

TOWN OF AMHERST  
Zoning Board of Adjustment

October 17, 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 for the meeting,  
7 including that the applicant will make a presentation, the public will then have a chance to  
8 comment and ask questions through the Chair, and the Board will have the ability to comment at  
9 any time. The Board will then move into the deliberations section of the meeting, at which time  
10 public comment will cease. The Board will review regional impact of each case and consider  
11 approval or denial with or without conditions. If an applicant does not agree with the decision,  
12 they can apply for a request for a rehearing within 30 days of this meeting. In the application for  
13 a rehearing, the applicant needs to add a letter explaining why they think the rehearing is  
14 necessary. If the applicant is still not satisfied after the rehearing, there is recourse to the  
15 Superior Court, within 30 days from the rehearing date.

16  
17 Doug Kirkwood introduced the Board members.  
18

19 *Tony Ortiz sat for Tracy McInnis.*  
20

21 **REHEARING:**

22 **Withdrawal requested by applicant**

23 1. **CASE #: PZ17271-042623 – REHEARING FOR VARIANCE** Louise Norwood  
24 **(Owner & Applicant); 89 Chestnut Hill Road, PIN #: 011-007-001** – Request for relief  
25 from Article III, Section 3.15, Paragraph D to operate a private wedding venue as a Home  
26 Occupation. *Zoned Northern Rural. Continued from September 19, 2023.*

27  
28 Jamie Ramsay read and opened the case. The Chair noted that the applicant has withdrawn this  
29 application.

30  
31 **PUBLIC HEARINGS:**

32 2. **CASE #: PZ17719-081123 – APPEAL OF ADMINISTRATIVE DECISION**  
33 **Sten Larson (Applicant); 14 Buckridge Drive, PIN #: 007-017-012** – Request for  
34 relief from Article IV, Section 4.11 to appeal an administrative decision of the Office  
35 of Community Development regarding their issuance of a building permit that may  
36 violate the Zoning Ordinance. *Zoned Residential Rural. Continued from September 19,*  
37 *2023.*

38  
39 3. **CASE #: PZ17765-082523 – APPEAL OF ADMINISTRATIVE DECISION**  
40 **Hal Amadon (Applicant); 33 Buckridge Drive, PIN #: 007-017-033** – Request for  
41 relief from Article IV, Section 4.11 to appeal an administrative decision of the Office  
42 of Community Development regarding their issuance of a building permit that may

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44       **violate the Zoning Ordinance. *Zoned Residential Rural.* Continued from September 19,**  
45       **2023.**

46  
47 Jamie Ramsay read and opened both cases. Doug Kirkwood asked the applicants if both cases, as  
48 they were quite similar, could be heard simultaneously. The applicants agreed.  
49

50 Nic Strong stated that the Board previously closed the public hearings for these cases and is in  
51 deliberations only at this time. Laura Spector-Morgan, Esq., Mitchell Municipal Group, P.A.,  
52 Counsel for the ZBA, noted that the Board could reopen the public hearing, but the hearings  
53 should then be publicly re-noticed with that information.  
54

55       **Charlie Vars moved to reopen the public hearings. There was discussion regarding**  
56       **this motion. There was no second. Motion died on the floor.**

57  
58       **Danielle Pray moved to continue deliberations on the two cases. Jamie Ramsay**  
59       **seconded.**

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

61  
62 Doug Kirkwood noted that the item being appealed is the decision of the Building Inspector and  
63 not the building permit itself.  
64

65 Danielle Pray stated that the Board is discussing the interpretation by the Building Inspector  
66 regarding agricultural use on these lots. The complaint alleges violations of the Wetland  
67 Ordinance. In order to do work within a wetland, applicants need a Conditional Use Permit  
68 (CUP) from the Planning Board or for the work to be considered a permitted use. In this case, the  
69 use was identified by the Building Inspector as being an agricultural use, with the area being  
70 used for lawn and grass. The record shows the interpretation of the Building Inspector's  
71 definition of agricultural uses. There are also numerous interpretations from others, including the  
72 Town Engineer and Community Development Director, that lawn and grass is not an agricultural  
73 use. Danielle Pray stated that she agrees with this interpretation. In reviewing the totality of the  
74 Zoning Ordinance, this definition is geared towards farming and other subsistence activities. She  
75 agreed that grass and lawn is not an agricultural use, rendering the lawn use connected to this  
76 building permit as a violation of the Zoning Ordinance.  
77

78 Tony Ortiz agreed that the Board should review the RSA in its entirety. He does not believe  
79 grass/lawn is an agricultural crop grown and harvested extensively for profit or for food, as per  
80 the RSA. He echoed Danielle Pray's comments.  
81

82 Charlie Vars stated that he does not believe the grass is a violation. The Building Inspector used  
83 the information that was provided to him, within his authority, and he properly interpreted the  
84 Ordinance.  
85

86 Doug Kirkwood stated that, upon reading the RSA, he has a hard time believing a lawn is an  
87 agricultural use. He believes the Building Inspector misinterpreted the definition of an

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88 agricultural use. When the definition is put into context, it is hard to justify a lawn as an  
89 agricultural use.

90

91 Jamie Ramsay had no comment at this time.

92

93 Danielle Pray stated that there were also some disturbance actions taken on the sites, such as  
94 logging and other activities. These are also a violation of the Zoning Ordinance, in her opinion. It  
95 is clear from the Ordinance that only permitted uses specified in the Zoning Ordinance and uses  
96 identified through the CUP process are allowed in the Wetlands District.

97

98 Jamie Ramsay asked if disturbances on the sites occurred prior to the building permit issuance.  
99 Danielle Pray stated that the record does not show the date of the building permit and the Board  
100 did not have the opportunity to ask anyone with that knowledge. The record is also not clear as to  
101 when the disturbances on the sites occurred. The Building Inspector did note that he attended to  
102 some logging on the site, but she is unclear of the details.

103

104 Laura Spector-Morgan, Esq., noted that the building permit for 14 Buckridge Drive was  
105 approved by the Building Inspector on May 26, 2023, and the building permit for 33 Buckridge  
106 Drive was approved on May 31, 2023. These dates were included in a September 25, 2023, letter  
107 to the Board from Cronin, Bisson, & Zalinsky.

108

109 Jamie Ramsay asked if site disturbance occurred before or after the building permits were issued.  
110 Attorney Spector-Morgan noted, per Attorney Bisson's letter, that Kali Construction, in the 40  
111 days it took the applicants to file their appeals, cleared the lots and poured the foundation on 14  
112 Buckridge Drive. It is unclear if there was additional clearing activity on these lots prior to that.

113

**CASE #: PZ17719-081123 – APPEAL OF ADMINISTRATIVE DECISION &**  
**CASE #: PZ17765-082523 – APPEAL OF ADMINISTRATIVE DECISION**

116

117 Danielle Pray moved that the Building Inspector's interpretation of grass as used on  
118 these properties does not meet the definition of agricultural uses in the Zoning  
119 Ordinance. Tony Ortiz seconded.

120

**Discussion:**

121 Doug Kirkwood asked each Board member to give their vote and the reasons for it.

123

124 Tony Ortiz stated that he will vote to uphold the appeal. He believes the Building  
125 Inspector misinterpreted the Ordinance and RSA 21:34-a, in finding there were no  
126 violations where construction occurred within the wetland buffer, and the proposal  
127 to install a lawn within the buffer. Tony Ortiz stated that he believes the proposed  
128 grass area is not recognized as a permissible agricultural use under the RSA and is  
129 therefore not permitted under Article 4 Section 4.11.G of the Zoning Ordinance. As  
130 a result, he believes the construction activity that occurred in the wetland buffer and

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131           **the proposed lawn are in violation of Article 4 section 4.11 of the Zoning Ordinance**  
132           **and will vote to uphold the appeal.**

133  
134           **Charlie Vars stated that he believes the Building Inspector used the information**  
135           **provided to him from the engineering firm. It was within the Building Inspector's**  
136           **authority to properly interpret the ordinance and he made the right decision. He**  
137           **will not vote to uphold the appeal.**

138  
139           **Jamie Ramsay stated that the Building Inspector used all of the information that**  
140           **was provided to him on which to make the decision. The interpretation of grass as**  
141           **an agricultural use is a reach, but he does not support the appeal.**

142  
143           **Danielle Pray clarified to Jamie Ramsay that the only point of discussion for this**  
144           **motion is the interpretation of grass as an agricultural use. Jamie Ramsay stated**  
145           **that grass is not an agricultural use. Danielle Pray asked Jamie Ramsay to clarify**  
146           **his vote. Jamie Ramsay agreed that grass is not an agricultural use and will then**  
147           **vote affirmatively on the motion.**

148  
149           **Danielle Pray stated that this motion deals with the interpretation of the Building**  
150           **Inspector that grass or lawn is an agricultural use. For purposes of the Zoning**  
151           **Ordinance, that is an incorrect interpretation. She echoed Jamie Ramsay's**  
152           **comments that the Building Inspector used the information available to him and**  
153           **that some of the terms require interpretation because not everyone will know the**  
154           **correct interpretation. That is one reason this Board is hearing this item, and the**  
155           **motion seeks to clarify whether that interpretation was correct.**

156  
157           **Doug Kirkwood noted that some logging activity happened on those sites and this**  
158           **activity should not occur within a buffer. He agreed with Danielle Pray's**  
159           **interpretation and explanation.**

160  
161           **Attorney Spector-Morgan noted that the vote for this motion so far is that the lawn**  
162           **would not be a permitted use within the buffer area.**

163  
164           **Voting: 4-1-0; motion carried.**

165  
166           Attorney Spector-Morgan noted that there was a second issue raised, as to whether the clearing  
167           activities within the buffer also violated the Zoning Ordinance. The Board could include this as a  
168           separate motion. Danielle Pray stated that Doug Kirkwood did mention the clearing that took  
169           place during his vote on the last motion. Attorney Spector-Morgan stated that the Board should  
170           decide if it finds that both the logging and the lawn were violations. Danielle Pray stated that she  
171           believes this was mentioned within the previous motion. Attorney Spector-Morgan confirmed  
172           that the Board believed that the previous motion found both the logging and the lawn to be a  
173           violation. The Board confirmed that their vote had been on both issues.

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175 Attorney Spector-Morgan stated that with an administrative appeal, the Board stands in the shoes  
176 of the administrative official. The Board is essentially acting as the Building Inspector and has  
177 found that there was a violation. The Board can now either decide that it wants to impose a  
178 remedy, or it can decide that the Building Inspector can impose the remedy. The potential  
179 remedies are revocation of the building permit for violation of the Ordinance, as the building  
180 permit was dependent on complying with the Ordinance, or an order for remediation of the site  
181 and the buffer. The developer will then have various avenues to follow.  
182

183 Charlie Vars noted that there was some remediation discussed during the previous meeting and  
184 asked if that strictly related to the trees or rocks disturbed on the site. He wanted to know when  
185 this was done and stated that it would be difficult to determine a remedy without this  
186 information. Doug Kirkwood stated that this is unclear. Tony Ortiz noted that, per a letter from  
187 the Building Inspector on August 11, 2023, erosion and sedimentation controls were installed.  
188 The controls were installed with the use of silt fencing, resulting in compliance being met. Jamie  
189 Ramsay noted that this was installed in response to the violation noticed by the Building  
190 Inspector.  
191

192 Danielle Pray stated that she reviewed documents from the wetland scientist regarding a survey  
193 layout worksheet and staking out the wetland buffer. There was information that the buffer was  
194 to remain untouched, unless allowed by a CUP or as a permitted use. There was also information  
195 regarding restoration of the buffer and installation of placards to define the wetland district.  
196

197 Jamie Ramsay stated that no sort of mapping was provided to the Building Inspector. Danielle  
198 Pray stated that there is additional interpretation regarding the administrative decision about the  
199 wetland delineation itself. Part of the administrative decision includes the Building Inspector  
200 stating, using the delineation that was provided to him and his interpretation of the information  
201 obtained, there were no violations. Danielle Pray stated that the interpretation of the wetland  
202 buffer itself is an issue and that the Board could make that interpretation at tonight's meeting.  
203 The Board was provided testimony from a wetland scientist regarding the delineation according  
204 to the wetland's definition. This is how the size of the wetland is interpreted, and that size  
205 determines which classification in the Ordinance the wetland falls into. In Section 9.1  
206 Definitions of the Ordinance, it states that, when classifying wetlands for the purposes of this  
207 Ordinance, separate evaluation units shall be considered and drawn at each location where the  
208 wetland narrows to less than 50'. The wetland scientist testified in an e-mail that this delineation  
209 was done on a lot north of one of these lots but there were no drawn maps submitted for the lots  
210 in question. The only map submitted was for a septic system. There are no drawn maps that  
211 indicate the 50' pinch anywhere. The Board heard some testimony that this was done but there  
212 are no drawn maps, as specified in the Ordinance. The drawn maps were supposed to be  
213 considered by the Town, but could not be considered as they were not submitted. This part of the  
214 Ordinance was not followed, and this should be incorporated in the decision. This is not to cast  
215 stones, but to make sure the Board follows the Ordinance. It appears the wetland scientist was  
216 the only person who considered the maps and there is no indication that any were drawn. The  
217 maps would determine the buffer, so the Board has to consider a 25' buffer as this is what the  
218 wetland scientist determined, but this should have been a determination for the Town to make.

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219  
220 Attorney Spector-Morgan noted that, if the Board is going to require remediation as part of its  
221 decision, the Board could instruct the Building Inspector to obtain the required wetlands  
222 mapping to determine exactly what kind of wetland this is. Danielle Pray stated that she is in  
223 favor of remediation.

224  
225 In response to a question from Tony Ortiz, Danielle Pray stated that she is leaning toward  
226 requiring the Building Inspector to obtain the wetlands delineation.

227  
228 While discussing a timeline for this item, Attorney Spector-Morgan noted that the Board should  
229 require this delineation before construction on the site resumes. Doug Kirkwood noted that the  
230 Town has a wetland scientist who works for the Town Engineer. Charlie Vars asked if the Town  
231 Engineer should do the mapping, or someone else. Danielle Pray stated that this would not be up  
232 to the Board if it delegates this item to the Building Inspector. Jamie Ramsay stated that whoever  
233 did it would be producing certified information and he would like someone to do this as soon as  
234 possible. He agreed with delegating this item to the Building Inspector. Doug Kirkwood stated  
235 that the appeal was of the Building Inspector's decision so it was reasonable to have him go back  
236 and get the plans.

237  
238 Jamie Ramsay stated that he has not heard any information that the site is unstable. There has  
239 been some remediation already completed.

240  
241     **Danielle Pray moved that the buffers are to remain untouched, unless allowed by  
CUP or permitted use, and that restoration of the buffer occur with installation of  
placards defining the WWCD; further, that the wetlands and their delineation  
showing where the wetlands narrow to less than 50' be physically drawn and  
mapped by a wetland scientist and considered by the Building Inspector prior to or  
before construction resumes. Jamie Ramsay seconded.**

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

243  
244 Charlie Vars confirmed that these motions were with regard to both lots. The Board agreed.

245  
246     **Charlie Vars moved to exit deliberations. Jamie Ramsay seconded.  
Voting: 5-0-0; motion carried unanimously.**

247  
248     **2. CASE #: PZ17930-092723 –VARIANCE**

249     **Timothy Yarnall & Christine Ferrari (Owners) & Crossroads Contracting - Nick  
Couture (Applicant); 5 School Street, PIN #: 017-080-000.** Request for relief from  
250 Article IV, Section 4.3, Paragraph D1, 2 & 3 to allow the construction of an addition and  
251 garage. Zoned Residential/Rural with Historic District overlay.

252  
253 Jamie Ramsay read and opened the hearing.

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262 Nick Couture, Crossroads Contracting, explained that this deals with setbacks for the property at  
263 5 School Street. This is an old lot and is registered in the Town's Historic District. The  
264 requirements for historic lots were a lot different than they are today. The current requirement for  
265 a lot in this Zone is two acres and this lot is only 1/3 of an acre. This is also a corner lot. When  
266 one considers the 50' setback along with the rear setbacks, it basically turns this into an  
267 unbuildable lot. There is an existing garage on the lot that is beyond the point of repair. The  
268 intention is to tear it down and rebuild it. There is a safety issue when backing out of the garage  
269 onto Boston Post Road. The proposal is to build a new garage and move it away from the house,  
270 allowing the original curb cut to remain and allowing for a turnaround to pull onto the street. The  
271 second part of the project involves the main structure. The original structure was a Town bank  
272 which is in excellent condition. There were three additions built onto it over the years heading  
273 towards the garage. The additions are not in as good of a condition as the original structure. The  
274 proposal is to remove those three additions and replace them with an addition and a porch. The  
275 porch will be fitting for the house and will architecturally replicate the existing porch on the front  
276 of the house. The proposed building square footage is very similar to the existing structure, but in  
277 a different layout. Regarding setbacks, the part of the existing structure that is closest to the street  
278 is 14.3' and the proposed, being the proposed porch, would be 14.08'. The proposed addition  
279 shape is being driven by utilization of the existing footprint.  
280

281 Tony Ortiz asked about the dimensions of the existing garage. Nick Couture stated that he does  
282 not have the exact dimensions, but the existing garage is slightly smaller than the proposed  
283 garage.  
284

285 In response to a question from Charlie Vars, Nick Couture stated that the addition foundations  
286 are a dry-stacked stone. Jamie Ramsay asked if this is a stable foundation to build on. Nick  
287 Couture stated that it is not. This is being worked on with the Historic District Commission.  
288

289 In response to a question from Charlie Vars, Timothy Yarnall stated that the proposed porch is  
290 slightly smaller than the existing porch.  
291

292 Nick Couture stated that the proposed addition will include a wood frame and be wood sided.  
293 Jamie Ramsay asked if the brick on the existing structure will remain. Nick Couture stated that,  
294 due to the condition of the foundation, brick, and substructure of the brick, this is proposed to be  
295 removed. This will also be addressed with the Historic District Commission.  
296

297 Jamie Ramsay stated that the current setback from the northern border of the property is  
298 approximately 88'. The proposal is to move this north by approximately 20'. Nick Couture  
299 agreed. Jamie Ramsay noted that the front wall of the structure will be in the same orientation  
300 and so will not expand on the existing violation. Nick Couture stated that this area will actually  
301 pull away from the street a bit, changing from 14.3' to 14.38'.  
302

303 Charlie Vars stated that there will still be approximately 75' between this area and the  
304 neighboring property, which is unique for the center of Amherst. This project will also have little  
305 effect to the house next to it. He likes the proposed driveway changes.

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- 306  
307 In response to a question from Jamie Ramsay, Nick Couture stated that the structural engineer  
308 for the project is Nancy Nichols, Nichols Engineering.
- 309  
310 In response to a question from Charlie Vars, Nick Couture stated that the new driveway will be a  
311 combination of granite pavers and asphalt. This item is also being considered with the Historic  
312 District Commission.
- 313  
314 Danielle Pray asked about the closest distance of the current house to Boston Post Road. Nick  
315 Couture stated that this distance is 18.52'. With the proposed porch, the closest distance will be  
316 14.08'. Danielle Pray asked if the closest point of the addition structure to the abutter's property  
317 line is 18.5' and 22.4'. Nick Couture agreed with this. He noted that there is a bulkhead walkout  
318 set of stairs proposed, and this area will move slightly closer to the abutter's property.
- 319  
320 In response to a question from Charlie Vars, Nick Couture stated that there is no plan to move  
321 the walk-in safe at all.
- 322  
323 Charlie Vars noted that the proposed porch will be slightly closer to the road, but this area is  
324 proposed to be open and so there will not be much of a change visually. Timothy Yarnall noted  
325 that there is an existing fence which goes all the way to the driveway in that area.
- 326  
327 In response to a question from Jamie Ramsay, Nick Couture stated that there is approximately 8'  
328 from the curb to the fence.
- 329  
330 Danielle Pray asked if there also needs to be a variance regarding the square footage proposed.  
331 Nic Strong stated that the square footage is not changing enough to bring this into play. The  
332 variance required is for setbacks on both sides and all abutters were notified of this hearing.
- 333  
334 Charlie Vars noted that the existing residence on the adjacent lot is quite small. Danielle Pray  
335 asked if there is a fence between this property and the abutters to the south. Timothy Yarnall  
336 stated that there is a fence between this lot and the property on School Street. There is a small  
337 gap between his front porch and their front door where there is no fence.
- 338  
339 Doug Kirkwood asked if the underground utilities have been examined. Nick Couture stated that  
340 he knows where the water lines are coming into the house. There is a bit of uncertainty as to  
341 where the septic systems are located. The utilities for the garage are via a hanging electrical line  
342 which will be moved underground.
- 343  
344 Charlie Vars noted that the plans incorrectly label School Street as Main Street. This can be  
345 amended on the plan set. Charlie Vars stated that he believes the proposal is a classy approach to  
346 an addition in the center of Town and it really enhances this lot, while not doing any harm to the  
347 abutters.
- 348  
349 Danielle Pray asked the applicant to address the variance criteria.

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350

351 Nick Couture addressed the variance criteria.

352

353 *1) How will granting the variance not be contrary to public interest?*

354 Granting of the variance will not be contrary to public interest because granting of this  
355 variance will not conflict with the purpose of the ordinance. Properties in the Residential  
356 Rural Zone require a 50' setback, as well as a two-acre minimum lot size. Due to the age of  
357 this property, it is only 0.335 acres, which makes the 50' setback substantially  
358 more burdensome when applied to this particular property, to the point where it would be an  
359 unbuildable lot.

360

361 Granting of this variance will not threaten public health, safety, or welfare. The relocation of  
362 the garage and adding a turnaround will eliminate the need to back on or off Boston Post  
363 Road, which will significantly increase safety.

364

365 *2) How will granting of the variance ensure the spirit of the ordinance will be observed?  
366 Please explain.*

367 Granting of this variance will allow for using setbacks similar to what exist on the  
368 property today, which the applicant believes is in keeping with the spirit of the Ordinance. It  
369 will also provide relief from an unnecessary hardship when applying the current setback to  
370 this small historic property.

371

372 *3) How will substantial justice be done?*

373 Substantial justice will be done by granting of this variance, providing the homeowner  
374 relief from an unnecessary hardship while maintaining a minimum setback similar to what  
375 exists today. This will also allow for a design that will compliment this historic home which  
376 is also in the interest of the community.

377

378 *4) How will the value of surrounding properties not be diminished? Please explain.*

379 The value of the surrounding properties will not be diminished but rather increased by  
380 the proposed renovations.

381

382 *5) Literal enforcement of the provisions of the ordinance would result in unnecessary  
383 hardship because:*

384 *(A) For the purpose of this sub paragraph, “unnecessary hardship” means that owning  
385 to special conditions of the property that distinguish it from other properties in the area;*

386 *(B) Explain how, if the criteria in subparagraph A above are not established, an  
387 unnecessary hardship will be deemed to exist if, and only if, owing to special conditions  
388 of the property that distinguish it from other properties in the area, the property cannot  
389 be reasonably used in strict conformance with the ordinance, and a variance is therefore  
390 necessary to enable a reasonable use of it:*

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391  
392 Properties in the Residential Rural Zone require a 50' setback as well as a two-acre  
393 minimum lot size. Due to the age of this property, it is only 0.335 Acres, which makes  
394 the 50' setback substantially more burdensome when applied to this particular property.  
395 This creates an unnecessary hardship when applying the 50' setback. The  
396 applicant believes the proposed use is reasonable due to the hardship and the  
397 proposed setback being similar to the current 14.3' smallest setback that exists today.  
398

399 Danielle Pray asked what else about the property makes it special that would require this  
400 variance. Nick Couture stated that the shape of the property and its location are unique. This is a  
401 narrow corner lot. When all the parts of the subparagraph are applied, not only the regular  
402 setback but also the corner setback which is 50', there is not much space left. The north end of  
403 the property itself from front to back is only 46.62'. Applying the setbacks on this lot turn it into  
404 a non-buildable lot. When applying the 50' setback, this takes up approximately 90% of the  
405 property and the 10% that was left is within the rear setbacks.

406  
407 Doug Kirkwood asked for public comment. There was none at this time.  
408

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

411  
412 **CASE #: PZ17930-092723 –VARIANCE**

413  
414       **Jamie Ramsay moved no regional impact. Danielle Pray seconded.**  
415       **Voting: 5-0-0; motion carried unanimously.**

416  
417 Jamie Ramsay stated that this hearing deals with the existing garage and setbacks. This proposal  
418 tastefully deals with these items by moving the garage off Boston Post Road leading to increased  
419 safety. This proposal will not create an expansion of the existing non-conformity. This is a  
420 preexisting non-conforming lot. He is sorry to see the existing brick addition be removed, but an  
421 unsafe foundation cannot be built on.

422  
423 Danielle Pray noted that she is a little concerned with the proposed porch moving closer to the  
424 road. This is proposed to be open and so she is okay with it, but she would like a condition of  
425 approval that the porch not be enclosed. Board members agreed.

426  
427 The Board reviewed the criteria tests:

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

- 429
  - 430           • C. Vars – true, this will not be in conflict with the Ordinance. The 50' setback makes  
431           it so that almost 100% of the lot is unbuildable. The proposal will be an asset to the  
432           future community, which is in the public interest.
  - 433           • J. Ramsay – true, the purpose of the ordinance is for the public health, safety, welfare  
434           and/or all of them. The proposed plan is better than the pre-existing condition, if for  
no other reason, than the proposed design of the garage.

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- 435        • D. Pray – true, the test is if the proposal threatens the public health, safety, or welfare  
436        and she does not find that it does, as there has been no evidence presented that it will.  
437        Also, this test discusses if this proposal alters the essential character of the locality,  
438        and she does not believe it does that either. Both the garage and addition are replacing  
439        existing structures. There is a slight change in the dimensions, but the replacements  
440        will not change the character of the area.
- 441        • T. Ortiz – true, granting the variance would not alter the essential character of the  
442        neighborhood and is not against the public interest. The property is an undersized lot  
443        and therefore requires a variance for the proposal. The proposal to add a garage and  
444        more living space is a reasonable use.
- 445        • D. Kirkwood – true, it is not safe to have a garage that requires backing out onto a  
446        heavily traveled highway. The proposal will impact the public health, safety, and  
447        welfare positively.

448        **5 True**

449  
450        **2. The Variance will ensure that the spirit of the ordinance will be observed.**

- 451        • J. Ramsay – true, the proposal will not negatively affect the character of the  
452        neighborhood. Any proposed improvements made to the design seem to fit. This will  
453        not negatively impact the spirit of the Ordinance.
- 454        • D. Pray – true, she reiterated the points she made for criteria 1.
- 455        • T. Ortiz – true, granting the variance will not threaten the public health, safety, or  
456        welfare. Regarding the proposed garage, it improves public safety as it eliminates the  
457        need for the property owners and guests to back their vehicles onto Boston Post Road.  
458        The proposed addition does not alter the character of the neighborhood and keeps the  
459        characteristics of the existing structure.
- 460        • C. Vars – true, for the reasons already iterated.
- 461        • D. Kirkwood – true, for the reasons already iterated.

462        **5 True**

463        **3. Substantial justice is done.**

- 464        • D. Pray – true, the rule for this test is that any loss to the individual that is not  
465        outweighed by a gain to the general public is an injustice. If the applicant does not  
466        receive a variance there will be an old garage on the property and an addition that  
467        does not suit the owner's purposes. There has not been any indication that the general  
468        public has anything to gain from denying this variance.
- 469        • T. Ortiz – true, granting the variance will permit the applicant reasonable use of the  
470        property by adding additional living space and allowing vehicles to safely exit the  
471        driveway. Denying the variance provides no benefit to the public.
- 472        • C. Vars – true, the proposed addition and porch are actually shorter than the current  
473        addition on the back of the house. This is beneficial from an aesthetic standpoint.
- 474        • J. Ramsay – true, substantial justice will be done because the proposal is not a radical  
475        change to the design of the property, but instead an improvement of it. Enjoyment of  
476        one's property is a large part of why this Board exists.

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- 477        • D. Kirkwood – true, justice would be done due to additional safety accessing the  
478        driveway and garage. The proposal is mindful of the existing architecture.  
479        **5 True**

- 480
- 481        **4. The values of the surrounding properties will not be diminished.**
- 482        • C. Vars — true, this proposal is similar to the other house on the road parallel to Main  
483        Street that has just been completed. This adds greatly to the value of surrounding  
484        properties. Allowing vehicles to access the property without backing into the roadway  
485        also increases the value of that piece of property.
- 486        • J. Ramsay – true, the proposal will do nothing to diminish any surrounding property.  
487        The value of surrounding properties is generally through the allure of the Historic  
488        District and the real estate market demand. This proposal will not affect values one  
489        way or the other, except to help this property remain a very desirable piece of  
490        property through a design that does the property justice.
- 491        • D. Pray – true, there has been no evidence presented that this proposal would  
492        diminish any values in the area. The applicant presented information that the current  
493        garage is older and improving that alone would probably improve prices, along with a  
494        new modern addition which is in keeping with the character of the neighborhood. It is  
495        not for her to decide if surrounding values will increase, but they definitely will not  
496        diminish.
- 497        • T. Ortiz – true, no evidence has been provided that indicates surrounding property  
498        values would decrease as a result of this proposal. The proposal will actually increase  
499        the value of this property and, in turn, possibly could be considered a benefit for the  
500        surrounding properties.
- 501        • D. Kirkwood – true, for the reasons already stated.
- 502        **5 True**

503

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

- 506        • D. Pray – true, the special conditions of the property are, as identified by the  
507        applicant, the age of the property and the small lot. There are few opportunities for a  
508        project to not affect the setbacks. The shape of the property is narrow, and this is a  
509        corner lot, making setback requirements impossible. No fair relationship exists  
510        between the general public purposes and not allowing a variance. The applicant wants  
511        to replace an old garage in disrepair with a new modern garage and addition. This  
512        does not significantly change the current impacts of the property. There is no general  
513        public purpose which would overrule the applicant installing a new garage and a new  
514        addition. These are reasonable uses of the property.
- 515        • T. Ortiz – true, the proposed use is a reasonable one and, given the lot size, the  
516        applicant has presented the best option. By denying this request, it would cause harm  
517        to the property owner with no benefit to the health, safety, or welfare of the public.  
He echoed statements made by Danielle Pray.

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- 518        • C. Vars — true, it is valuable to swap a small difference in setbacks for the upgrade  
519        of this property. Literal enforcement would make this lot non-buildable. There are  
520        special conditions relating to this lot.  
521        • J. Ramsay— true, the biggest hardship facing this applicant is the lot's size and  
522        configuration. The current setbacks would make this lot non-buildable. The lot is  
523        preexisting, nonconforming leading to a requirement for a variance. The proposal will  
524        not be offensive to other properties.  
525        • D. Kirkwood – true, this proposal will have a positive impact on the appeal of the  
526        neighborhood.

527        **5 True**

528 Doug Kirkwood stated that the application, having passed all of the tests is granted, with the  
529 condition that the proposed rear (northern) porch shall not be enclosed.

530  
531        **Jamie Ramsay moved to exit deliberations. Danielle Pray seconded.**  
532        **Voting: 5-0-0; motion carried unanimously.**

533  
534        **OTHER BUSINESS:**

535  
536        **1. Minutes: July 18, 2023; August 15, 2023; and September 19, 2023**

537  
538        **Danielle Pray moved to approve the meeting minutes of July 18, 2023, as presented.**  
539        **Jamie Ramsay seconded.**  
540        **Voting: 5-0-0; motion carried unanimously.**

541  
542        **Danielle Pray moved to approve the meeting minutes of August 15, 2023, as**  
543        **presented. Charlie Vars seconded.**  
544        **Voting: 5-0-0; motion carried unanimously.**

545  
546 The Board agreed to table discussion of the September 19, 2023, meeting minutes to a future  
547 meeting.

548  
549        **2. Any other business that may come before the Board**

550  
551        **Charlie Vars moved to adjourn the meeting at 8:56pm. Tony Ortiz seconded.**  
552        **Voting: 5-0-0; motion carried unanimously.**

553  
554        Respectfully submitted,  
555        Kristan Patenaude