In attendance: Doug Kirkwood- Chair, Robert Rowe – Vice Chair, Jamie Ramsay – Secretary/Treasurer, Charlie Vars, Danielle Pray, and Tim Kachmar – Alternate.

Staff present: Nic Strong, Community Development Director, and Kristan Patenaude, Minute Taker.

Doug Kirkwood called the meeting to order at 7:04 pm. He explained the ZBA process and introduced the Board members.

NEW BUSINESS:

1. **CASE #: PZ11559-071919 – James & Barbara Sacco (Owners & Applicants) – 5 Parkhurst Drive, PIN#: 008-029-002 – Request for relief from Article IV, Section 4.5, Paragraph E to allow for the construction of a 22’x32’ addition within 31 feet of the sideline where 40 feet is required. *Zoned Northern Rural.***

Jamie Ramsay read the public hearing notice.

Bob Kilmer, of Sandford Surveying & Engineering, representing the Saccos, explained that the Saccos have owned the home since 1998. They resided in the home until this past April, when a fire destroyed the structure. As they rebuild, the Saccos are looking to enlarge the footprint of their home. This would include a 22’x32’ addition off the north side of the house, which extends into the existing driveway. The property would continue to use the existing well and septic systems. The subdivision originally had 30’ setbacks, but the Zoning Ordinance changed to regulate 40’ setbacks.

Charlie Vars stated that he spoke with the Saccos in April regarding the rebuild, but has not had a conversation with them since and does not feel conflicted about listening to or judging this case.

Bob Kilmer addressed the five tests:

1. Granting the variance will not be contrary to the public interest. The proposed variance is to accommodate a 32’ by 22’ addition on the north side of the home which would encroach on the 40’ side setback approximately 9’. The public will not be impacted by this variance. Lot 10-25, which would be impacted the most, is currently a vacant wooded parcel.
2. Granting the variance will be consistent with the spirit and intent of the ordinance. The spirit and intent of the ordinance pertains largely to public safety, overcrowding and adequate separation of uses on adjacent lots.

The parcel is in a rural setting, at the end of a cul-de-sac, where most of the homes are set back from the road and not fully visible from the road. The encroachment into the side setback will not have an adverse effect on public safety. The addition does not change the current use or intensity of use on the single-family home. The addition will not increase the amount of traffic to the residence or restrict access by fire and police.

1. Substantial justice is done. Granting the variance will allow the applicant to further enjoy their h. There is no harm to the general public as the variance would not affect public safety, public view or any other impact to the town or the general area. The only individual impacted by this variance would be the owner of Lot 10-25. The lot is vacant and wooded and the intrusion into the side setback will be of minimal impact to them, at this time.
2. The values of surrounding properties are not diminished. Granting the variance will not cause a diminishing of value to any abutting or surrounding properties. It will be constructed to current codes, have a similar appearance and be maintained in the same manner as the existing house was.
3. The residence is built in the easterly portion of the lot. The septic is to the south and the well is to the west of the house. Requiring the proposed addition to be built anywhere else on the property would require either an additional driveway entrance to the property or a much more extensive driveway than already exists. The proposed location is the only location that would create the least visual impact to the surrounding properties and the public and allow for most of the existing driveway to be used. When the lot was created by subdivision in 1984 and the house was built, the side setback was 30’. Since this the side setback has been increased to 40’. If the side setback was at the original 30’, this variance would not be necessary.

Requiring the applicant to place the proposed addition in a place on the property that would meet the required setbacks would place an undue hardship on the owners for the use they plan for the addition. There is no relationship between the general public purposes of the Ordinance that they are seeking the variance from and the specific application to the subject parcel, because the proposed addition has no impact on public safety or overcrowding.

Placing an addition on the property where it will be more useful to the owners, for enclosed storage of vehicles and equipment, out of the weather and out of sight of the general public and additional living space, is not an expansion of the use of the property, it will still be used as a single family residence. Therefore, it is a reasonable use.

In response to a question from Jamie Ramsay, James Sacco stated that the existing foundation will be used and expanded. The entire wood structure will be demolished.

In response to a question from Danielle Pray, Bob Kilmer stated that the adjacent wooded lot is about 15-17 acres. James Sacco explained that the closest house to that side of the property is very difficult to see from his house.

**Jamie Ramsay moved to enter deliberations. Charlie Vars seconded.**

**All in favor.**

**Charlie Vars moved no regional impact on this application. Jamie Ramsay seconded.**

**All in favor.**

**Discussion:**

Robert Rowe stated that requesting the addition be placed in a different area would impact either the septic system or the well. The addition is being requested in a reasonable location.

Charlie Vars stated that if the addition had been built, as seen in the plan now, in the beginning there would be no variance needed. He also stated that any house on the adjacent property will probably be built in the center of the lot and away from the lot line in question.

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

* C. Vars – true, the addition, size-wise, is commensurate with the rest of the house.
* J. Ramsay – true, if there were any issues with public safety, these would have arisen before the property was impacted by a fire.
* R. Rowe – true
* D. Pray – true, the encroachment will not alter the essential character or affect public rights, health, or safety.
* D. Kirkwood – true. He also questioned if there will be access to the back of the structure, in case there happens to be another fire.

**5 True**

2. The Variance is consistent with the spirit and the intent of the Ordinance

* J. Ramsay – true; there will be no impact on surrounding properties or the character of the area.
* R. Rowe – true
* D. Pray – true
* C. Vars – true
* D. Kirkwood – true

**5 True**

3. Substantial justice is done.

* R. Rowe – true, there is a benefit to the owner to enlarge the house, but the variance will do no harm to the general public.
* D. Pray – true
* C. Vars – true
* J. Ramsay – true, the original house was not a substantial house and the addition will not majorly impact the structure.
* D. Kirkwood – true

**5 True**

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

* D. Pray – true, there is no evidence that surrounding values will be diminished; but instead the building will be brought up to code and have a new structure.
* C. Vars – true, the addition will probably increase the positive impact on the neighbors.
* J. Ramsay – true
* R. Rowe – true
* D. Kirkwood – true

**5 True**

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

* C. Vars – true, this is the only location on the lot to put such an addition; and the hardship is in the increase from the original setback being 30’ to 40’.
* J. Ramsay – true, the original foundation will be reused, making the addition as low-impact as possible.
* R. Rowe – true.
* D. Pray – true, the location of the septic and well makes the addition not feasible anywhere else on the property; also no other houses can be seen from the lot.
* D. Kirkwood – true, the location makes sense and is very practical.

**5 True**

**The Chair stated that all the tests have been passed and the variance is granted as submitted.**

**Jamie Ramsay moved to exit deliberations. Robert Rowe seconded.**

**All in favor.**

OTHER BUSINESS:

1. **Minutes: July 16, 2019**

**Danielle Pray moved to accept the minutes of June 18, 2019 as amended [line 20: to include that no vote was taken on the motion; line 30: to explain that D. Mangan is the owner of the home, but not the current resident]. Robert Rowe seconded.**

**All in favor.**

1. **Discussion regarding Case #: PZ11383, 9 Warren Way, Variance for Nail Salon**

Community Development Director, Nic Strong, explained that the reason that the applicant/representative was not present for the hearing of the case was due to the notification being sent only to the owner of the property, but not the applicant. This was an office error on the Town’s part. There is also a language barrier difficulty in this case, as the applicant needs a translator. She requested that the Board re-notify the case and hear it at the September meeting.

Doug Kirkwood suggested that legal counsel be contacted in regards to this matter, as he believes the RSA precludes the applicant from applying again until next year after a denial.

Robert Rowe stated that all former remedies are foreclosed unless the owner/applicant can come forward with information stating why no one was present when the case was originally heard. Charlie Vars explained that the information would be that they were not notified of the hearing by the town.

Doug Kirkwood stated that counsel will be consulted, and if there is time and reason to rehear the case it will be added to the schedule.

1. **Rules of Procedure**

The Board did not discuss their rules of procedure, but the Chairman pointed out a potential amendment to the non-conforming uses section of the Zoning Ordinance.

**Jamie Ramsay moved to adjourn at 7:57 p.m. Charlie Vars seconded.**

**All in favor.**

Respectfully submitted,

Kristan Patenaude

Minutes approved: September 17, 2019