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AMHERST COMMUNITY  
DEVELOPMENT OFFICE

Owners: Karl Norwood and Louise Norwood.

Applicant: The NAI Norwood Group (the “Applicant”).

Property: 86 Chestnut Hill Road, Amherst, New Hampshire 03031,  
Tax Map 11, Lot 10 (the “Property”).

Relief: Variance from Amherst Zoning Ordinance (“AZO”) Section 4.11 (F) (1) (b) (50’  
wetland buffer).

### Property Facts and Background

The Property is located near the top of Chestnut Hill Road in Amherst – not far from the border of New Boston. The Property is one a few lots owned by the Owners in the immediate area.

Tax Records for the Property depict the Property at 4.00 acres; however, the Property is closer to 5 acres at 4.768 acres. *See* attached plan entitled “Wetland Buffer Impact Exhibit.”

The Property is in the Northern Rural zone, which allow for residential uses.

The Deed for the Property can be found at the Hillsborough County Registry of Deeds at ***Book 2154, Page 136.***

The Property is currently undeveloped and there are significant wetlands that encumber the vast majority of the Property. The Property is bounded by stonewalls and, in addition to the wetlands, is well forested. There is a small, dry, and clear meadow-like area at the south east corner of the Property where the intended proposal would be best suited. Along the easterly side of the Property runs Chestnut Hill Road where many of the preexisting homes are quite large.

This proposal is for a single-family home to be constructed at the south easterly corner of the Property. The footprint of the house is intended to be 2,384 square feet.

The AZO mandates a 50-foot buffer from the edge of the wetland. Despite the large size of the Property there is very little space to build on the Property without encroaching into any of the applicable buffers/setbacks whether it be the wetland buffer or the front/side setbacks.

This proposal would involve an impact to the wetland buffer of about 1,403 square feet bringing the proposal within 21.4 feet to the wetland buffer at its closest point. Said point would be the edge of the rear deck that is attached to the proposed house. The closest point of the dwelling (*as opposed to a deck*) would be 23.2 feet

However, as indicated on the attached plan, which delineates where all the applicable buffer/setback boundaries are located, the 'buildable area' is so compact that relief would need to be sought to build any size or manner of house despite that fact that the Property is nearly 5 acres.

### VARIANCE CRITERIA

1. Granting the Variance would not be contrary to the public interest because:

It is important to note that the test is in the negative. That is to say that it does not require the applicant to prove that the proposed use is IN the public interest, but only to prove that it is NOT contrary to the public interest.

Given the nature of a Variance, any Variance would be to some degree contrary to the public interest and the spirit of the ordinance. Perrault v. Town of New Hampton, 171 N.H. 183, 186 (2018). As such, a Variance must do more than conflict with the terms of the applicable zoning ordinance, Id., and, therefore, a Variance cannot be denied for the very reasons it is sought in the first instance. Malachy Glen Associates, Inc. v. Town of Chichester, 155 N.H. 102, 107 (2007). In order to be contrary to the public interest and violate the spirit of the ordinance, a

Variance must unduly and to a marked degree conflict with the basic objectives of the applicable zoning ordinance. Perrault, 171 N.H. at 186 (emphasis added). To determine whether a Variance unduly conflicts with the basic objectives of the applicable zoning ordinance, a Board may consider whether the Variance will alter the essential character of the area or threaten the public health, safety or welfare. Id. (emphasis added).

Here, the Applicant is seeking construct a modest single-family residence. Wetland buffer relief is needed given the proximity of the wetlands to the west of the buildable area.

By granting the Variance, there would be no harm to the public's interest because allowing the dwelling's construction will still conform to the area's essential character, which is *residential* homes.

There is, likewise, no threat to public health, safety, and welfare for the same reason – a residential single-family home in a residential zone will not adversely impact or threaten public safety. There are no traffic concerns as the Property sits along a rural road with minimal traffic.

As stated, the Property is quite large and, other than the immediate relief being asked for, the proposal is otherwise compliant with the AZO. Furthermore, given the strict buffer requirements of the AZO involving wetlands coupled with the challenges of this Property relief would need to be sought to construct any size or manner of a dwelling.

The intent of the AZO wetland buffer is to protect the wetlands and we fully recognize the need for such protections. The relief requested is minor as the closest point from the wetlands is 21.4 feet.

In conclusion, if relief is granted to allow for this one single-family residence the essential character of the neighborhood would remain unchanged (*residential*) and there would be no threat to public safety allowing one modest house on a rural road.

2. The spirit of the ordinance is observed because:

As a matter of law, the analysis for both prongs one and two of the Variance criteria are the same. Harborside Associates, L.P. v. Parade Residence Hotel, LLC, 162 N.H. 508, 514 (2011). For the same reasons that the grant of the Variance is not contrary to the public interest, it also does not violate the spirit of the ordinance.

3. Substantial justice is done because:

Perhaps the only guiding rule [on this standard] is that any loss to the individual that is not outweighed by a gain to the general public is an injustice. Malachy Glen Assocs. v. Town of Chichester, 155 N.H. 102, 109 (2007).

The Applicant has the right to be able to make the highest and best use of their investment. The Applicant has designed a reasonable and, for the most part, zoning compliant plan that will fit in with the surrounding area.

The public will experience no negative effects if this Variance is granted because the zoned area is residential and the Applicant is proposing a residential use.

Put simply, denial of the Variance will not result in any gain to the public while, conversely, a denial would rob the Applicant of a reasonable return in their investment.

4. The values of surrounding properties will not be diminished because:

The area at issue is completely residential. There is no evidence to suggest that any of the property values in the area will be negatively impacted as a result of allowing the Proposal to move forward. Indeed, the Proposal is for the construction of a modest and handsome single-family home that would logically enhance the property values in the area.

5. Literal enforcement of the provisions of the ordinance would result in an unnecessary because:

“Hardship,” under NH RSA 674:33, I (b) (1) (A) and (B) is a straight forward three step analyses;

- a. What are the special conditions of the property, if any;
- b. ‘No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property,’ which can be said another way that if the Variance is granted would it *unreasonably frustrate the purpose ordinance*; and
- c. Is the proposed use reasonable?

The special conditions (a) are satisfied for the following reasons;

- The Property is quite large at 4.768 far exceeding the required size of a buildable lot.
- However, the vast majority of the Property is wetland.
- Nonetheless, there is a small corner that is suitable to build a modest home like the one being proposed.
- The ‘ask’ is reasonable in light of the challenges of this Property.
- Any proposal for any size or manner of a house would require relief from the AZO wetland buffer requirements.

Skipping ahead to (c), the proposed use is residential and the applicable zone allows for residential use, ***thus the proposed use is reasonable.***

Therefore, here, the remaining question is (b) whether “[n]o fair and substantial relationship exists between the general public purposes of the ordinance provision and the

specific application of that provision to the property.” See NH RSA 674:33, *et seq.* Or, again, if the Variance is granted will it unreasonably frustrate the purpose of the AZO?

The purpose of the applicable sections of the AZO at issue are clearly to protect the wetlands.

Despite being a large lot, the buildable area is small enough that relief from the aforementioned sections of the AZO would need to be sought in order to construct just about anything. The Proposal comes within 21.4 feet of the wetland. Therefore, the impact to the wetland buffer is minimal (*but unavoidable*) and since this Proposal is for one single-family home.

Alternatively, even if ‘Hardship’ was not satisfied under NH RSA 674:33, I (b) (1), which we contend it is, then ‘Hardship’ is satisfied under NH RSA 674:33, I (b) (2), which states *“[i]f the criteria in subparagraph (1) are not established, an unnecessary hardship will be deemed to exist if, and only 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.”* NH RSA 674:33, I (b) (2) (emphasis added).

Here, the Property cannot be developed in any reasonable manner due to its special conditions (*wetlands*) without seeking relief from the AZO – despite the fact that the Property is nearly 5 acres.

As such, hardship is satisfied under both NH RSA 674:33, I (b) (1) and (2).