. No case that comes before this Board is precedent setting to similar applications in the future. A future applicant would have a difficult time proving the same hardship as this property.
- D. Pray – true, some of the special conditions of this property include its location, and its existing facilities, such as a gazebo and a catering building as well as the photo area and the scenery. These distinguish it from other properties in the area. The general purpose of the ordinance is to protect the rural character and not detract from it. This proposal carries out the purpose of the ordinance. The proposed use is a reasonable one because people have the right to use their homes as occupations. The proposed type of Home Occupation seems to be suited for this property.
- D. Kirkwood – true, as previously stated by other Board members, and the fact that, if there was a problem with the events hosted on this site, the Board would likely have heard about it.

**5 True**

The Board discussed potential conditions of approval. Danielle Pray stated that she would like to have a condition regarding alcohol being served complying with all state and local laws. The Board could also consider a maximum number of participants for events. The Board also previously conditioned an approval on a variance running with the current owners of a property. Charlie Vars stated that variances legally run with the property. Nic Strong agreed that variances run with the land. Jamie Ramsay suggested that the variance could run with the maximum number of event guests.

Nic Strong asked if the Board would consider, as part of the variance approval, stating that it is considering the proposal as a Home Occupation, as it does not meet the definition of Home Occupation because it is not inside a building. Granting this as a Home Occupation is a variance in and of itself.

Danielle Pray stated that she reviewed the Home Occupation section that states 10 clients per day. Multiplying 10 by 30 days leads to 300, which could be used as a calculation for this proposal.

Doug Kirkwood read the proposed conditions: alcohol service by licensed bartenders overseen by New Hampshire Liquor Commission; events limited to 125 people; the proposal is a Home Occupation; the number of events is limited to 10 per year; and the closing time is 10:00PM. Danielle Pray noted that she would like to make sure alcohol use on the property also complies with local laws, but the State may be in charge of that. Jamie Ramsay asked about the maximum number of events for the property. Danielle Pray noted that this is being applied for as a home occupation and not a commercial enterprise, so she is in favor of keeping the number of events at 10 per year. Jamie Ramsay suggested that 12 events would be a reasonable number. Tracy McInnis agreed that word of mouth might spread about the beautiful property and there may be more people wanting to have events there.

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**Jamie Ramsay moved to approve the conditions, as discussed, with an amendment that the number of events be limited to 12 per year. There was no second.**

**Tracy McInnis moved to approve proposed conditions: alcohol service by licensed bartenders overseen by New Hampshire Liquor Commission; events limited to 125 people; the proposal is a home occupation; the number of events is limited to 12 per year; and the closing time is 10:00PM.**

**Discussion:**

**Danielle Pray stated that she preferred to limit this to 10 events per year as that was what was presented by the applicants and she did not want to increase it. Jamie Ramsay stated that 10 events had been presented. The Board agreed.**

**Charlie Vars seconded.**

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

Doug Kirkwood stated that the application, having passed all of the tests and with the approved conditions, is granted.

**OTHER BUSINESS:**

**1. Minutes: March 21, 2023**

**Charlie Vars moved to approve the meeting minutes of March 21, 2023, as submitted. Danielle Pray seconded.**

**Voting: 4-0-1; motion carried [T. McInnis abstaining].**

**ELECTION OF OFFICERS**

Charlie Vars noted that he and Doug Kirkwood had a previous discussion regarding if the current Chair was not going to run again and has one year left, he might agree to step aside so that he would be available to help the replacement. Charlie Vars noted that Doug Kirkwood had expressed concern that Danielle Pray may have a conflict of interest due to her being a Selectman.

Doug Kirkwood stated that he reached out to Town Counsel but had not yet heard back. Danielle Pray pointed out that the Town has a new Town Counsel, Drummond Woodsum. She noted that there is not a conflict of interest. If any case ever came before both boards, she would recuse herself. The conflict is with herself, and she will make that decision.

Charlie Vars asked Doug Kirkwood if it was now his intention to stay on as Chair for one more year. Doug Kirkwood stated that was the case.



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**Charlie Vars moved to nominate Doug Kirkwood as Chair of the Zoning Board of Adjustment. Jamie Ramsay seconded.**

**Charlie Vars moved to close nominations. Danielle Pray seconded.  
Voting: 5-0-0; motion carried unanimously.**

**Charlie Vars moved to nominate Danielle Pray as Vice Chair of the Zoning Board of Adjustment. Jamie Ramsay seconded.**

**Charlie Vars moved to close nominations. Jamie Ramsay seconded.  
Voting: 5-0-0; motion carried unanimously.**

**Charlie Vars moved to nominate Jamie Ramsay as Secretary/Treasurer of the Zoning Board of Adjustment. Tracy McInnis seconded.  
Voting: 5-0-0; motion carried unanimously.**

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

Danielle Pray asked who will reach out to Town Counsel to get answers on the questions raised this evening, suggesting that she and Nic Strong would be able to set that up. The Board agreed that Danielle Pray and Nic Strong would reach out and answers would be sent back to the entire Board.

Charlie Vars noted that, for the past few months, any item before the Planning Board where there is a question as to whether it meets the current Zoning Ordinance, has been sent to the ZBA to be dealt with. He believes this is new. Danielle Pray noted that the ZBA can grant variances for those items. She does not see a problem in that.

Charlie Vars asked if the applicants' counsel is allowed to change the wording of the variance. Danielle Pray stated that this is a question for Town Counsel. There will not be another notification of abutters, as the item was continued this evening.

**Tracy McInnis moved to adjourn the meeting at 10:15pm. Danielle Pray seconded.  
Voting: 5-0-0; motion carried unanimously.**

Respectfully submitted,  
Kristan Patenaude

Minutes approved: July 18, 2023