



ZONING BOARD OF ADJUSTMENT BELMONT, NH

Wednesday, July 26, 2023
Belmont Mill & Zoom
Belmont, NH 03220

Members Present: Chairman Peter Harris and Members David Dunham, Reese Grey, Mark Mastenbrook, Sharon Ciampi, and John Froumy.

Staff Present: Karen Santoro, Town Planner, and Susan Austin, Land Use Administrative Assistant.

ZOOM: None

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.

Chairman Harris stated that he would like to remind everyone to be respectful to each other and the Board members and to please direct all questions and comments to the Board. The public will be allowed the opportunity to address the Board during the public hearing.

Abutter's Hearing: Martin and Kimberly Conway: Request for a variance of Article 5 Table 2 of the Zoning Ordinance to allow the removal of the existing house and garage and replacing it with new construction of a house, deck and attached garage approximately 18.15' from the private Right of Way known as Dutile Shore Road, where 50' is required. Property is located at 31 Dutile Shore Road, Tax Lot 103-005-000-000, in the Residential Single Zone. ZBA Case #12-23Z.

Chris Boldt, Esq. was present for the applicants. He stated that they have two applications before the Board for the same project. He stated that the key issues were that the required 50 foot setbacks that the applicant is seeking relief from actually overlap. The proposed plans will double the distance from the road, and the new structure will be more conforming.

He stated that the first two criteria for granting an ordinance are viewed together. As the court has indicated repeatedly, the requirement that the variance not be contrary to the public interest is related

to the requirement that the variance be consistent with the spirit of the ordinance. The Town also doesn't have any clear stated purposes for these provisions. As his narrative explains, they can conclude that the standard rationale for these setbacks of this kind in general could apply. For example, for the setback from the lake, its purpose is to protect water quality. For the road setback, it's to help sight lines for traffic, or to allow for a road to be expanded in the future. The applicants have already received their DES Shoreland Permit that shows they have met their criteria. From the road standpoint, they are improving the sightline.

He stated that as far as the third prong, substantial justice, the guiding rule is that any loss to the individual, the applicant, that is not outweighed by a gain to the general public is an injustice. In this case, he would argue that they are benefiting the community by making this house more conforming and will likely give the town more in property taxes.

The fourth prong states that the use will not diminish surrounding property values. Included in the Board packet, there are letters of support from the abutters.

The fifth prong, unnecessary hardship, he suggests that this is broken out into three parts. What are the special conditions of the property? What are the specific provisions of the zoning ordinance and their purpose? Is the project reasonable? The special conditions are listed on page 5 of the packet and they include the existing built condition that is 9 feet from the road and 11 feet from the lake. They also include the fact that this portion of the road encroaches largely on the property due to the bend in this portion of the road. It also includes the overlapping nature of the lake setback and the road setback. It's impossible to be conforming. Accordingly, he believes they have met the 5th criteria. Again, this is a reasonable use.

Current Considerations:

Does the application meet the criteria for granting a Variance(s)? Yes, it does.

Property is within the Aquifer Protection District.

Is this a Development of Regional Impact?

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: J. Froumy moved that the proposal does not have a regional impact.
S. Ciampi seconded.
Vote: All in favor, motion carried. (6-0)

Departmental Responses:

Fire: It appears that they are staying in a same size foot print, bringing in a new home will hopefully updated items will make it a safer house. I am good as long as it fits within what the zoning board agrees with. At this point there doesn't seem to be any fire concerns.

Building/Code Enforcement Officer: With only 18' away from the ROW a full-size pickup will not be able to park in the driveway exasperating the parking issues that exist on this road.

Staff Comments: Lot is .25 acres; minimum lot size in RS Zone is 1 acre. Existing cottage is pre-existing nonconforming. Project has received Shoreland Impact Permit.

Chairman Harris opened the public comment portion of the meeting. There were no public comments. Chairman Harris closed the public comment.

Chairman Harris stated that there were two letters in support of the project received from abutters Kevin Hutchinson and Arthur Mooney.

MOTION: J. Froumy moved to grant the variance to of Article 5 Table 2 of the Zoning Ordinance to allow the removal of the existing house and garage and replacing it with new construction of a house, deck and attached garage approximately 18.15' from the private Right of Way known as Dutile Shore Road, where 50' is required. (Tax lot 103-005-000-000), based on the following findings:

1. *The variance will not be contrary to the public interest because:* It conforms the intended purpose of the ordinance which is increased safety, further from the traveled way, increase the line for the snow removal by the town and increase protection of the lake due to the fact that the new home will be further from the lake than the existing home. It does not alter the character of the neighborhood insofar as the esthetics of the home are similar to those of the neighborhood, and it will be a brand-new house thereby fitting well into the neighborhood.
2. *The spirit of the ordinance is observed because:* It conforms the intended purpose of the ordinance which is increased safety, further from the traveled way, increase the line for the snow removal by the town and increase protection of the lake due to the fact that the new home will be further from the lake than the existing home. It does not alter the character of the neighborhood insofar as the esthetics of the home are similar to those of the neighborhood, and it will be a brand-new house thereby fitting well into the neighborhood
3. *Substantial justice will be done because:* Any loss to the individual applicant that is not outweighed by a gain to the general public is an injustice. Denying the applicant the ability to begin this project would certainly be an injustice by that standard. There is no conceivable gain to the public by denying this request.
4. *The variance would not diminish the value of surrounding properties because:* There is an increased setback lessening nonconformance that is present on the property at this time. It will also offer an esthetic improvement to both the property and the neighborhood. Therefore, you can conclude that surrounding property values will not be diminished and perhaps even enhanced.

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 property is narrow, and not deep enough to have a structure on it without it being too close to setbacks as stated in the ordinance. No reasonable use of the property is possible without a variance, due to the dimensions of the property, and the restrictions those dimensions have on that property. Under that standard, the 5th criteria will be met.
6. Additional conditions:
 - 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 7/26/25 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.

M. Mastenbrook seconded the motion.

Vote: All in favor, motion carried (6-0)

Abutter's Hearing: Martin and Kimberly Conway: Request for a variance of Article 4 of the Wetlands Ordinance to allow the removal of the existing house and garage and replacing it with new construction of a house, where the new deck and attached garage are approximately 26.95' from the public waters, where 50' is required. Property is located at 31 Dutile Shore Road, Tax Lot 103-005-000-000, in the Residential Single Zone. **ZBA Case #13-23Z.**

MOTION:

J. Froumy moved to grant the variance to of Article 4 of the Wetlands Ordinance to allow the removal of the existing house and garage and replacing it with new construction of a house, deck and attached garage approximately 26.95' from the public waters, where 50' is required. Property is located at 31 Dutile Shore Road (Tax Lot 103-005-000-000) based on the following findings:

1. *The variance will not be contrary to the public interest because:* It conforms the intended purpose of the ordinance which is increased safety, further from the traveled way, increase the line for the snow removal by the town and increase protection of the lake due to the fact that the new home will be further from the lake than the existing home. It does not alter the character of the neighborhood insofar as the esthetics of the home are similar to those of the neighborhood, and it will be a brand-new house thereby fitting well into the neighborhood.
2. *The spirit of the ordinance is observed because:* It conforms the intended purpose of the ordinance which is increased safety, further from the traveled way, increase the line for the snow removal by the town and increase protection of the lake due to the fact that the new home will be further from the lake than the existing home. It does not alter the character of the neighborhood insofar as the esthetics of the home are similar to those of the neighborhood, and it will be a brand-new house thereby fitting well into the neighborhood

3. *Substantial justice will be done because:* Any loss to the individual applicant that is not outweighed by a gain to the general public is an injustice. Denying the applicant the ability to begin this project would certainly be an injustice by that standard. There is no conceivable gain to the public by denying this request.
4. *The variance would not diminish the value of surrounding properties because:* There is an increased setback lessening nonconformance that is present on the property at this time. It will also offer an esthetic improvement to both the property and the neighborhood. Therefore, you can conclude that surrounding property values will not be diminished and perhaps even enhanced.
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 property is narrow, and not deep enough to have a structure on it without it being too close to setbacks as stated in the ordinance. No reasonable use of the property is possible without a variance, due to the dimensions of the property, and the restrictions those dimensions have on that property. Under that standard, the 5th criteria will be met.
6. Additional conditions:
 - 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 7/26/25 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.

M. Mastenbrook seconded the motion.

Vote: All in favor, motion carried (6-0)

Abutter's Hearing: Kassandra Ladd & Grace Shaw-Kennedy: Appeal of an Administrative Decision of Article 8.F.4 of the Zoning Ordinance to construct a 26'x 32' Accessory Dwelling Unit (In-Law Suite) on a lot with an existing Accessory Dwelling Unit, where only one ADU is permitted per lot. Property is located at 152 Bean Hill Road. Tax Lot 223-023-000-000, in the Residential Single Zone. ZBA Case #14-23Z.

William Philpot Jr. was present as counsel for the applicants. He distributed pictures of the residence and existing cabin to the Board. He stated that he'd like to note the differences between the two uses of the structure. While only one ADU per lot is allowed, the existing building is not an accessory dwelling unit, rather the existing building is defined as "housing for employees/caretakers or farmhands".

W. Philpot stated that pursuant to Article 15 of the Zoning Regulations, Definitions, defines an ADU as a "residential living unit that is within or attached to a single-family dwelling or is within or attached to an attached or detached accessory structure to such principal residence, and provides independent living facilities for one or more persons, including sleeping, eating, cooking, and sanitation on the same parcel of land as the principal dwelling unit it accompanies. He stated that when the Planner issued her written decision that there is an existing accessory dwelling unit on the lot, she misunderstood the prior approval that was granted in 2017. That approval was not for an

ADU, rather it was for detached housing for the employees that were employed on the working farm that exists on the applicant's property. These living quarters are allowable under RSA 21:34-a and not pursuant to Article 8F of the Zoning Ordinance. The application that she denied is for a dwelling unit accessory to a residential structure. Because of this, approving this application would not result in two accessory dwelling uses, rather one ADU and one detached unit that is for agricultural use and not residential. He asked that the Board grant his clients the appeal and allow the building permit to be issued for this residential living unit.

J. Froumy stated that the first question he would ask is if this lot qualifies as a farm? He stated that the applicant has already answered that for him. While reading RSA 21:34-a, the residence of employees is located on such land is included in this statute. He stated that for this consideration, unlike a special exception where at least three Board members are required to go out and look at the lot, they are not required to go and look. He stated that he did drive to see this lot, and it is without a doubt a working farm. If the Board fails to recognize this property as a farm, it would be because they didn't drive out to see this.

S. Ciampi asked if the existing cabin was considered an accessory dwelling unit? K. Santoro stated that it was approved as an detached dwelling unit. She stated that the definition of an accessory dwelling unit is defined as a subordinate building commonly associated with, incidental to or on the same lot or occupancy as the primary building. She stated that she isn't saying his is not a farm, but by reading the ADU ordinance, it states only one unit is allowed per lot. The existing dwelling unit is an accessory dwelling unit that happens to be for farm hands.

W. Philpot stated that an in-law apartment is required to be attached. The farmer's quarters are not required to be attached. He stated that the building permit for the existing dwelling unit was approved because of RSA 21-34, and it was allowed to be a detached unit, because there is no restriction under RSA 21-34. The in-law apartment is required to be attached to the residence or a building that is accessory to the residence.

D. Dunham stated that the state statute requires the town to allow at least one. But it does not restrict the town to just one. State law would allow more than one.

W. Philpot stated that this is an agricultural exception. There are two distinct uses. They are entitled to the building permit for an accessory dwelling unit, because one does not exist on that lot.

M. Mastenbrook stated that this lot is a farm. It's over 100 acres and it's a working farm with employees who live in the employee dwelling. Looking at 21-34, he tends to agree that the existing dwelling unit is not an ADU. He agrees that people should look at the property, but the pictures are pretty clear that it is a farm and with a farm that large, you will need farmhands. The conflict that arises is that on paper at the Town, it's called a dwelling unit, not employee housing.

P. Harris stated that in the Zoning District Regulations under commercial uses, the Agricultural Animals, lots of 3 acres or less and 3 acres or more, 3 acres or less is an exception, 3 acres or more, which has been proven, is permitted. He doesn't see any issues on that level. The only question he has is that in May 1999, there was a building permit granted for a horse area. Are there many horses on the property? W. Philpot stated that there were. P. Harris stated that horses were not permitted, so

he doesn't know how it exists on the property. W. Philpot stated that horses are permitted under 21-34. P. Harris stated that under the Commercial Zoning uses, horses are not permitted in a single-family residence. W. Philpot stated that in New Hampshire's preemption status, New Hampshire legislative says that the Town cannot zone out. He stated that he submits that the horse stables on the property is a legitimate permitted use that can continue on and needs no permits that can continue from today forward.

Current Considerations:

P. Harris asked "Does the applicant meet the criteria as having standing as "persons aggrieved" to appeal, that is to say, the person must be "aggrieved" by that decision. RSA 676:5, I."

MOTION: S. Ciampi moved that the applicant does have standing as a "persons aggrieved" by the decision.
J. Froumy seconded the motion.
All in favor, motion carried (6-0)

P. Harris stated that a portion of property related to this application is not located within the Aquifer Protection District. (A small portion on southern edge of property is located in the Aquifer Protection District.)

Is this a Development of Regional Impact

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 proposal does not have a potential regional impact.
M. Mastenbrook seconded.
Vote: All in favor, motion carried (6-0)

Departmental Responses:

Fire: A second dwelling for living will change the E911 addresses. Will there be a need for increased septic?

Building/Code Enforcement Officer: Only concern is this request is in contrary to current zoning regulations.

Land Use Technician: See staff comments

Staff Comments:

- Project scope: Install a 26' x 32' Dwelling Unit Accessory to Residential Use ("In-law suite")

- Per article 8.F.4 Only one accessory dwelling unit per lot is allowed. Currently there is an existing accessory dwelling unit on the lot; a second accessory dwelling unit will require a Variance from the Zoning Board of Appeals.

Appeal Motion:

MOTION: J. Froumy moved to deny the decision of the Zoning Administrator, that Article 8.F.4 of the Zoning Ordinance to construct a 26'x 32' Accessory Dwelling Unit (In-Law Suite) on a lot with an existing Accessory Dwelling Unit, where only one ADU is permitted per lot does not apply to the permit application, because it's clearly a working farm and the existing housing is for workforce. Therefore, allows for the agricultural exemption.

D. Dunham seconded the motion.

Vote: All in favor, motion carried. (6-0)

Abutter's Hearing: Michael Gagne-Matt Smith: Request for a variance of Article 5, Table 2 of the Zoning Ordinance to build a 16' x 24' addition off of the rear of the house 23' from the side lot line, where 25' is required. Property is located at 50 Silkwood Avenue, Tax Lot 206-029-000-000, in the Rural Zone. ZBA Case # 15-23Z

Abutter's Hearing: Michael Gagne-Matt Smith: Request for a variance of Article 5, Table 2 of the Zoning Ordinance to build a 16' x 24' addition off of the rear of the house 16' from the rear lot line, where 25' is required. Property is located at 50 Silkwood Avenue, Tax Lot 206-029-000-000, in the Rural Zone. ZBA Case #16 -23Z

K. Santoro stated that a stamped plan from surveyor was not included in the application packet, therefore the application is not complete. The applicant asked for a continuance until the August meeting.

MOTION: P. Harris moved to continue request for a variance of Article 5, Table 2 of the Zoning Ordinance to build a 16' x 24' addition off of the rear of the house 23' from the side lot line, where 25' is required, and the request Property is located at 50 Silkwood Avenue, Tax Lot 206-029-000-000, in the Rural Zone. **ZBA Case # 15-23Z** to the August 23, 2023 meeting at this location.

J. Froumy seconded the motion.

Vote: All in favor, motion carried. (6-0)

MOTION: P. Harris moved to continue request for a variance of Article 5, Table 2 of the Zoning Ordinance to build a 16' x 24' addition off of the rear of the house 16' from the rear lot line, where 25' is required. Property is located at 50 Silkwood Avenue, Tax Lot 206-029-000-000, in the Rural Zone. **ZBA Case #16 -23Z** to the August 23, 2023 meeting at this location.

J. Froumy seconded the motion.

Vote: All in favor, motion carried. (6-0)

Abutter's Hearing: George Pickering: Request for a variance of Article 5 Table 2 of the Zoning Ordinance, to replace two decks (27' x 10') and (15' x 10') approximately .5' from the side lot line, where 12.5' is required. (Request is after the fact) Property is located at 96 Fox Hill Road, Tax Lot 111-058-000-000 in the Residential Single Zone. **ZBA Case #17-23Z**

Current Considerations:

History:

- March 1983 – Sewage permit application
- January 1986 – Building permit for alterations/repair; window replacement
- May 1987 – Building permit for repair/reconstruction of existing porch
- May 1987 – Building permit application for deck (denied)
- July 1987 – Special Exception & Variance application for deck 15' from water (denied)
- September 1991 – Letter from CEO re: deck built w/o permit
- September 2012 – Mechanical permit (chimney insert)
- May 2016 – Mechanical permit (tank replacement)
- April 2023 – Building permit for residential alterations/repair; window replacement
- April 2023 – Building permit for shed (in-kind replacement)
- May 2023 – ATF Building permit for two decks (27'X10' and 15' x 10')

Does the application meet the criteria for granting a Variance? Yes, it does.

Property is within the Aquifer Protection District.

Is this a Development of Regional Impact?

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 proposal does not have a potential regional impact.
J. Froumy seconded.
Vote: All in favor, motion carried (6-0)

Staff Comments:

- Lot is .17 acres
- Existing cottage is pre-existing nonconforming.
- Variance for original deck was denied in 1987; deck was built without permits by prior owner; current owner was in the process of replacing deck; an ATF building permit was applied for. This application is an effort to gain compliance with the Belmont Zoning Ordinance.
- Original sketch on building permit application indicated 10 feet from property line; survey provided as part of the variance application indicates 6 inches from property line.

George Pickering was present for his application. He stated that bought the property in July of 2022. Right away he contacted the previous building inspector in order to get an idea of what needs to be done. Mr. Wheeler informed him that he needed a shoreland permit. He applied for a shoreland permit in March and received that. He called the Town Hall and spoke with Mark Ekberg, the current building inspector to find out what he needed for the inspection. Mr. Ekberg told him what he needed and at that point, Mr. Pickering though he had a permit. He scheduled an inspection and Mr. Ekberg came out to inspect the deck. A few days later, Mr. Ekberg called him to tell him he never pulled a permit for the deck. Mr. Pickering stated that he thought the shoreland permit was all that he needed. The building inspector told him that because it was an in-kind replacement, it shouldn't be a big deal. So he kept working on the deck. Then he received a denial letter a week later that informed him that the deck was never permitted in the first place. He stated that he didn't know why it was denied, but there is a hardscaping deck underneath this new deck. The deck is a vital part of the house, because the lot is so small. He noted that the measurements noted on the staff report were incorrect. K. Santoro stated that on the sketch provided it shows 14 feet from one boundary line and 10 feet from the other.

M. Mastenbrook asked if the new deck is the same size as the old deck? G. Pickering stated that it was.

G. Pickering stated that he wanted to point out that there was a typo in the application. It says that it's 27x10 feet but it's actually 27x20 feet.

K. Santoro stated that on building permit the deck was listed as 27 x 10 feet. Because of this, the application was noticed for the a 27x10, they would have to re-notice this application with the proper measurements for the deck.

MOTION:

M. Mastenbrook moved to table the request for a variance of Article 5 Table 2 of the Zoning Ordinance, to replace two decks (27' x 10') and (15' x 10') approximately .5' from the side lot line, where 12.5' is required. (Request is after the fact) Property is located at 96 Fox Hill Road, Tax Lot 111-058-000-000 in the Residential Single Zone. ZBA Case #17-23Z, in order to properly notice this application.

J. Froumy seconded the motion.

Vote: All in favor, motion carried (6-0)

Abutter's Hearing: George Pickering: Request for a variance of Article 4 of the Zoning Ordinance, to replace two decks (27' x 10') and (15' x 10') approximately 5' from the public water, where 50' is required. (Request is after the fact) Property is located at 96 Fox Hill Road, Tax Lot 111-058-000-000 in the Residential Single Zone. ZBA Case #18-23Z

MOTION: M. Mastenbrook moved to table the request for a variance of Article 5 Table 2 of the Zoning Ordinance, to replace two decks (27' x 10') and (15' x 10') approximately .5' from the side lot line, where 12.5' is required. (Request is after the fact) Property is located at 96 Fox Hill Road, Tax Lot 111-058-000-000 in the Residential Single Zone. ZBA Case #17-23Z, in order to properly notice this application.

J. Froumy seconded the motion.

Vote: All in favor, motion carried (6-0)

Minutes of June 28, 2023

MOTION: J. Froumy moved to approve the minutes of June 28, 2023 as written.
S. Ciampi seconded the motion.
Vote: All in favor, motion carried (6-0)

ADJOURNMENT

MOTION: M. Mastenbrook moved to adjourn at 7:58 PM.
S. Ciampi seconded.
Vote: All in favor, motion carried (6/0)

Respectfully Submitted,



Susan M. Austin
Land Use Assistant