

March 19, 2024

**DRAFT**

221 the three lots removes the fundamental concerns of the reduced frontage lot amendments from  
222 2023. The use is reasonable. Stormwater management has been handled properly and satisfied by  
223 the Town's peer review.

224

225 Charlie Vars asked if the first motion regarding merging the lots is needed. Danielle Pray stated  
226 that she believes it is. Attorney Westgate noted that the three conditions proposed are agreeable  
227 to the applicant.

228

229 Danielle Pray asked for public comment.

230

231 Gerry Pelletier, 1 Newbury Drive, explained that the request for rehearing emphasizes how much  
232 of an impact the original plan had on them as abutters. The new plan agrees with the Ordinance  
233 changes and satisfies the original concerns regarding overcrowding and other items stated in the  
234 rehearing documents. In the future, he would like there to be more emphasis paid to the concerns  
235 of citizens, as he does not feel this was addressed at the original hearing for this item. The  
236 original plan did impact the community and neighborhood. The new proposal lessens the impact,  
237 and this is appreciated. Regarding the frontage issues, the Board can decide that item. The  
238 burden was placed on residents to come back to the Board and make sure the Ordinance is  
239 upheld.

240

241 Patricia Pelletier, 1 Newbury Drive, stated that the voters voted for the five-acre lot minimum  
242 which was ignored in November by the Board. As innocent abutters, it ended up costing attorney  
243 fees and legal fees in order to have this recognized by the Board. She further noted that they had  
244 decided not to have their attorney present at this meeting because of the cost.

245

246 There was no further public comment at this time.

247

248 **Jamie Ramsay moved to close the public hearing for this item. Charlie Vars**  
249 **seconded.**

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

251

252 **PUBLIC HEARINGS:**

253

254 **2. CASE #: PZ18647-030424 –VARIANCE**

255 **Karl & Louise Norwood (Owners) & NAI Norwood Group (Applicant); 86**

256 **Chestnut Hill Road, PIN #: 011-010-000** – Request for relief from Article IV, Section  
257 4.11, Paragraph (F)(1)b and (G) for the construction of a single-family home at the  
258 south easterly corner of the property that would involve an impact to the wetland buffer  
259 of about 1,403 square feet bringing the proposal within 21.4 feet to the wetland  
260 buffer. *Zoned Northern Rural.*

261

262 Jamie Ramsay read and opened the case.

263

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264 Tom Burns, TF Moran, stated that this lot at 86 Chestnut Hill Road is located across the street  
265 from the applicant's primary property. The parcel is approximately 4.7 acres and has been in  
266 their ownership for over 50 years. The lot is challenged by the fact that, despite its size, it is  
267 encumbered by a significant amount of wetlands on the property. As a result, it has a limited  
268 buildable area outside of the required buffers for those wetlands. The application is to allow for  
269 construction of a single-family home that would encroach within the 50' wetland buffer located  
270 along the southeast corner of the property. Some of the buildable envelope exists outside of the  
271 wetland buffer and outside of the required frontage and side setbacks of the property. This area is  
272 approximately 3,300 s.f. and has an irregular geometry. The house is proposed on the only  
273 buildable area on the lot that would not impact the wetlands directly and would minimize  
274 impacts to the buffer itself. The applicant along with the builder looked at a number of different  
275 house options. The proposed option would be complementary to this neighborhood. Nearby are  
276 very high-end homes. The road itself is a designated scenic road. The home is proposed to fit  
277 well within the neighborhood aesthetic without creating unnecessary impacts to the wetland  
278 buffer or to the wetland itself. The house would have a front entry driveway and be served by an  
279 onsite well outside of the wetland. The property would have an onsite wastewater disposal  
280 system, with a leach field located in the frontage to keep it away from the wetland and maintain  
281 the minimum setback requirements of 75' away from wetlands per the State regulations and 100'  
282 by the Town's regulations. The requested variance is for encroachment of the house in the buffer.  
283

284 Tom Burns addressed the five criteria:  
285

- 286 1. *How will granting the variance not be contrary to the public interest?*  
287 Here the applicant is seeking to construct a modest single-family residence. Wetland  
288 buffer relief is needed given the proximity of the wetlands to the west of the buildable  
289 area. By granting the variance there would be no harm to the public's interest because  
290 allowing the dwelling's construction will still conform to the area's essential character,  
291 which is residential homes. There is likewise no threat to the public health, safety, and  
292 welfare for the same reason. A residential single-family home in a residential zone will  
293 not adversely impact or threaten public safety. There are no traffic concerns as the  
294 property sits along a rural road with minimal traffic. As stated, the property is quite large  
295 and other than the immediate relief being asked for, the proposal is otherwise compliant  
296 with the AZO. Furthermore, given the strict buffer requirements of the AZO involving  
297 wetlands coupled with the challenges of this property, relief would need to be sought to  
298 construct any size or manner of a dwelling. The intent of the AZO wetland buffer is to  
299 protect the wetlands and we fully recognize the need for such protections. The relief  
300 requested is minor as the closest point from the wetlands is 21.4'. In conclusion, if relief  
301 is granted to allow for this one single family residence, the essential character of the  
302 neighborhood would remain unchanged, residential, and there would be no threat to the  
303 public safety, allowing one modest house on a rural road  
304
- 305 2. *How will the granting of the variance ensure that the spirit of the ordinance will be*  
306 *observed?*

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307 The spirit of the ordinance is observed for the reason that the granting the variance is not  
308 contrary to the public interest, because again, the proposal is to construct a residential  
309 home in a residential neighborhood with construction in the buffer, which is unavoidable,  
310 with no encroachment or impact of the wetland itself.

311

312 3. *How will substantial justice be done?*

313 Substantial justice is done because the applicant has the right to be able to make the  
314 highest and best use of their investment. The applicant has designed a reasonable and, for  
315 the most part, zoning compliant plan that will fit with the surrounding area. The public  
316 will experience no negative effects if this variance is granted because the zoned area is  
317 residential, and the applicant is proposing a residential use. Put simply, denial of the  
318 variance will not result in any gain to the public, while conversely a denial would rob the  
319 applicant of a reasonable return in their investment.

320

321 4. *How will the value of the surrounding properties not be diminished?*

322 The values of surrounding properties will not be diminished because the area at hand is  
323 completely residential. There is no evidence to suggest that any of the property values in  
324 the area will be negatively impacted as a result of allowing the proposal to move forward.  
325 Indeed, the proposal is for the construction of a modest and handsome single-family  
326 home that would logically enhance the property values in the area.

327

328 5. *Literal enforcement of the provisions of the ordinance would result in unnecessary*  
329 *hardship because:*

330 (A) *For the purpose of this sub paragraph, “unnecessary hardship” means that*  
331 *owing to special conditions of the property that distinguish it from other*  
332 *properties in the area:*

333 (i) *No fair and substantial relationship exists between the general public*  
334 *purposes of the ordinance provision and the specific application of that*  
335 *provision to the property,*

336 *and*

337 (ii) *The proposed use is a reasonable one:*

338 Those special conditions are satisfied for the following reasons: the property is quite  
339 large at 4.768 acres, far exceeding the required size of a building lot; however, the vast  
340 majority of the property is wetland. Nonetheless, there is a small corner that is suitable to  
341 build a modest home like the one being proposed. The ask is reasonable in light of the  
342 challenges of this property. Any proposal for any size or manner of a house would require  
343 relief from the AZO wetland buffer requirements.

344

345 Skipping ahead to (c), the proposed use is residential, and the applicable zone allows for  
346 residential use. Thus, the proposed use is reasonable.

347

348 (B) *Explain how, if the criteria in subparagraph A above are not established, an*  
349 *unnecessary hardship will be deemed to exist if, and only if, owing to special*  
350 *conditions of the property that distinguish it from other properties in the area, the*

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351 *property cannot be reasonably used in strict conformance with the ordinance, and*  
352 *a variance is therefore necessary to enable a reasonable use of it:*

353 Therefore, here the remaining question is (b) whether no fair and substantial relationship  
354 exists between the general public purposes of the ordinance provision and the specific  
355 application of that provision to the property. Again, if the variance is granted, the  
356 question is if it will unreasonably frustrate the purpose of the AZO. The purpose of the  
357 applicable sections of the AZO at issue are clearly to protect the wetlands. Despite being  
358 a large lot, the buildable area is small enough that relief from the aforementioned sections  
359 of the AZO would need to be sought in order to construct just about anything. The  
360 proposal comes within 21.4' of the wetland. Therefore, the impact of the wetland buffer  
361 is minimal but unavoidable since this proposal is for one single family home.

362  
363 Alternatively, even if hardship was not satisfied under NH RSA 674: 33, I (b) (1), which  
364 we contend it is, then hardship is satisfied under NH RSA 674: 33, I (b) (2), which states,  
365 "If the criteria in subparagraph 1 are not established, an unnecessary hardship will be  
366 deemed to exist if, and only if owing to special conditions of the property that distinguish  
367 it from other properties in the area, the property cannot be reasonably used in strict  
368 conformance with the ordinance, and the variance is therefore necessary to enable a  
369 reasonable use of it." Here the property cannot be developed in any reasonable manner  
370 due to its special conditions (wetlands) without seeking relief from the AZO, despite the  
371 fact that the property is nearly five acres. As such, hardship is satisfied under both NH  
372 RSA 674:33, I, (b), (1) and (2).

373  
374 Charlie Vars asked if there are test pits on the property. Tom Burns stated that these are not yet  
375 in place. A wetland scientist has reviewed the wetlands and soils of the site. NRCS soils maps of  
376 the lot have been received. Charlie Vars asked if the water table is high. Tom Burns stated that it  
377 is. His estimate, based on the elevation of wetlands and soil mapping, is approximately 24".

378 Charlie Vars noted that this will likely be a slab on grade. Tom Burns stated that the intent is to  
379 raise the house. The grade rises as one moves south on the lot. The southeast corner is at 192',  
380 moving to 188' north along the roadway. The proposal is to raise the house elevation to create a  
381 basement and allow an elevated leach field. There may not be able to be a walkout basement, but  
382 this is being explored. The garage would be located on the northerly side of the property.

383  
384 In response to a question from Jamie Ramsay, Tom Burns explained that this is a wooded lot.  
385 There is a stand of existing trees that runs along the edge of the wetland which is not proposed to  
386 be removed.

387  
388 In response to a question from Jamie Ramsay, Tom Burns stated that the builder's desire is to  
389 have a gravity septic system. The proposed leach field could be slid back on the property to stay  
390 further from the road and 100' from the wetlands. An Advanced Enviroseptic system is proposed  
391 to allow a reduction in footprint of the system, 60% of a typical pipe and stone system. If this  
392 needs to be a pump system, it can still work with the septic system with bypass venting. This will  
393 be dealt with through DES.

394

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395 Tony Ortiz asked how much of the proposed building sits within the wetland buffer. Tom Burns  
396 stated that there will be approximately 1,400 s.f. of permanent impact within the buffer, or about  
397 55% of the proposed house. Tony Ortiz noted that the applicant has said there will be no impact  
398 to the wetland itself but asked how this can be assured, as the closest point sits 21.4' away from  
399 the wetland. Tom Burns stated that the builder will put up erosion control measures, such as silt  
400 sock and silt fence, along the buffer. No trees will be removed from within the buffer. This is a  
401 tight building envelope, and the builder will have to maintain the buffer. If it is impacted, the  
402 builder will have to seek relief from the Town and State.

403

404 Jamie Ramsay stated that the building permit should contain information that the builder will  
405 erect and maintain a silt barrier throughout the construction progress. Tom Burns agreed that this  
406 will have to be maintained throughout the course of construction. He has spoken with the builder  
407 about this. The intention is that any area outside the house footprint and within the buffer will be  
408 restored to existing conditions.

409

410 Tony Ortiz asked about the plan for the backyard area below the deck and porch to the wetland.  
411 Tom Burns explained that the intention is to maintain the tree line. If an area is currently grass, it  
412 will be left as such. No impervious surfaces will be placed in that area.

413

414 Tony Ortiz asked about driveway sanding/salting, as the edge of the driveway is right near the  
415 buffer. Tom Burns stated that he has accounted for this in other projects. He could recommend  
416 other products to the owner. Jamie Ramsay stated that a directive would be better. It was noted  
417 that this could be made a condition of approval.

418

419 Tim Kachmar asked what kind of wetlands are on the site. Tom Burns explained that these are  
420 classified by DES as very poorly drained wetlands. There are some areas of standing water, but  
421 not directly adjacent to this property. The property contains an area of shallow permanent open  
422 water, including a stream, which is poorly drained. This area requires a 50' setback. The back  
423 wooded area is classified as very poorly drained and requires a 75' buffer. There are pockets of  
424 inaccessible upland in the middle.

425

426 In response to a question from Jamie Ramsay, Tom Burns stated that the intent is not to clear  
427 trees on the buffer line, though some branches on the canopy may be trimmed.

428

429 Tony Ortiz noted that, if this variance was not sought, the applicant would likely have to seek  
430 variances for the side/front setbacks. He asked if any other proposals to shift the house outside  
431 the wetland buffer were considered. Tom Burns explained that this is located on a scenic road,  
432 which usually has a 100' setback. This lot predates that requirement and has a 50' setback. The  
433 intention is to place the house back from road so as to be not as visible. This places the leach  
434 field in front, pushing the house back. The applicant reviewed a few different house  
435 options/models and considered some that straddle the front setback, but the proposed location fits  
436 better. Tony Ortiz stated that any construction activity in a wetland buffer is a concern, but  
437 building within a wetland buffer is a larger concern.

438

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439 Danielle Pray asked if the driveway, parking area, and septic system areas are buildable. Tom  
440 Burns stated that these are not buildable for structure itself. Danielle Pray asked if that is only  
441 true for this structure chosen. Tom Burns stated that the applicant could not place a house in the  
442 50' setback but a leach field is okay. Danielle Pray asked if the applicant considered seeking  
443 relief from the front setback. Tom Burns stated that this is an option. Danielle Pray asked if the  
444 applicant could fit a house in the buildable envelope. Tom Burns stated that only limited sized  
445 houses could fit there and these may not be in keeping with the neighborhood. A 24'x36' split  
446 level house could fit, but it would not match aesthetically with the neighborhood. The proposed  
447 house is a compact size while fitting aesthetically. Jamie Ramsay stated that the proposed  
448 envelope actually has a large footprint. Danielle Pray noted that the Board must discuss if it is  
449 more important for the home to fit aesthetically or impact the wetland.

450  
451 Danielle Pray asked Tom Burns if he read the email from the Amherst Conservation Commission  
452 (ACC). Tom Burns stated that he did not, but he attended a meeting with the group and was told  
453 before the meeting that the ACC could not support any impact within the buffer. However, it was  
454 noted that the applicant has a case for a hardship as it is unclear where else the house could be  
455 placed on the lot. It was recommended that the applicant seek relief from the ZBA. Danielle Pray  
456 noted that the email states that the property is part of a very large wetlands complex that serves  
457 as the headwaters for surface water drainage extending to and through the Town's Joe English  
458 Reservation. Impacts from additional wetlands disturbance, wastewater infiltration, and  
459 stormwater runoff associated with this proposal should be avoided. Tom Burns stated that, if  
460 there is significant concern with the proposal, it could be shifted 30' into the front setback. The  
461 applicant could also look at other house options. He asked the Board's opinion. Danielle Pray  
462 explained that the Board cannot give advice. The Board will consider the impact to the wetlands  
463 and buffer, concerns of the ACC, and purpose of the Ordinance, against a balance with the  
464 aesthetics and potential traffic impacts. The Board will only consider the potential wetland  
465 impacts tonight. Tom Burns noted that, if the house was slid into the front setback, there could  
466 likely still be some encroachment into the buffer with the same house design.

467  
468 Jamie Ramsay asked why it is impossible to move the structure uphill and closer to the road.  
469 This would likely more than maintain the 21.4' from the deck to the wetland edge and 23.2' from  
470 the corner of the house to the wetland. This achieves many of the objectives. Tom Burns stated  
471 that the placement was to aid in sight distance from the driveway looking south along the  
472 roadway. The driveway was pushed as north as possible but could be shifted a bit. Jamie Ramsay  
473 stated that shifting this north toward Chestnut Hill Road will help with many of the concerns.

474  
475 Charlie Vars stated that he would be more comfortable with a topographical map to review. Tom  
476 Burns stated that the site pitches west and north. The southeast corner is at 192'. It then pitches  
477 toward the wetland. The center of the proposed house is at 189', and the wetland is at 187'.  
478 Charlie Vars noted that there is a 50' setback off the property line at the stonewall, but Chestnut  
479 Hill Road is then 10'-12' further beyond that. He would be more comfortable with a 40' variance  
480 request, knowing there is extra space between the road and the stonewall. This would still leave a  
481 50' visual appearance. It could also help with the septic system, as less fill would be needed.

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482 Tom Burns thanked the Board for its feedback and stated that the applicant would look into ways  
483 to minimize impacts to the wetland.

484

485 Tim Kachmar suggested a site walk. The Board agreed.

486

487 Charlie Vars asked if the proposed location of the well could be swung toward the house. Tom  
488 Burns stated that he would like to keep this in an open area but can relocate it a bit on the site.

489

490 Danielle Pray asked for public comment at this time.

491

492 Nicole Sperry, 90 Chestnut Hill Road, expressed support for the plans to build on this lot. This is  
493 in the best interest of the neighborhood.

494

495 Richard Szum, 82 Chestnut Hill Road, stated that he believes setting the house in the proposed  
496 location would threaten the public health, safety, and welfare, as it would block some of the view  
497 from his driveway. This creates a safety concern on the road. The speed limit is 30 miles per  
498 hour along the road but many vehicles speed. The setback of the house impacts his ability to see  
499 up the road. As he backs out of his driveway, he will not be able to see as far up the road. He  
500 stated that the requirement is a 50' setback from the road and he would not like to see this  
501 reduced. Reducing it would impact vision to the road.

502

503 Danielle Pray noted that the Board would have a site walk and retake this item at its next  
504 meeting.

505

506 Chris Norwood, who grew up in Norwood house nearby, asked if any decisions will be made on  
507 the site walk. Danielle Pray explained that no decisions will be made until the next meeting on  
508 this item.

509

510 There was no additional public comment at this time.

511

512 The Board agreed to a site walk on Thursday, April 4, 2024, at 5pm.

513

514 **Charlie Vars moved to table this application to April 16, 2024, at 7pm, at Town**  
515 **Hall. Jamie Ramsay seconded.**

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

517

518 **Charlie Vars moved to enter deliberations. Tim Kachmar seconded.**

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

520

521 **CASE #: PZ18136-110223 –VARIANCE**

522 **Divest LLC (Owner & Applicant); County Road & Thornton Ferry Road II; PIN #: 004-**  
523 **142, 142-10, 142-12, 142-13**

524

525 **Jamie Ramsay moved no regional impact. Tim Kachmar seconded.**