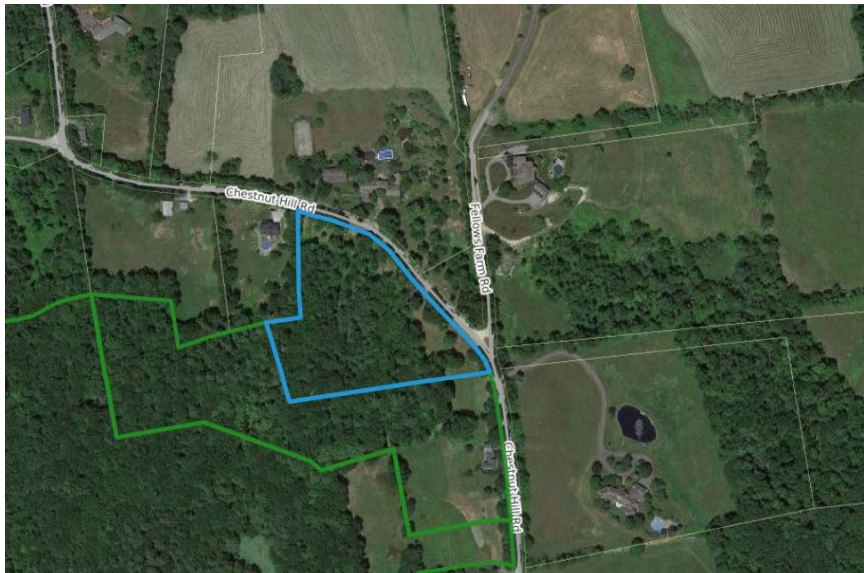




Town of Amherst, New Hampshire
Office of Community Development
Building · Code Enforcement · Planning · Zoning · Economic Development

STAFF REPORT

CASE #: PZ18647-030424
MEETING DATE: April 16, 2024
COMPLETED BY: Nic Strong, Community Development Director
ZONING DISTRICT: Northern Rural (NR) & Wetland & Watershed Conservation District (WWCD) Overlay
APPLICATION DESIGNATION: Variance
PROPERTY OWNER: Karl & Louise Norwood
APPLICANT/AGENT: NAI Norwood Group
Christopher Drescher, Esq.
MAP/LOT: Map 11 Lot 10
LOT SIZE: 4.00 acres
LOCATION OF PROPERTY: 86 Chestnut Hill Road



REQUEST FOR RELIEF:

- Relief is requested from the provisions of Article IV, Section 4.11, Paragraphs F. 1. b. and G., in order that the applicant may construct a single-family home at the south-easterly corner of the property with a wetland buffer impact of 1,403 s.f. +/-, bringing the proposal within 21.4 feet of the wetland buffer.

SUBMISSION ITEMS:

- An application form, completed and signed by Karl Norwood, as owner and applicant, was submitted on February 16, 2024, along with:
 - list of abutters with addresses and mailing labels;
 - authorization for Cronin, Bisson & Zalinsky to act on the Norwood's behalf;
 - four 11" x 17" copies of Tax Map 11 Lot 10 Wetland Buffer Impact Exhibit Karl & Louise Norwood Land 86 Chestnut Hill Road Amherst, New Hampshire Owned By & Prepared For: Karl & Louis Norwood, Scale: As Shown, February 6, 2024;
 - six-page Variance Application Narrative;
 - 8.5" x 11" copy of Wetland Buffer Impact Exhibit;
 - ten copies of application packet;
 - application fees of \$206 were paid.
- There are no outstanding fees.

BACKGROUND/CHRONOLOGY:

- The application was heard at the March 19, 2024, meeting. See attached minutes.
- A site walk was scheduled for Thursday, April 4, 2024, at 5:00 p.m. The site walk was cancelled due to the snowstorm. The Board could consider rescheduling the site walk to a new date.

DISTRICT REQUIREMENTS:

- The property is located in the Northern Rural District.
- The following Permitted Uses are allowed in the Northern Rural District:
 1. One (1) family dwelling and accessory buildings or structures. (3-2-76, 3-11-08)
 2. Farm, agricultural, or nursery use. (3-2-76)
 3. Roadside Stand for the sale of farm produce or nursery products. (3-2-76)
 4. Home Occupation. (11-2-82)
 5. Planned Residential Development (PRD). In order to achieve the purpose of this section, Planned Residential Development shall be encouraged as the principal method of future development of this zone. (See Art. IV, Sec. 4.17) (11-2-82)
 6. (Deleted 3-8-22)
 7. Workforce Housing (see Section 4.14)
 8. Amateur, non-profit sports and recreation uses subject to obtaining Planning Board site approval which may provide at minimum for setbacks, buffers, sanitary facilities, parking, and traffic impact. Uses involving motorized recreation vehicles are prohibited. Night lighting may be allowed by the Planning Board when more than five hundred (500) feet from any residential use but not after 9:00 p.m. (3-12-91)
 9. Accessory apartment (3-8-16)
- **A single-family dwelling is proposed and is a permitted use.**

SCENIC SETBACK REQUIREMENTS:

SECTION E: SCENIC ROADS:

Designated March 7, 1972:

1. Chestnut Hill Road from Prokos' driveway (lot # 10-33) to New Boston line.
2. Eaton Road from Christian Hill to Mont Vernon Road
3. Green Road from Christian Hill to Mont Vernon Road.
4. Lyndeboro Road from NH Rte. 101 (Amherst Street) to NH Rte. 13.
5. Spring Road from Bellerose property (Lot #6-46-5) to the Merrimack line.
6. Austin Road from Mack Hill to Horace Greeley Road.
7. Ponemah Hill Road from Hollis Road to the Milford Town line.
8. Old Milford Road westerly from NH Rte. 101 (Amherst St.) to NH Rte. 101.
9. Col. Wilkins Road from Old Milford Road

Designated March 6, 1973:

10. Brook Road from Horace Greeley Road to the Town Conservation Area
11. Dodge Road from the water hole below the present Town Dump (lot #6-70) to Austin Road.

Designated March 11, 1980:

12. Baboosic Lake Road from Pavillion Road to the Merrimack town line.

Designated March 11, 1986:

13. County Road from the junction with Ravine Road to the Souhegan River.

Designated March 17, 1989:

14. Lynch Farm Road.

Designated June 15, 1989:

15. Pond Parrish Road

Designated March 14, 1998:

16. Mack Hill Road

- Article III, Section 3.11, Paragraphs B (12.):

A. PURPOSE. The purpose of this section is to preserve and enhance the rural, open character of the Town as viewed from the main roads leading through the Town and scenic roads within the Town and to prevent unsightly development along these routes.

B. REGULATIONS. To accomplish the purpose of this section, a setback requirement for all structures of one hundred (100) feet from the highway right-of-way is established on the following roads, and said setbacks shall apply notwithstanding any other setback requirements which may be applicable as a result of other zone regulations: (3-2-76)

1. Rte 122 from Hollis Town line north to Old Rte 101, Horace Greeley Highway. (3-14-00)
2. Boston Post Rd from Stearns Rd north to Route 122
3. Boston Post Rd from Beaver Brook north to Mt. Vernon Rd.
4. Mt. Vernon Rd from Boston Post Rd north to Mt. Vernon Town line
5. Amherst Street (3-9-99, 3-14-00)
6. Horace Greeley Highway from Milford Town line north to Bedford Town line. (3-9-99)
7. New Boston Rd from Boston Post Rd north to Mt. Vernon Town Line
8. Christian Hill Rd from Davis Lane to Route 13
9. Corduroy Rd from Merrimack Rd north to Boston Post Rd.
10. Merrimack Rd from Boston Post Rd north to Corduroy Rd.

11. Mack Hill Rd from Manchester Rd north to Austin Rd.
 12. All scenic Roads (see Section E) 3-2-76
- **Section 3.11, C. contains a provision that if "a lot of record at time of passage of this section is of such size and dimension that the application of the foregoing setback in combination with all other setbacks as may be required for such lot precludes the use of more than sixty percent (60%) of the area of such lot, then the foregoing one hundred (100) foot setback shall not apply to such lot."**
 - **The applicant has included a note on the plan that this is a lot of record and predates the scenic setback regulation. The present owners' deed is attached. I followed the title chain at HCRD back to 1889.**
 - Section 4.11, Wetland and Watershed Conservation District, includes the following permitted uses:
 1. Forestry Uses, subject to the provisions of RSA 227-J:6, as amended, and in accordance with applicable Best Management Practices.
 2. Agricultural Uses, as defined by RSA 21:34-a, as amended, and in accordance with applicable Best Management Practices. The Planning Board reserves the right to reasonably regulate agricultural uses as provided for in RSA 674:32-b, as amended.
 3. The installation and maintenance of water wells and surface water intake facilities and associated supply lines and appurtenances.
 4. Public and private open space, conservation land, trails, wildlife refuges, parks, and passive recreational uses and other low impact uses of land consistent with the stated purpose of this ordinance.
 5. Construction and maintenance of fences, footbridges, catwalks, wharves/docks, and other water dependent structures provided said structures are constructed on posts, pilings, or other means of support which do not substantially alter the existing ground surface. New construction activities may require a permit from the NHDES. For maintenance of a legally constructed structure(s) refer to RSA 482-A: 3 IV. (a), (b), (c), as amended. Maintenance of existing public and private roads, driveways, bridges, and culverts; utilities; fire protection and irrigation supply works; and stormwater management facilities.
 6. Replacement or repair of any existing septic system confirmed to be in failure provided:
 - a. The system requiring replacement or repair was in place prior to the date of adoption of this ordinance;
 - b. Prior to commencement of such replacement or repair the property owner has obtained any and all required State and local construction approvals and permits; and
 - c. The planned replacement or repair will not expand the intensity of use of the structure(s) it is intended to serve.
 - Conditional Uses allowed in the WWCD are as follows:

Conditional Uses. Any use not identified as a permitted use under Paragraph G of this Section is recognized as having potential to adversely affect lands situated within the Wetland and Watershed Conservation District and, therefore, prove contrary to the stated

purpose of this ordinance. However, the following uses of land in the Wetland and Watershed Conservation District may be permitted upon issuance of a Conditional Use Permit by the Planning Board, provided the Board finds, based upon competent evidence, that such use or uses will not be expected to significantly impair the function and values of resources situated within the District and meets the other criteria set forth herein:

1. Accessory structures associated with a legally existing primary structure, provided the applicant demonstrates that no practicable alternative exists elsewhere on the lot and outside of the Wetland and Watershed Conservation District.
2. Construction of streets, roads, and other access ways, including driveways, footpaths, bridges, and utilities if essential to the productive use of land beyond the Wetland and Watershed Conservation District. These uses shall be located and constructed in such a way as to minimize the potential for detrimental impact to the District and be planned, designed, and constructed in a manner consistent with applicable State and local standards. Such construction may be permitted within the District only when no viable alternative is available.
3. Water impoundments for the purposes of creating a water body for wildlife, fire protection, stormwater management, or recreational use. Construction of impoundments for on-site detention and/or treatment of stormwater runoff in the Wetland and Watershed Conservation District, provided the Planning Board finds that it is not practical or possible to locate them outside of the District.
4. Non-conforming Uses and Structures: Expansion of a non-conforming use or structure situated within the Wetland and Watershed Conservation District may be permitted provided the Planning Board finds, in addition to the provisions outlined in Section I.2 a-g, that the proposed expansion conforms to the following additional standards:
 - a. The encroachment upon the surface water, wetland, or vernal pool is not increased;
 - b. The expansion is located as far from the surface water, wetland, or vernal pool as possible and located so as to minimize disturbance of existing vegetation within the District; and
 - c. The Planning Board finds that any potential decrease in wetland function and values resulting from the activity or use will be properly mitigated on the site. Mitigation strategies may include, but are not limited to, planting of indigenous vegetation in the District; improving existing or implementing new storm water management and treatment; removal and management on invasive species on the property; and the removal of excess impervious surfaces.
5. Other uses which the applicant is able to demonstrate to the satisfaction of the Planning Board that will not significantly interfere with wetland functions and values, water quality, or wildlife habitat pursuant to the statement of purpose of this ordinance; or in the alternative, uses that will impact wetlands functions and values; but, in the opinion of the Planning Board, are not contrary to the public interest and will result in significant public benefit provided:

- a. Compensatory mitigation is provided such that those Wetland and Watershed Conservation District functions and values to be impacted will be off-set in whole. Such mitigation may be located on- or off-site. As a guide to the type and extent of compensatory mitigation considered, reference shall be made to the New England District Compensatory Mitigation Guidance, US Army Corps of Engineers, New England District, Regulatory Division, 7-2- 2010 as amended.
 - b. The applicant has demonstrated avoidance and minimization to the fullest extent practical.
- **Neither the Permitted Uses or uses allowed by Conditional Use Permit allow construction of a house within the WWCD, hence the need for the variance.**

PURPOSE OF ZONING ORDINANCE RESTRICTION IN QUESTION:

- The Town of Amherst’s zoning ordinance follows a traditional Euclidean zoning pattern; the term Euclidean coming from a court case in 1926, Village of Euclid, Ohio vs. Ambler Realty Co. In this case the U.S. Supreme Court upheld the constitutionality of a zoning ordinance that would separate uses and control building heights.
- The traditional planning goals associated with Euclidean zoning are providing for orderly growth, preventing overcrowding of land and people, alleviating congestion, and separating incompatible uses.
- The Amherst Zoning Ordinance specifies as its purposes:
“...promoting the public health, safety, and general welfare of the Town of Amherst...”
and “...to implement the goals of the orderly development and growth of the Town as set forth in the Master Plan adopted in November 1980 and future revisions of the Master Plan as the needs of the Town dictate.”.
- The Northern Rural District specifies as its purpose:
 1. To recognize, establish, and affirm an area of the Town in which lower density development is of itself, desirable. (3-11-86)
 2. To recognize the unique rural, scenic, and natural character of a portion of Town which has remained essentially undeveloped and unchanged during the time that the remainder of the Town has experienced considerable physical development and change. (3-2-76)
 3. To identify a portion of Town that contains extensive areas of poor soils, steep slopes, and limited accessibility which limits the type of development which is compatible with these limitations as well as the areas in which development can suitably take place. (3-2-76)
 4. To ensure that future development in this area of Town be of a type that is compatible with the area's extensive physical limitations as well as its unique rural, scenic, and natural character. (3-2-76)
- The purpose of the WWCD is to protect the health, safety, and general welfare of the public by promoting both the most appropriate use of land and by protecting wetland and surface water ecosystems and water quality in accordance with the goals and objectives of Amherst’s adopted Master Plan. Wetlands, surface waters, and associated buffers situated in the Town of Amherst are recognized as a valuable natural resource requiring

careful management in order to preserve their benefits to public health, safety, and welfare.

- The purpose of the Scenic Setback requirement is to preserve and enhance the rural, open character of the Town as viewed from the main roads leading through the Town and scenic roads within the Town and to prevent unsightly development along these routes.

AMHERST CONSERVATION COMMISSION COMMENTS:

- The Amherst Conservation Commission had a presentation on this project at their February 14, 2024, meeting.
- The Amherst Conservation Commission is not in favor of the proposal and submitted their comments to that effect by email dated February 19, 2024. See attached.
- The Amherst Conservation Commission submitted a second email dated April 5, 2024. See attached.

APPLICANT'S RESPONSE TO VARIANCE CRITERIA:

- See the attached application for the applicant's responses to the variance criteria as listed on the ZBA's application form.

STAFF COMMENTS:

- Discussion took place at the last meeting about the possibility of changing the house location so as to be further away from the wetland buffer, but potentially impact setbacks on the property.
- **Board note: the pending application should either be voted on by the Board or withdrawn by the applicant if something other than what it is proposing is to be considered, but it cannot be amended in the middle of the process. A new application would be needed for a proposal to impact front or side setbacks or other aspects of the Zoning Ordinance.**

DELIBERATIONS:

REGIONAL IMPACT:

- Pursuant to NH RSA 36:56, I. "A local land use board... upon receipt of an application for development, shall review it promptly and determine whether or not the development, if approved, reasonably could be construed as having the potential for regional impact. Doubt concerning regional impact shall be resolved in a determination that the development has a potential regional impact."
- Pursuant to NH RSA 36:55, "...'development of regional impact' means any proposal before a local land use board which in the determination of such local land use board could reasonably be expected to impact on a neighboring municipality, because of factors such as, but not limited to, the following:
 - I. Relative size or number of dwelling units as compared with existing stock.
 - II. Proximity to the borders of a neighboring community.
 - III. Transportation networks.
 - IV. Anticipated emissions such as light, noise, smoke, odors, or particles.
 - V. Proximity to aquifers or surface waters which transcend municipal boundaries.
 - VI. Shared facilities such as schools and solid waste disposal facilities."

- Pursuant to NH RSA 36:57, I. "Upon determination that a proposed development has a potential regional impact, the local land use board having jurisdiction shall afford the regional planning commission and the affected municipalities the status of abutters as defined in RSA 672:3 for the limited purposes of providing notice and giving testimony."
- Pursuant to NH RSA 36:57, II. "Not more than 5 business days after reaching a decision regarding a development of regional impact, the local land use board having jurisdiction shall, by certified mail, furnish the regional planning commission and the affected municipalities with copies of the minutes of the meeting at which the decision was made. The local land use board shall, at the same time, submit an initial set of plans to the regional planning commission, the cost of which shall be borne by the applicant."

DISCUSSION OF VARIANCE CRITERIA:

- See the attached application for the applicant's responses to the variance criteria as listed on the ZBA's application form.

FINDINGS OF FACT:

- Pursuant to recent changes to RSA 676:3, all local land use boards have to include specific findings of fact that support any decision to approve or disapprove an application for a local permit.

DEADLINE FOR BOARD ACTION:

- Pursuant to RSA 674:33, VIII., upon receipt of an application, the Zoning Board of Adjustment shall begin formal consideration and shall approve or disapprove such application within 90 days of the date of receipt, provided that the applicant may waive this requirement and consent to such extension as may be mutually agreeable. If the Zoning Board of Adjustment determines that it lacks sufficient information to make a final decision on an application and the applicant does not consent to an extension, the Board may, in its discretion, deny that application without prejudice, in which case the applicant may submit a new application for the same or substantially similar request for relief.
- 90 days from the February 16, 2024, receipt date is May 16, 2024.
- **Should a further continuance be needed for any reason, the applicant should be asked to waive the deadline for action and agree to the extension of the deadline.**

BOARD OPTIONS:

- After reviewing the application, considering all of the evidence, hearing all of the testimony, and by taking into consideration members' personal knowledge of the property in question, the Board should vote on a motion that approves, approves with conditions, or disapproves with reasons, the application under consideration. All five variance criteria must be met to grant a variance.

NS/

4/9/24

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<u>VARIANCE CRITERIA GUIDELINES</u>	
Statutory Requirements (RSA 674:33, I(b))	Explanation
<i>APPLICANT MUST SATISFY ALL OF THE FOLLOWING</i>	
1. The variance is not contrary to the public interest.	The proposed use must not conflict with the explicit or implicit purpose of the ordinance, and must not alter the essential character of the neighborhood, threaten public health, safety, or welfare, or otherwise injure “public rights.”
2. The spirit of the ordinance is observed.	As it is in the public’s interest to uphold the spirit of the ordinance, these two criteria are related.
3. Substantial justice is done.	The benefit to the applicant should not be outweighed by harm to the general public.
4. The values of surrounding properties are not diminished.	Expert testimony on this question is not conclusive, but cannot be ignored. The board may also consider other evidence of the effect on property values, including personal knowledge of the members themselves.
5. Literal enforcement of the ordinance would result in unnecessary hardship. Unnecessary hardship can be shown in either of two ways: First is to show that because of special condition of the property that distinguish it from other properties in the area: (a) There is no fair and substantial relationship between the general public purposes of the ordinance provision and the specific application of that provision to the property; and (b) The proposed use is a reasonable one. <i>Alternatively</i> , unnecessary hardship exists if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.	The applicant must establish that the property is burdened by the zoning restriction in a manner that is distinct from other land in the area. (a) Determine the purpose of the zoning restriction in question. The applicant must establish that, because of the special conditions of the property, the restriction, as applied to the property, does not serve that purpose in a “fair and substantial” way. (b) The applicant must establish that the special conditions of the property cause the proposed use to be reasonable. The use must not alter the essential character of the neighborhood. <i>Alternatively</i> , the applicant can satisfy the unnecessary hardship requirement by establishing that, because of the special conditions of the property, there is no reasonable use that can be made of the property that would be permitted under the ordinance. If there is any reasonable use (including an existing use) that is permitted under the ordinance, this alternative is not available.