

TOWN OF AMHERST
Zoning Board of Adjustment

June 20, 2023

APPROVED

In attendance: Doug Kirkwood (Chair), Danielle Pray (Vice Chair), Charlie Vars, and Tony Ortiz (alternate)

6:00 p.m. Non-public session pursuant to RSA 91-A:3, II. (I) Consideration of legal advice provided by legal counsel, either in writing or orally, to one or more members of the public body, even where legal counsel is not present

Doug Kirkwood called the meeting to order at 6:14pm.

Tony Ortiz sat for Tracy McInnis.

Danielle Pray moved to enter Non-Public Session at 6:15pm. Charlie Vars seconded. Voting: 4-0-0; motion carried unanimously.

Discussion and consideration of legal advice. No votes taken or decisions made.

Charlie Vars moved to exit Non-Public Session at 6:54pm. Danielle Pray seconded. Voting: 4-0-0; motion carried unanimously.

PUBLIC SESSION:

In attendance: Doug Kirkwood (Chair), Danielle Pray (Vice Chair), Jamie Ramsay (Secretary), Charlie Vars, and Tony Ortiz (alternate)

Staff present: 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.

PUBLIC HEARINGS:

1. CASE #: PZ17270-042623 – VARIANCE

Scott McEttrick (Owner & Applicant); 6 North End of Lake, PIN #: 008-066-000 – Requesting relief from Article III, Section 3.5, Paragraph C to allow construction of an accessory dwelling unit on the second floor of a proposed detached garage on a non-conforming lot. Zoned Residential Rural. Continued from May 16, 2023.

Jamie Ramsay read and opened the case.

Charlie Vars moved to untable this case. Jamie Ramsay seconded. Voting: 5-0-0; motion carried unanimously.

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Daniel Muller, Attorney at Cronin, Bisson, & Zalinsky, P.C., explained that the Board closed the public hearing on this case during its last meeting and was deliberating when a question arose. He stated that, unless the Board needs additional information from him at this time, he would like to move this item to deliberations.

Doug Kirkwood noted that the Board previously had questions regarding two references within the applicant's materials. Attorney Muller explained that, in applying for a variance, he references the broadest relief and the narrower relief. When this request previously went to the Planning Board, there was a question as to whether a non-conforming lot could satisfy one of the elements for a Conditional Use Permit (CUP). In his experience, if there is a condition that practically cannot satisfy the broader relief, the next step is to seek approval of the use through a variance. The narrative supplied with this application cited two sections, one which would allow for the use via a variance, and the other narrower relief which would allow the Planning Board to grant a CUP for the non-conforming lot. In the second option, this case would go back to the Planning Board for its consideration under a CUP. The intention of citing both items was to cover the bases for his applicant and to pave a way forward through different options.

Doug Kirkwood explained that the requested variance is to allow for construction of an accessory dwelling unit (ADU) on the second floor of a detached garage on a non-conforming lot. Attorney Muller explained that, in his experience, if there is an issue under the CUP for a special exception, the use can be requested under a variance. The Board could also choose a narrower relief and allow the use on a non-conforming lot, while leaving the rest of the item to be decided on by the Planning Board.

There were no questions or comments from the Board at this time. There was no public comment at this time.

2. CASE #: PZ17414-053123 – VARIANCE

Scott W. & Susan Jacobs O'Connell (Owners & Applicants); 3 Mack Hill Road, PIN #: 020-029-000 – Requesting relief from Article III, Section 3.9, Paragraph D to use an existing driveway to access a newly created back lot. Existing driveway is within 500' of an existing intersection of a publicly traveled road. *Zoned Residential Rural*.

Jamie Ramsay read and opened the case.

Jason Bolduc, Meridian Land Services, explained that the applicants are requesting relief from the provisions of Article 3, Section 3.9, paragraph D., to use an existing driveway access for a newly created backlot. The existing driveway is located within 500' of an existing intersection along a publicly traveled road. The existing house was constructed in 1820 and it would be reasonable to conclude that the driveway has been providing access to the lot since that time. There are no proposed changes to the existing driveway. The only change is the classification of the lot from a frontage lot to a reduced frontage lot. The subdivision regulations do not allow for a driveway within 500' of a publicly traveled way. The existing driveway meets or exceeds the current Town driveway regulations in Chapter B, Section 3.10. The purpose of this Section

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states, “in as much as driveways, entrances, and access points are, in effect, intersections, and therefore require certain controls as to size, location, and construction in order to provide safe and efficient access to property fronting on the public way, as well as surface drainage in and around said driveways,” essentially allowing for safe access to the lot. This is contradictory to the 500’ separation distance in the subdivision regulations. The regulations require a 10’ wide driveway, paved, with grades less than 8%. The existing driveway is 11’ wide on average. According to the regulations, driveways must be 100’ from the intersections of roads. This driveway is 200’ from the intersection of Manchester Road and Mack Hill Road. The intention is to keep the driveway where it is currently located and create two lots in the back of the property, each which will have a separate driveway along Manchester Road. Two driveway plans will be presented to the Planning Board tomorrow to this effect.

Charlie Vars explained that the subdivision of the two lots removes the frontage from Lot 20-29. Jason Bolduc agreed and noted that this changes the classification of the lot which kicks it to the 500’ requirement. Charlie Vars asked if the same issue will come into play for newly created lot 20-29-1, regarding the distance from the intersection, and asked if it would be prudent to run the driveway off the existing driveway. Jason Bolduc explained that the new lots will be frontage lots and thus do not need to meet the 500’ requirement. He asked what the difference is between frontage lot driveways and backlot driveways regarding the space requirement, if they serve the same purpose.

Charlie Vars suggested a common driveway for the two new lots off the existing driveway. Jason Bolduc stated that the new driveways are shown on the plan. The existing driveway has existed since approximately 1820 and has caused no known safety issues.

Doug Kirkwood stated that the application requests relief from Article 3, Section 3.9, paragraph D., but there is no paragraph D. Danielle Pray noted that this updated language was placed in the Board’s packet.

Danielle Pray suggested that the applicant read through the variance criteria.

Jason Bolduc read the variance criteria:

1. How will granting the variance not be contrary to the public interest?

Granting of this variance will not be contrary to the public interest, as there is no harm or adverse impact by the continued use of the existing driveway. Continued use of the existing driveway from 1820 will neither alter the essential character of the neighborhood nor threaten the health, safety, or general welfare of the public.

2. How will the granting of the variance ensure that the spirit of the ordinance will be observed?

The spirit of the ordinance will be observed because, to the best of our knowledge, the driveway has been providing safe access to the lot since at least 1820. Since there is no known design or safety basis for the new 500’ separation requirement, we rely on the

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Town's driveway regulations to conclusively state the existing driveway far exceeds the required safety separations. The spirit of the ordinance is observed by the continued use of the existing driveway.

3. *How will substantial justice be done?*

Substantial justice will be done because the parent lot's access will remain the same and has historically not been the result of hazardous situations to vehicular traffic or pedestrians. Continued use of the current driveway would not be outweighed by any perceived gain by the general public, especially as there is no proven benefit for the 500' separation value. No public benefit will occur by denial of this application.

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

The value of the surrounding properties will not be diminished because the continued use of the current driveway will not diminish the values of the surrounding properties, as the location and use of it will not change.

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

(A) For the purpose of this sub paragraph, "unnecessary hardship" means that owning to special conditions of the property that distinguish it from other properties in the area:

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 because this proposal distinguishes the property from others as it does not propose a new driveway to a new dwelling. The special conditions of the existing driveway location still comply with the Town's driveway regulation separation requirements, which provides for proper protection of the health, safety, and general welfare of the public. The full application of the ordinance to this particular property is not necessary to promote a valid public purpose.

(i) This driveway has existed since 1820 and has not presented a hazardous situation to vehicular traffic or pedestrians. Denial of this variance would result in unnecessary hardship to the owner, as it would result in the denial of a subdivision that, to the best of our knowledge, meets all other Town subdivision regulations.

(ii) The proposed use is a reasonable one because we know of no engineering design or public safety requirements which support what appears to be an arbitrary value of 500' and otherwise meets all other Amherst driveway regulations.

(B) Explain how, if the criteria in subparagraph A above are not established, an unnecessary hardship will be deemed to exist if, and only if, owning 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:

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The proposed parent lot's reduced frontage will utilize the existing access which is within 500' of Mack Hill Road and Manchester Road. However, the driveway meets or exceeds all regulations within the Amherst driveway regulations. The driveway is continued use is a reasonable one, as the special conditions of its existing location neither negatively affect area properties nor alter the essential character of the neighborhood.

Danielle Pray stated that there were some questions asked by the Planning Board for this item, regarding an easement to the north of the property on Mack Hill Road. Jason Bolduc stated that a neighbor was concerned about rights to this 16.5' frontage area. This proposal will not impact anywhere near this area. This space is not adequately sized to place a driveway and there would have to be a large wetland crossing.

Jamie Ramsay asked if Manchester Road is considered a scenic road. Jason Bolduc stated that he is unsure. Jamie Ramsay asked that the applicant review this. He noted that this is located within the Historic District and asked if the proposal meets the setbacks for the building envelope in the District setbacks. Jason Bolduc stated that the Planning Board asked that the existing structure meet the required separation distance to an existing pool house, which is noted on the plan. Accessory structures have a reduced setback requirement to property lines.

Jamie Ramsay noted that Lot 20-29-1 has a 100' setback from Mack Hill Road but not Manchester Road. As this is a corner lot, it needs to meet the setback requirements for both roads. Jason Bolduc stated that he will verify if Manchester Road is a scenic road or not, as this may allow for a larger setback. Jamie Ramsay stated that, if this is not a scenic road, there could be additional requirements, due to it being in the Historic District. The other subdivided lot, 20-29-2, also could have a 100' setback requirement in the Historic District. Jason Bolduc explained that the plan includes Note 3 that Mack Hill Road is classified as a scenic road and a 100' front setback. The Note also includes any relevant overlay districts. Jamie Ramsay stated that he does not believe Note 3 is specific to the Historic District overlay. Jason Bolduc stated that the Note is supposed to apply to any relevant overlay districts. He will review the Historic District setback requirements.

Charlie Vars noted that this variance is only for the use of an existing driveway to access back lots. He stated that he cannot think of a safer way to access these lots than the proposal. These new proposed lots will then need to go before the Planning Board for a Conditional Use Permit (CUP).

Doug Kirkwood asked for public comment.

Reed Panasiti, 11 Mack Hill Road, asked for clarification on the location of this driveway and how the new lots will be accessed. Jason Bolduc showed on a map the location of the existing driveway and explained that the new lots will be accessed from Manchester Road. Reed Panasiti stated that he believed, per the last Planning Board meeting on this item, that this was not an option. Jason Bolduc explained that this was a question of the Planning Board. Tomorrow night, the applicant will show the Planning Board engineered plans with sight distances, showing that

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the two proposed access points to the lots meet the regulations. The existing driveway will not be altered in any way.

There was no further public comment at this time.

REQUEST FOR REHEARING:

- 3. Request for rehearing, CASE #: PZ17271-042623 –VARIANCE**
Louise Norwood (Owner & Applicant); 89 Chestnut Hill Road, PIN #: 011-007-001 –Request for relief from Article III, Section 3.1, Paragraph D to operate a private wedding venue as a Home Occupation. *Zoned Northern Rural.*

Jamie Ramsay read and opened the case.

There was no one present from the applicant's team.

Doug Kirkwood explained that, as this is a request for a rehearing, the Board generally considers the letters it received for this item, and then makes a decision.

Charlie Vars moved to enter deliberations. Danielle Pray seconded.
Voting: 5-0-0; motion carried unanimously.

The Board discussed tabling the second agenda item, as there were questions posed of the applicant during the presentation. A member of the public asked to make comments regarding the second agenda item.

Jamie Ramsay moved to exit deliberations. Charlie Vars seconded.
Voting: 5-0-0; motion carried unanimously.

Daphne Jackson, 5 Mack Hill Road, stated that she believes the proposal could impact neighborhood values because it would lead to additional driveways and structures in this area. This area has always been a quiet private property, not a business. This proposal would essentially alter the character of the neighborhood. It is currently a quiet open field, and this proposal would impact lower Mack Hill.

Dean Jackson, 5 Mack Hill Road, asked if there is enough land to develop the two additional backlots proposed. This was always a pasture for horses. He does not want to see this area become all houses. He would like the Board to maintain the character of this community. Doug Kirkwood explained that the Planning Board would be an appropriate venue for these comments.

Charlie Vars moved to enter deliberations. Jamie Ramsay seconded.
Voting: 5-0-0; motion carried unanimously.

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Scott McEttrick (Owner & Applicant); 6 North End of Lake, PIN #: 008-066-000 – Requesting relief from Article III, Section 3.5, Paragraph C to allow construction of an accessory dwelling unit on the second floor of a proposed detached garage on a non-conforming lot. Zoned Residential Rural.

**Danielle Pray moved no regional impact. Charlie Vars seconded.
Voting: 5-0-0; motion carried unanimously.**

Charlie Vars explained that this was sent to the Zoning Board because the Planning Board was unsure if a variance was necessary, and partly because the ADU would not be adjacent to the existing house and, instead, on top of a detached garage. He does not believe a variance is required for this item and suggested that it should be sent back to the Planning Board for a CUP discussion.

Danielle Pray agreed that the threshold question is if a variance is required. If the Board determines it is, then there was additional testimony tonight regarding what the applicant is seeking to do.

Jamie Ramsay asked Charlie Vars why he believes a variance is not required. Charlie Vars stated that any owner is allowed to construct an ADU on a piece of property. The reason for the variance request is as it relates to the size and dimensions of this lot. The Board has always acknowledged that lots around Baboosic Lake are undersized, but owners still have the right to an ADU. If this variance request is strictly based on the size of the lot, he does not believe a variance is needed. Instead, this could be handled by the Planning Board through a CUP process.

Danielle Pray stated that she believes this reasoning has merit. Per Section 4.2 Lots of Record, this is a lot of record, regardless of its size. This variance request is based on the size of the lot, and this is the reasoning for not requiring a variance in this case.

Jamie Ramsay noted that this is a preexisting non-conforming lot of record.

Danielle Pray moved that a variance for relief from the dimensional requirements of Section 3.18.C.1.A for an attached ADU is not required for owner Scott McEttrick, CASE #: PZ17270-042623. Jamie Ramsay seconded.

Discussion:

Charlie Vars noted that this decision will send this item back to the Planning Board for a decision regarding if the application meets the requirements for a CUP.

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

CASE #: PZ17414-053123 – VARIANCE

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Scott W. & Susan Jacobs O'Connell (Owners & Applicants); 3 Mack Hill Road, PIN #: 020-029-000 – Requesting relief from Article III, Section 3.9, Paragraph D to use an existing driveway to access a newly created back lot. Existing driveway is within 500' of an existing intersection of a publicly traveled road. Zoned Residential Rural.

**Danielle Pray moved no regional impact. Charlie Vars seconded.
Voting: 5-0-0; motion carried unanimously.**

In response to a question from Danielle Pray, Charlie Vars explained that the engineer's plan shows an existing driveway frontage access of 115.11', where the ordinance requirement is 50'. There does not seem to be a better way to handle access to the lots. Further development would be difficult, as it would be hard to find 50' of right of way to access the back acres of the lot. Owners have a right to subdivide their lots. The 500' distance seems arbitrary. The State of NH right of way requires a 400' line of sight distance, and this certainly exists for the driveway. This would meet the State line of sight requirements for a public road.

Danielle Pray stated that the Board is responsible to follow the Zoning Ordinance, which takes precedent over the regulations. The 500' requirement is in the Zoning Ordinance and the Board must consider this, regardless if the applicant feels it is arbitrary based on what is in the regulations. Relief can be sought, which is the purpose of this application.

The Board reviewed the criteria tests:

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

- D. Pray – true, one item to be considered is whether the request would change the character of the neighborhood. This is an existing driveway and so it would not change the character of the neighborhood in any way. Secondly, the Board must consider if this would impact the public health, safety, or welfare. There is no indication that allowing an existing driveway to remain in use would impact these items.
- T. Ortiz – true, there was no evidence shown that this proposal will impact the public health, safety, or welfare, or impact the character of the neighborhood. There is no change proposed to the driveway which has previously allowed for access to the lot.
- C. Vars – true, this is an existing driveway and is as far from the intersection as it could be.
- J. Ramsay– true, for the reasons previously stated.
- D. Kirkwood – true, as previously stated by other Board members.

5 True

2. The Variance will ensure that the spirit of the ordinance will be observed.

- T. Ortiz – true, there's nothing to suggest granting the variance will alter the character of the neighborhood or negatively impact the health, safety, and welfare to the public.
- C. Vars – true, this is the safest access point and will not change the appearance of the neighborhood.
- J. Ramsay– true, there is no opportunity from this to endanger the public safety.

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- D. Pray – true, this does not affect the public health, safety, or welfare. This is an existing driveway that is currently in use and there will be no change to it.

- D. Kirkwood – true, as previously stated by other Board members.

5 True

3. Substantial justice is done.

- C. Vars – true, there will be no changes to the entrance of the site, which will not diminish any surrounding property values.

- J. Ramsay – true, allowing use of the existing driveway will not alter the character of the neighborhood.

- D. Pray – true, there is no gain to the general public in not allowing the driveway to be used as it is currently used. The applicant's harm thus outweighs the public gain in not granting the variance.

- T. Ortiz – true, the proposed use is a reasonable one, the benefit of the applicant is not outweighed by hardship to the public, and this makes use of an existing driveway.

- D. Kirkwood – true, as previously stated by other Board members.

5 True

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

- J. Ramsay – true, the value of surrounding properties will not be diminished.

- D. Pray – true, the applicant stated that the continued use of the existing driveway will not diminish values of the surrounding properties, as the location and use will not change.

- T. Ortiz – true, there is no evidence provided that would suggest a negative impact on surrounding properties.

- C. Vars – true, there is no necessity for the 500' as far as substantial justice and this will not diminish the value of surrounding properties to allow access from the existing driveway to the backlot.

- D. Kirkwood – true, as previously stated by other Board members.

5 True

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

- D. Pray – true, the Board has to determine special conditions of the property. This is a fairly large lot on a corner and the current driveway impacts whether this applicant can subdivide the property. Not every driveway in this area is within 500' of an intersection, but this one is. There is an existing driveway currently used by the owners, with no changes proposed. This creates a hardship to the applicant in terms of subdividing the lot. The use is a reasonable one and people have a right to subdivide their property, in compliance with Town ordinances. This will allow the owners to develop their property in a meaningful way.

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- T. Ortiz – true, the proposal is a reasonable one as it utilizes the existing driveway with no proposed changes. Denial would negatively impact the applicant and the proposed plans for the property which is out of the Board’s purview.
- C. Vars — true, this does comply with the Town’s driveway regulations and to deny it would be a hardship.
- J. Ramsay– true, as previously stated by other Board members.
- D. Kirkwood – true, as previously stated by other Board members.

5 True

Doug Kirkwood stated that the application, having passed all of the tests is granted.

Request for rehearing, CASE #: PZ17271-042623 –VARIANCE

Louise Norwood (Owner & Applicant); 89 Chestnut Hill Road, PIN #: 011-007-001 – Request for relief from Article III, Section 3.1, Paragraph D to operate a private wedding venue as a Home Occupation. Zoned Northern Rural.

Doug Kirkwood explained that the variance granted to the owner is being requested to be reheard.

Jamie Ramsay stated that the appellant for this item was not noticed of the meeting. Notice of the meeting was not required to this owner though and the hearing was otherwise properly noticed.

Danielle Pray stated that she favors a rehearing. Although this item was properly noticed, she sees a huge defect in that someone can own a property next to their property to which those abutters do not get noticed. This is not the applicant's fault, nor the interested party's fault, but seems unfair. This is a defect that the Board should correct. This variance would affect the abutters in question quite considerably, in regard to where cars are going to be parked and what time people will leave the property. She would have liked to have heard more about those comments during the hearing. She is in favor of a rehearing.

Charlie Vars stated that the Board was very generous in its interpretation based on the applicant’s reputation. Recognizing that the variance runs with the property, some of the items brought to light by abutters may have brought about additional discussion by the Board. A future owner could look to expand the use, which may impact the abutters in question. He is in favor of a rehearing.

Jamie Ramsay agreed. He does not feel that the Board was not presented with an accurate presentation of the proposed use by the owners, but there is concern for the future of this property. A subsequent owner could expand this use and there would be nothing to prevent that.

Tony Ortiz stated that he would like to hear some clarification regarding the proposed 10:00 PM end time for the events. He would support a rehearing.

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Doug Kirkwood stated that there can be layers of abutters. There is question as to where this stops though. The issue of no notification in this case should be recognized and corrected. This gives justification for a rehearing. However, the person requesting this does not have any legal standing. Danielle Pray noted that this person is an interested party under the State law, RSA 677:2, to apply for a rehearing. This does not need to be an abutter. This language is included in the Staff Report for this item. The interested party has made a case that they could be impacted by this item.

Charlie Vars stated that, in a rehearing, he would not be looking to eliminate the variance provided, but he would like to hear testimony if the Board missed details during the last hearing that could be corrected within the variance regarding the future and parameters of use. The Board has been reasonable about granting rehearsings in the past, in order to do the best for all involved.

Jamie Ramsay moved to grant a rehearing as requested by the interested parties at the July 18, 2023 meeting, at 7pm, at Town Hall. Tony Ortiz seconded.

Discussion:

Charlie Vars explained that this hearing would not contain new documentation necessarily and would not necessarily lead to a different outcome.

Danielle Pray noted that this will be a de novo hearing, as though the Board is hearing it for the first time.

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

OTHER BUSINESS:

1. Minutes: May 16, 2023

The Board did not address these at this time.

2. Any other business that may come before the Board

Jamie Ramsay moved to adjourn the meeting at 8:40pm. Charlie Vars seconded.

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

Respectfully submitted,
Kristan Patenaude

Minutes approved: August 15, 2023