

TOWN OF AMHERST
Zoning Board of Adjustment

March 21, 2023

APPROVED

In attendance: Doug Kirkwood (Chair), Danielle Pray (Vice Chair), Jamie Ramsay (Secretary), Charlie Vars, and Tony Ortiz (alternate)
Staff present: Nic Strong, Community Development Director, and Kristan Patenaude, Recording Secretary (remote)

Doug Kirkwood called the meeting to order at 7:00pm. He outlined the process and introduced Board members and staff present.

Tony Ortiz sat for Tracy McInnis.

EXTENSION REQUEST:

1. CASE #: PZ13589-011921 – VARIANCE

Paulo Caetano (Owner & Applicant), 6A Clark Island Road, PIN #: 008-108-000 – Request for relief from Article IV, Section 4.3, Paragraph D.1 to construct an addition within the 50’ front setback. Zoned Residential Rural.

Jamie Ramsay read and opened the case.

George Chadwick, Bedford Design Consultants, representing the applicant, stated that he had represented the applicant in February of 2021, in front of this Board, regarding an addition in the front yard setback. A variance was granted at that time. The applicant would now like to start the construction of the addition to his home. The existing home is 15.4’ away from the property and the addition would be 14.7’ away, a difference of 7/10 of a foot. George Chadwick asked if the Board would like him to review the same criteria which were used for the granting of the variance back in 2021.

Doug Kirkwood stated that he would like to hear the criteria again.

George Chadwick stated that the variance will not be contrary to the public interest as the addition will only alter the front setback nonconformance by 7/10 of a foot. The ordinance allows for expansion of non-conforming setbacks, per Section 3.2.D., as long as the alterations do not increase the degree of nonconformance. The proposed addition does increase the nonconformance by 1.4%, but the closest home is several thousand feet away and the area is heavily wooded. In 2021, a Shoreland Permit was received for this expansion, as it is located within the 50’ waterfront setback. Copies of this permit have been supplied to the Town, as it is still current. There will be a decrease of 625 s.f. of impervious surface by removing existing pavement at the end of the driveway. With the construction of a 305 s.f. addition, the net decrease is 320 s.f. There will be no additional asphalt added to the property. The addition will not alter any abutters’ view of the Lake. The addition will not alter the character of the neighborhood, and no additional traffic, health, or safety, issues are created by this addition.

George Chadwick stated that granting the variance ensures that the spirit of the audience will be observed because the purpose of the ordinance is to promote public health, safety, and welfare.

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One way this is accomplished is by grouping similar uses and imposing size restrictions. The Residential Rural regulations for new subdivisions are reasonable, but many of these camp lots created over 100 years ago cannot meet these regulations due to their small size. Due to the size and shape of the existing parcel, the structure does not currently meet the setback. By allowing the expansion of the home, the Board will not be threatening the spirit and intent of the ordinance, or the Town Master Plan.

Regarding substantial justice, George Chadwick stated that, to be substantially just the applicant's loss must not outweigh the benefit provided by the restriction. Continuing to allow this parcel to be developed in a residential manner, consistent with the neighborhood, will benefit the public. History has shown that expansions of parcels on the Lake have improved the area and reduced impact to the environment by providing improved septic treatment and decreased direct stormwater runoff discharge. In 2001, a new septic system was designed, permitted through the Town and State, and has since been built.

George Chadwick stated that the value of surrounding properties will not be diminished by granting the variance. The applicant plans to invest a great deal of money to improve his home. A new, Clean Solution septic system has been constructed. There will be a decrease in lot coverage, by removing 625 s.f. of pavement to accommodate the 305 s.f. addition. The property does and will comply with NHDES and Amherst Building Codes. Granting the variance, to allow for a decreased setback, will not alter the essential character of the neighborhood.

Regarding literal enforcement of the provisions of the ordinance resulting in an unnecessary hardship, George Chadwick stated that no fair and substantial relationship exists between the general purpose of the ordinance and the specific application of the provision, because the purpose of the ordinance is to promote public health, safety, and welfare and there are similar uses and dimensional violations in the Baboosic Lake area. The property in question is unique in its surroundings, due to its size, shape, and location. The setback request does not alter the public health, safety, and welfare, and there is no fair, substantial reason to prohibit this request. The proposed use is a reasonable one because residential use is allowed in the Residential Rural Zone.

George Chadwick noted that these were the criteria submitted originally for the request in 2021. The applicant would like to square off his house by adding a 305 s.f. addition. A drip edge is also being proposed, where possible. Regarding infiltration, the best area would be where the existing septic system is located, so the infiltration must be designed around the existing property layout.

In response to a question from Jamie Ramsay regarding if this would include a rain garden, George Chadwick stated that this will be a crushed stone infiltration trench. A previously approved Shoreland Permit for the addition, septic system, and a retaining wall, was received. The septic system and retaining wall were built, but then, due to the pandemic, the applicant decided to sail the Caribbean with his family. The applicant has since hired New Hampshire Builders to be the contractor for the project. George Chadwick explained that the applicant is

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now requesting a yearlong extension for this variance, in order to get through the building season.

In response to a question from Doug Kirkwood, George Chadwick stated that no additional trees are planned to be removed from the property. The existing property line splits two trees, a 15" pine and a 30" oak, neither of which are proposed to be touched as part of this project. This project looks to impact the front yard setback by 7/10 of a foot, and the property's front yard setback currently does not meet the requirements.

Danielle Pray noted that the addition is proposed to be L-shaped and only the front setback is impacted by 7/10 of a foot. This is not an application for a new variance; this is a request for an extension to a previously approved variance.

Jamie Ramsay noted that the proposed construction at this time is exactly what was approved by variance two years ago. George Chadwick agreed and noted that the criteria he read through were the same as in the original variance application.

Jamie Ramsay suggested that the Board could consider that the application being submitted for an extension is exactly the same as the original application which was previously approved and agree not to detail out each test. Doug Kirkwood stated that he believes the Board needs to run through the tests to state that the information to qualify for each has not changed.

George Chadwick asked if the Board will be granting an extension or a new variance. Danielle Pray stated that this is a conversation for the Board to have. George Chadwick stated that he has been through this process in the past. Two other towns, via legal counsel, agreed that it was best to grant an extension and not act as if they were new applications. He stated that he would assume a new variance would be for two years. Danielle Pray asked if, in those other two cases, the variances had expired. George Chadwick stated that that was not the case. Danielle Pray stated that she believes this would be the issue in this case. It would then be an issue to discuss this as an application for a new variance, as that is not how this was advertised and noticed.

Danielle Pray asked if the Board can extend a variance that has already expired. Nic Strong stated that, through her experience on the Planning Board, if an extension is requested, the Board has discretion to act on it. As this was posted and noticed as an extension hearing, abutters know that the variance existed. There are no abutters present to speak to the proposed extension, so in her mind, the Board can proceed.

Danielle Pray stated that the RSA does include language about the Zoning Board being able to extend a variance, but the language in the ordinance clearly states that this previous variance is null and void, as it has expired.

Doug Kirkwood asked the Board to vote to move into deliberations.

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

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

Jamie Ramsay moved no regional impact. Charlie Vars seconded.

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

Danielle Pray stated that Nic Strong has received legal opinion from the NH Municipal Association, which seems to state that the Board can grant this extension, but there is some amount of confusion through the ordinance.

Charlie Vars asked what can be gained by going through the entire variance process again when the information presented is exactly the same as what was previously approved two years ago, instead of simply granting an extension. Danielle Pray stated that she believes the ordinance needs to be updated. The only gain would be that a new variance would be for two years, whereas the Board may choose to make the extension period shorter. Charlie Vars stated that, if the Board decides to consider a new variance instead, it will have to make the applicant come back at a future meeting for a vote, instead of simply finishing this item this evening. Charlie Vars noted that four of the members present had sat on the original variance request and approved it. Tony Ortiz was not previously on the Board for the approval of this variance.

In response to a question from Danielle Pray, Nic Strong stated that, if the Board decides not to grant an extension, the applicant would need to come back for a new variance application.

Nic Strong explained that the Municipal Association recommended holding this as a public hearing, instead of covering it under Other Business, in order to allow for notice to abutters and the public.

Doug Kirkwood stated that this is not an application for an extension; it is an application for a variance. Danielle Pray stated that this was noticed as an extension request. Jamie Ramsay stated that it appears this is an extension for a lapsed variance and there is good legal counsel from the Municipal Association.

Charlie Vars stated that he would be in favor of granting this extension, based on the fact that the Board previously granted the variance with the same criteria.

Danielle Pray noted that the RSA states that a variance can be extended by the Zoning Board for good cause. The Board should state this good cause. Charlie Vars noted that the pandemic is a good cause.

Doug Kirkwood stated that he believes the Board should review each test, in order to cover its bases. Danielle Pray stated that she would rather talk about the good cause for the extension instead.

Danielle Pray moved that the Board approve an extension for one year for good cause, with the cause being the ramifications and effects of COVID-19 and the

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applicant being out of the country and not available to pursue this addition. The applicant has done some work on this project, including building a retaining wall and a new septic system. Charlie Vars seconded.

Voting: 4-1-0; motion carried [D. Kirkwood against].

Charlie Vars moved to exit deliberations. Doug Kirk declined the motion.

Doug Kirkwood stated that the Board did not define “good cause.” Danielle Pray stated that she stated this as part of the motion, including COVID-19, the owner being out of the country, and some work being pursued on the property. Doug Kirkwood stated that good cause is a general category, and anything could be included, including an applicant not wanting to pursue a project, but this is not necessarily justifiable. Danielle Pray stated that every case is unique and in this case, the applicant was out of the country on a sailboat. She believes the good cause enunciated is appropriate. Jamie Ramsay stated that the effects of COVID-19 are hard to dispute. This should not necessarily be written into the regulations but counts as a good cause demonstrated. Danielle Pray stated that the applicant appears to have left on a sailboat during the pandemic for his family’s safety, which is his choice.

Charlie Vars noted that this extension is within five weeks of its expiration date. He stated that he is unsure if the applicant may have already met the initial construction date within that variance time via the work that was done. Danielle Pray noted that a building permit may not have been pulled though. Charlie Vars noted that there was no public comment or abutter opposition to the project.

Charlie Vars noted that Tony Ortiz was not part of the original variance for this item, as Tim Kachmar was sitting as an alternate at that time. Doug Kirkwood stated that Tony Ortiz did sit through the criteria conversation this evening. Charlie Vars indicated that the language was almost identical to the original approval.

Doug Kirkwood stated that the Board runs through the tests to establish the facts that were used to support the decision. Findings of fact are needed for each application. Charlie Vars noted that he would not object to going through the tests if there was concern by someone on the Board about the application.

Jamie Ramsay moved to exit deliberations. Charlie Vars seconded.

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

OTHER BUSINESS:

1. Minutes: January 17, 2023

Jamie Ramsay moved to approve the meeting minutes of January 17, 2023, as submitted. Danielle Pray seconded.

Voting: 4-0-1; motion carried [T. Ortiz abstained].

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2. Any other business that may come before the Board

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Danielle Pray stated that there is an upcoming training on April 29th that Board members may be interested in. Nic Strong suggested that Board members register but could then watch the recorded sessions at a later date.

Doug Kirkwood stated that OSI has released a handbook for ZBAs in the State. He encouraged Board members to download and review it. Nic Strong stated that she would send a link.

Charlie Vars moved to adjourn the meeting at 8:01pm. Danielle Pray seconded.

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

Respectfully submitted,

Kristan Patenaude

Minutes approved: May 16, 2023