



ZONING BOARD OF ADJUSTMENT BELMONT, NH

Wednesday, February 22, 2023
Belmont Mill & Zoom
Belmont, NH 03220

Members Present: Chairman Peter Harris, Mark Mastenbrook, and David Dunham
Alternates present: John Froumy
Zoom: Sharon Ciampi
Staff: Susan Austin, Land Use Administrative Assistant and Karen Santoro, Interim Planner/Land Use Technician.

6:00 Public Meeting

The Chairman opened the meeting at 6:00 pm and welcomed those in attendance and announced that as Chairman of the Belmont Zoning Board of Adjustment, this public body is authorized to meet using electronic means. He said that the Board gave notice to the public of the necessary information for accessing the meeting using Zoom or telephone, and he announced that any party experiencing any difficulty in accessing the meeting at any point, should call 603-267-8300 x 101, and the meeting will be recessed until access can be restored for all parties.

P. Harris appointed John Froumy as a voting member

Chairman Harris stated that in order to provide timely notice, provide opportunities for input and consider the interests of other municipalities the Board shall act to determine if the development has a potential regional impact as defined by RSA 36:55. Impacts may include, but are not limited to: Relative size or number of dwelling units as compared with existing stock; Proximity to the borders of a neighboring community; Transportation networks; Anticipated emissions such as light, noise, smoke, odors, or particles; Proximity to aquifers or surface waters which transcend municipal boundaries; Shared facilities such as schools and solid waste disposal facilities.

MOTION: P. Harris moved that the proposals do not have a potential regional impact.

The motion was seconded by D. Dunham

Vote: All in favor by roll call vote, motion carried. (5-0)

Departmental Responses:

Building/Code Enforcement Officer: These numbers are very close to recently denied requests.

Assessing: The Current Use area and Conservation Easement/s should be reflected on any plans provided, and/or an updated Current Use Map provided, with a copy for Assessing Department.

Staff Comments:

- Lot is 12.7 acres; lot is in conservation easement with the Society for Protection of NH Forests.
- Front portion of existing cottage is pre-existing nonconforming.
- Applicant is working with Society for Protection of NH Forests to allow for the proposed expansion in footprint.

Abutters' Hearing – Matthew and Marlene McCabe: Request for a variance of Article 5 Table 2 of the Zoning Ordinance to construct an addition to the existing home and add a deck closer (36.13') to the front property line than allowed (50') Property is located at 21 Walnut Street in the "RS" Zone, Tax Lot 114-009-000-000. ZBA# 0323-Z.

Will Hess from Hess Engineering was present to speak for the applicants, Matthew and Marlene McCabe, who were also present.

Mr. Hess stated that the purpose of this project is to demolish the oldest section of 21 Walnut Street and leave the newest section of the existing home in place. Since this is an addition to the existing home, the required angle of the addition will put the corner of the home over the existing 25' side setback. This is to preserve an existing healthy and mature maple tree and build the addition to better fit the existing land and home. The applicant is asking for three setback variances, two side and one front. The front setback is 36.13 feet from the existing Walnut Street ROW where 50' is required, and the side setbacks are 13.73 feet and 15.03 feet from the property lines where 25' is required.

Mr. Hess answered the five criteria questions for the variance requests.

1. The variances will not be contrary to the public interest because: The applicants are proposing to add an addition to an existing structure replacing an old outdated section of the home. The new design will fit better in the existing neighborhood and surrounding land. They have limited flexibility on location because tying into an existing structure and the conservation restrictions set forth in the owner's deed. The applicants are asking to put 907 sf within the setback. This includes a portion of the existing home, new decks and new garage.
2. The spirit of the ordinance is observed because: The proposed structure will be sitting roughly in the same location as the existing structure and will remain within the footprint of land already used and established by the resident. Adding the structure that will tie better into the surrounding landscape.

3. Substantial justice will be done because: The applicants are removing an older section of a home to build a new addition that will fit better into the landscape. The new structure will not diminish value but will likely increase the value of the surrounding properties and it maintains the character of the neighborhood, therefore causing no harm.
4. The variances would not diminish the value of surrounding properties because: The applicants are removing an older section of a home to build a new addition that will fit better into the landscape. The new structure will not diminish value but will likely increase the value of the surrounding properties.
5. Owing to special conditions of the property, that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because of the following:
 - A. No fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property because: The proposed structure will fit better in the existing landscape and will have no adverse effects on the abutting properties. The proposed area over the existing set back is minimal and by allowing the variances, we will save a healthy and mature maple tree keeping the intent of the conservation restriction instilled on the property. The applicants are also saving a section of the existing house helping to reduce disturbance near the water and within the conservation area. The conservation restrictions in the deed limit the change in topography and disturbed area. The proposed design helps minimize the disturbance to the land and changes in topography.

and
 - B. the proposed use is a reasonable one because: We are not changing the use of the property from what it currently is.

Chairman Harris opened the public comment.

BJ Eckerd, abutter at 14 Walnut Street was present. She stated that she is the president of the Shore Association. She stated that all of the neighbors, some of which were present, do not have any problems with this project. It won't interfere with access or the view of the lake. Everything that the McCabe's have done to the property so far have been beneficial to all of the neighbors and to preserving the neighborhood and the conservation land. They have all seen the drawings and the McCabe's have been very transparent. They are very happy with this project and see no problems at all.

Devin Walsh, abutter at 25 Chestnut. She stated that they have a few neighbors that are not full year, but everybody is aware of the project and in total support.

J. Froumy stated that while they appreciate the president of the Shore Association is present, they need to keep mind that the variance stays with the land and not with the person. They need to consider this as a permanent change. One thing to consider is the conservation restrictions. The applicant has very limited ability to add anything to the structure or on the land, despite the fact that the land is very significant in

size. He submits that an existing home of only about 1,000 sf is pretty small. This is a reasonable request. For someone to ask a reasonable request and the Board to deny it in light of the fact that there is a conservation restriction where they can't put it anywhere else without violating that restriction, he feels that it is important for the Board to consider that. Those two facts should play into the decision, that the home is small and a reasonable request, and substantial justice is how this proposal will weigh upon the public as opposed to how much benefit it gives to the owner, and one cannot outweigh the other. That has to be considered while debating whether or not to grant or deny. As far as the hardship is concerned, what they need to keep in mind is that the property is a reasonable size, but it has restrictions on it. That makes this property unusual.

Chairman Harris stated that his concerns were similar. It is a reasonable request, the lot is large, but it has restrictions. When it comes to asking for reduction in site setbacks, its usually because of a problem with this property, steep slopes or banks, ditches, etc. This lot has conservation easement restrictions, which makes it unusual.

MOTION: J. Froumy moved to grant the variance to Article 5 Table 2 of the Zoning Ordinance to construct an addition to the existing home and add a deck closer (36.13') to the front property line than allowed (50') as the application meets the following criteria:

1. The variance will not be contrary to the public interest because: Insofar as the public interest is the essential character of the neighborhood, public safety or welfare and otherwise public rights. The public welfare is also expressed in a conservation restriction, and a building moved out of the portion of the property that is in presently would be a violation of the principal of the conservation restrictions.
2. The spirit of the ordinance is observed because: Insofar as the public interest is the essential character of the neighborhood, public safety or welfare and otherwise public rights. The public welfare is also expressed in a conservation restriction, and a building moved out of the portion of the property that is in presently would be a violation of the principal of the conservation restrictions.
3. Substantial justice will be done because: this criterion is based upon the principal that benefit should not be outweighed by harm to the general public or other individuals. There is no evidence here that there is harm to the general public with this proposal. The principal goes further to say that simply enforcing a setback requirement without any benefit to the public and would also injure the applicant is inappropriate, therefore as a Board we are obliged to grant the variance baaed upon the 3rd criteria that substantial justice will be done.
4. The variance would not diminish the value of surrounding properties because: The structure is a residence on a large piece of property, and being a new building would actually enhance the property value on which it will be sitting as well as the property values in its immediate vicinity.
5. Owing to special conditions of the property, that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because of the following: the hardship is based largely on the conservation restriction, and the property is unique in this regard as the property is large for a shoreland property. Adding a structure to this is a reasonable request and forcing the applicant to put this new structure on to another part of this property would be inappropriate because of the conservation restriction. The hardship cannot be reasonably overcome without violating the principals of the first variance which is the essential characters of the neighborhood or violating the conservation easement.

- A. the proposed use is a reasonable one because: Because of a reasonable size of the structure being proposed.

Any additional conditions are as follows:

- a) All representations made by the applicant during the public hearing are incorporated as a condition of this approval.
- b) The applicant and owner are solely responsible to comply with the approved plan and conditions of approval. Contractors should be sufficiently warned regarding same.
- c) Approval expires on 2/22/25 if use is not substantially acted on and if an extension is not granted. Approval also expires if use ceases for more than two years.

The motion was seconded by M. Mastenbrook

Vote: All in favor by roll call vote, motion carried. (5-0)

Chairman Harris stated that although the criteria is the same for each variance, they need to cover each one individually.

Abutters' Hearing – Matthew and Marlene McCabe: Request for a variance of Article 5 Table 2 of the Zoning Ordinance to construct the deck portion of the structure closer (13.73') to the side property line than allowed (25') Property is located at 21 Walnut Street in the "RS" Zone, Tax Lot 114-009-000-000ZBA# 0423-Z.

MOTION: J. Froumy moved to grant the variance to Article 5 Table 2 of the Zoning Ordinance to construct an addition to the existing home and add a deck closer (13.73') to the side property line than allowed (25') as the application meets the following criteria:

1. The variance will not be contrary to the public interest because: Insofar as the public interest is the essential character of the neighborhood, public safety or welfare and otherwise public rights. The public welfare is also expressed in a conservation restriction, and a building moved out of the portion of the property that is in presently would be a violation of the principal of the conservation restrictions.
2. The spirit of the ordinance is observed because: Insofar as the public interest is the essential character of the neighborhood, public safety or welfare and otherwise public rights. The public welfare is also expressed in a conservation restriction, and a building moved out of the portion of the property that is in presently would be a violation of the principal of the conservation restrictions.
3. Substantial justice will be done because: this criterion is based upon the principal that benefit should not be outweighed by harm to the general public or other individuals. There is no evidence here that there is harm to the general public with this proposal. The principal goes further to say that simply enforcing a setback requirement without any benefit to the public and would also injure the applicant is inappropriate, therefore as a Board we are obliged to grant the variance based upon the 3rd criteria that substantial justice will be done.

4. The variance would not diminish the value of surrounding properties because: The structure is a residence on a large piece of property, and being a new building would actually enhance the property value on which it will be sitting as well as the property values in its immediate vicinity.
5. Owing to special conditions of the property, that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because of the following: the hardship is based largely on the conservation restriction, and the property is unique in this regard as the property is large for a shoreland property. Adding a structure to this is a reasonable request and forcing the applicant to put this new structure on to another part of this property would be inappropriate because of the conservation restriction. The hardship cannot be reasonably overcome without violating the principals of the first variance which is the essential characters of the neighborhood or violating the conservation easement.

A. the proposed use is a reasonable one because: Because of a reasonable size of the structure being proposed.

Any additional conditions are as follows:

- a) All representations made by the applicant during the public hearing are incorporated as a condition of this approval.
- b) The applicant and owner are solely responsible to comply with the approved plan and conditions of approval. Contractors should be sufficiently warned regarding same.
- c) Approval expires on 2/22/25 if use is not substantially acted on and if an extension is not granted. Approval also expires if use ceases for more than two years.

The motion was seconded by D. Dunham

Vote: All in favor by roll call vote, motion carried. (5-0)

Abutters' Hearing – Matthew and Marlene McCabe: Request for a variance of Article 5 Table 2 of the Zoning Ordinance to construct the garage portion of the structure closer (15.03') to the side property line than allowed (25') Property is located at 21 Walnut Street in the "RS" Zone, Tax Lot 114-009-000-000. ZBA# 0523-Z.

MOTION: J. Froumy moved to grant the variance to Article 5 Table 2 of the Zoning Ordinance to construct an addition to the existing home and add a deck closer (15.03') to the side property line than allowed (25') as the application meets the following criteria:

1. The variance will not be contrary to the public interest because: Insofar as the public interest is the essential character of the neighborhood, public safety or welfare and otherwise public rights. The public welfare is also expressed in a conservation restriction, and a building moved out of the portion of the property that is in presently would be a violation of the principal of the conservation restrictions.
2. The spirit of the ordinance is observed because: Insofar as the public interest is the essential character of the neighborhood, public safety or welfare and otherwise public rights. The public

welfare is also expressed in a conservation restriction, and a building moved out of the portion of the property that is in presently would be a violation of the principal of the conservation restrictions.

3. Substantial justice will be done because: this criterion is based upon the principal that benefit should not be outweighed by harm to the general public or other individuals. There is no evidence here that there is harm to the general public with this proposal. The principal goes further to say that simply enforcing a setback requirement without any benefit to the public and would also injure the applicant is inappropriate, therefore as a Board we are obliged to grant the variance based upon the 3rd criteria that substantial justice will be done.
 4. The variance would not diminish the value of surrounding properties because: The structure is a residence on a large piece of property, and being a new building would actually enhance the property value on which it will be sitting as well as the property values in its immediate vicinity.
 5. Owing to special conditions of the property, that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because of the following: the hardship is based largely on the conservation restriction, and the property is unique in this regard as the property is large for a shoreland property. Adding a structure to this is a reasonable request and forcing the applicant to put this new structure on to another part of this property would be inappropriate because of the conservation restriction. The hardship cannot be reasonably overcome without violating the principals of the first variance which is the essential characters of the neighborhood or violating the conservation easement.
- A. the proposed use is a reasonable one because: Because of a reasonable size of the structure being proposed.

Any additional conditions are as follows:

- a) All representations made by the applicant during the public hearing are incorporated as a condition of this approval.
- b) The applicant and owner are solely responsible to comply with the approved plan and conditions of approval. Contractors should be sufficiently warned regarding same.
- c) Approval expires on 2/22/25 if use is not substantially acted on and if an extension is not granted. Approval also expires if use ceases for more than two years.

The motion was seconded by M. Mastenbrook

Vote: All in favor by roll call vote, motion carried. (5-0)

APPROVAL OF MINUTES:

MOTION: J. Froumy moved to approve the minutes of December 28, 2022 as written.

P. Harris seconded.

Vote: Motion carried by roll call vote (3-0-2) M. Mastenbrook and S. Ciampi abstained.

MOTION: J. Froumy moved to approve the minutes of February 2, 2022 as amended, to add the line “J. Froumy pointed out that a revision of the applicant’s plan to relocate the proposed structure would make it worthy of the Board’s consideration, but would not constitute a guarantee of a granting the variance.”

M. Mastenbrook seconded.

Vote: Motion carried by roll call vote (5-0)

STAFF REPORT:

K. Santoro stated that any applications for the Town Planner position received were to be reviewed today.

ADJOURNMENT:

MOTION: J. Froumy moved to adjourn at 6:47 pm.

Seconded by D. Dunham

Vote: Motion carried by roll call vote (5-0)

Respectfully submitted,

Susan M. Austin
Land Use Administrative Assistant