



# ZONING BOARD OF ADJUSTMENT BELMONT, NH

Wednesday, September 22, 2021  
Belmont Mill & Zoom  
Belmont, NH 03220

Members Present: Chairman Peter Harris; Vice Chair Norma Patten (zoom); Members Mark Mastenbrook (zoom), and Sharon Ciampi.  
Members Absent: David Dunham (E).  
Alternates Present: John Froumy.  
Staff: Elaine Murphy, Rick Ball and Candace Daigle.

The Chairman opened the meeting at 6pm, welcomed those in attendance and appointed J. Froumy as a voting member for tonight's meeting. He 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.

The Chairman asked the Board to start the meeting by taking a roll call attendance, with each attendee stating their name and that they report if they are attending via Zoom.

Chairman Peter Harris, meeting room  
Norma Patten, zoom  
Mark Mastenbrook, zoom  
John Froumy, meeting room  
Sharon Ciampi, meeting room  
Candace Daigle, Elaine Murphy and Rick Ball meeting room  
Raymond Bisson, zoom  
Chris Bouchard, zoom  
Dennis & Betsy Grimes

The chairman stated the following definition will be used to determine if the applications before the Board tonight have a regional impact. He explained 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.

**ABUTTERS HEARING – LOONS OF WINNISQUAM REV. TRUST:** Request for two variances of:

- A. Article 5 Table 2 of the Zoning Ordinance to replace a single-family structure closer (18') to the front property line than allowed (50'). ZBA #3421Z.
- B. Article 4 of the Wetlands Ordinance to replace a single-family structure closer (27.6') to the highwater mark than allowed (50') not closer than the preexisting structure but expansion exceeds 40%. ZBA # 3521Z.

Property is located at 21 Gilman Shore Road in an "RS" Zone, Tax Lot 111-069-000-000.

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

The motion was seconded by M. Mastenbrook and carried. (5-0) Roll Call N. Patten, P. Harris, M. Mastenbrook, J. Froumy, D. Dunham and S. Ciampi.

P. Harris explained the 2021 assessment card indicated the interior square footage is 2,840sf. The owner purchased the property January 29, 2016. In April 1999 the ZBA granted 2 special exceptions for an 8' x 16' sunroom addition 27' from the front property line and 45' to the water. In March 1987 the ZBA granted a variance for a 10' x 29' deck 22' from the water. The current structure was built in 1948.

Mr. & Mrs. Dennis Grimes, present, and Mr. Raymond Bisson from Stonewall Surveying, via zoom, presented the plan.

Mr. Raymond Bisson shared the screen showing the existing conditions. The property was originally built in 1948 and lies 8.6' from the northerly boundary line, 30.8' from the edge of the right of way and 15.3' to the shoreline. The building was there prior to zoning. They received 2 special exceptions for the sunroom addition and a variance for the deck.

Mr. Bisson explained that this year 13 Gilman Shore received approval for four variances for a dwelling unit and garage.

Mr. Bisson stated there is one minor change to the plan. They are adding a retaining wall which will create less disturbance of the ground and an exterior HVAC system. They are removing the existing structure and replacing it with a home and attached garage. The proposed setbacks will be 13' to the northerly setback instead of 8.6'; 29.9' for the house instead of 15.8' and 27.6' for the deck instead of 15.3'; 12.9' southerly setback still within the allowed 12.5'; and the front setback would be reduced by the garage to 18' and 21.2' to the front setback instead of 30.8'. The reduction of the front setback still provides adequate off-street parking and is a more reasonable request than maintaining the 15.3' to the shoreline.

C. Daigle wanted to know if there will be any condition space in the garage. Mr. Grimes stated it is just a basic garage with the second floor used for storage.

P. Harris wanted to clarify what the changes being made are. C. Daigle stated they include the HVAC system and retaining wall. Mr. Bisson stated the retaining wall will be less than 4' high and they will modify the calculations with NHDES. They will be using permeable pavers for the driveway and walkway. P. Harris wanted to know if the retaining wall needs to meet setbacks. C. Daigle no it doesn't and is all set. Mr. Grimes explained the retaining wall is to provide walkable access to the side yard.

M. Mastenbrook stated that it is refreshing to see new construction trying to stay within line with the setbacks and being moved further away from the water and side setback. They are encroaching on the front setback but it will not interfere with plows or infringe on the right of way.

J. Froumy stated the setbacks could render the property unusable with 50' setbacks from the road and water. The average home in the State of NH is 1890sf and this one is a reasonable size. They have made every effort to meet the setbacks. P. Harris agreed they made every effort to build within the setbacks and the improvements outweigh what is there.

Mr. Grimes stated he is clearing up the place and plans to landscape the site.

The chairman opened the hearing to public comment. There being no questions or comments the chairman closed the public hearing.

The Board discussed the depth of the lot and the reasonable size of the proposed structure. The applicant moved the structure back from the shoreland and made every reasonable effort to fit the house on the lot.

### **BOARD ACTION – LOONS OF WINNISQUAM REV. TRUST:**

**MOTION:** J. Froumy moved to grant a Variance of Article 5 Table 2 of the Zoning Ordinance to replace a single-family structure closer (18') to the front property line than allowed (50') as it meets the following criteria:

1. The variance for the front setback will not be contrary to the public interest because there appears to be no impact on the public. It does not alter the essential character of the neighborhood and does not injure the public's rights.
2. The spirit of the ordinance is observed because there appears to be no impact on the public. It does not alter the essential character of the neighborhood and does not injure the public's rights.
3. Substantial justice will be done because the loss to the individual is not outweighed by the gain to the public. If the variance is denied there will be no gain to the public.
4. The variance would not diminish the value of surrounding properties because the proposal is aesthetically pleasing and will enhance the character of the neighborhood.
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 variance is for a 50' setback and the size of the lot qualifies it for a variance as there is inadequate room for any structure on the property.
- and
- b. the proposed use is a reasonable one because it is a modest residential structure in an area zoned for residential units. It historically has been a residential structure.

Additional conditions:

1. All decks, steps, landings & stairs must be shown on the building permit application and no other structures or additions (incl. decks, porches, landings, etc.) that do not meet setback are allowed by this approval.
2. All setbacks certified at the commencement of construction and as may otherwise be required.
3. Comply with all conditions of Shoreland Protection permit.
4. Comply with Floodplain Ordinance.
5. Driveway permit required - Town is not responsible for damage done to permeable pavers installed within the road ROW.
6. The Building Permit will be conditioned on a new DES permit.
7. All representations made by the applicant during the public hearing are incorporated as a condition of this approval.
8. The applicant and owner are solely responsible to comply with the approved plan and conditions of approval. Contractors should be sufficiently warned regarding same.
9. Approval expires on 9/22/23 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.
10. There will be no conditioned space in the building (space within a building that is provided with heating and or cooling equipment and/or systems capable or maintaining through design heat of 68°F during the heating season and 80°F during the cooling season) which also contains separate water and sewer facilities and is detached from the remaining conditioned space in the main house.

The motion was seconded by M. Mastenbrook and carried (5-0) Roll Call P. Harris yes, J. Froumy yes, N. Patten yes, S. Ciampi yes and M. Mastenbrook yes.

**MOTION:** J. Froumy moved to grant a Variance of Article 4 of the Wetlands Ordinance to replace a single-family structure closer (27.6') to the highwater mark than allowed (50') not closer than the preexisting structure but expansion exceeds 40% as it meets the following criteria:

1. The variance for the front setback will not be contrary to the public interest because there appears to be no impact on the public. It does not alter the essential character of the neighborhood and does not injure the public's rights.

2. The spirit of the ordinance is observed because there appears to be no impact on the public. It does not alter the essential character of the neighborhood and does not injure the public's rights.
3. Substantial justice will be done because the loss to the individual is not outweighed by the gain to the public. If the variance is denied there will be no gain to the public.
4. The variance would not diminish the value of surrounding properties because the proposal is aesthetically pleasing and will enhance the character of the neighborhood.
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 variance is for a 50' setback and the size of the lot qualifies it for a variance as there is inadequate room for any structure on the property.  
and
  - b. the proposed use is a reasonable one because it is a modest residential structure in an area zoned for residential units. It historically has been a residential structure.

Additional conditions:

1. All decks, steps, landings & stairs must be shown on the building permit application and no other structures or additions (incl. decks, porches, landings, etc.) that do not meet setback are allowed by this approval.
2. All setbacks certified at the commencement of construction and as may otherwise be required.
3. Comply with all conditions of Shoreland Protection permit.
4. Comply with Floodplain Ordinance.
5. Driveway permit required - Town is not responsible for damage done to permeable pavers installed within the road ROW.
6. The Building Permit will be conditioned on a new DES permit.
7. All representations made by the applicant during the public hearing are incorporated as a condition of this approval.
8. The applicant and owner are solely responsible to comply with the approved plan and conditions of approval. Contractors should be sufficiently warned regarding same.
9. Approval expires on 9/22/23 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.
10. There will be no conditioned space in the building (space within a building that is provided with heating and or cooling equipment and/or systems capable or maintaining through design heat of 68°F during the heating season and 80°F during the cooling season) which also contains separate water and sewer facilities and is detached from the remaining conditioned space in the main house.

The motion was seconded by M. Mastenbrook and carried (5-0) Roll Call P. Harris yes, J. Froumy yes, S. Ciampi yes, N. Patten yes, and M. Mastenbrook yes,

**OTHER BUSINESS:**

**JENNIFER BOUCHARD FOR SUNSET BEACH CONDOMINIUM:** Request for rehearing (not a public hearing) on Board's 7/28/21 action to deny two variances for Tax Lot 107-150-000-002 ZBA # 2521Z & 2621Z.

C. Daigle explained that as shown on the handouts provided, the reasons for granting a rehearing should be based on the fact that the motion was not complete, there was an error of law or new information submitted rises to a level that the Board may wish to reconsider their decision.

P. Harris wanted to know if the carport was built with or without a building permit. S. Ciampi stated that in the original packet it stated that the applicant thought the carport was part of the building permit and it was not.

J. Froumy stated that he went through the packets presented for the rehearing and feels an obligation to give everybody their fair shake and review the information provided. The evidence has changed and the information they received now has addressed them. There is a point of law that needs to be clarified. There are statements about safety that may have contradicted what they thought to be true and is worthy of the Board's consideration. The Board owes it to the property owner to hear what they have say. The point is, if they don't listen to the new information provided, the applicant can go to Superior Court who will remand it back to the Board for a rehearing.

P. Harris stated they need to be fair to everyone and listen to the new information provided. S. Ciampi stated she feels differently and they could go before Superior Court. The Board has a process, they missed the first meeting whether it was intentional or not they then came back with an attorney. She doesn't see anything in the new packet that will change her mind. P. Harris stated that without giving the applicant an opportunity the Board could head down a bad road. All the submitted information needs to be read to serve the public. That is why we grant rehearings, it is not that we failed.

S. Ciampi wanted to know when they would have the rehearing? C. Daigle explained the it is recommended the rehearing be heard within 30 days of granting the rehearing. The next Zoning Board meeting is October 27<sup>th</sup> which is 35 days away. They can ask Mr. Bouchard if he will grant the Board an extra 5 days to rehear the application so it can be heard at the October meeting.

J. Froumy stated that granting the rehearing does not mean it will change the decision. M. Mastenbrook agreed with J. Froumy that it does not mean the decision will be changed. S. Ciampi stated everyone is entitled to a fair process. The Board is there to serve the public and she agrees to offer him a rehearing but that does not mean she will change her mind but she will give them an opportunity to present case. The Board will be open minded. N. Patten stated she was not in favor of the original proposal but will allow the rehearing. This will allow the applicant an opportunity to submit additional information but it doesn't mean she will change her mind but she will listen.

C. Daigle reviewed the administrative items that need to be considered to grant a rehearing. Was the request submitted in a timely manner? The statute requires it be submitted within 30 days after the decision was rendered, July 28<sup>th</sup>, staff calculated the 30 days would be August 27<sup>th</sup> and the

rehearing application was submitted on August 27<sup>th</sup>. The applicant for the rehearing must have “standing” to request the rehearing. The motion for rehearing is signed by Atty. Philip Hasting and Atty. Jeffrey Christensen of Cleveland, Waters and Bass, PA, attorneys for Ms. Bouchard. The Board must vote to grant or deny the Request for Rehearing within 30 day of the Request for the Rehearing which would be September 27<sup>th</sup>, they are acting on September 22<sup>nd</sup>. If a rehearing is granted, the Board shall set the date within 30 days. The next meeting is October 27<sup>th</sup> which is 35 days from today. The applicant can agree to the 35 days if they choose to.

**MOTION:** J. Froumy moved to grant a request for a rehearing on the Board’s 7/28/21 action to deny two variances for tax lot 107-150-000-002 to allow the Board to clarify the language and point of law and to review new safety information provided.

The motion was seconded by S. Ciampi and carried (5-0) Roll Call P. Harris yes, J. Froumy yes, S. Ciampi yes, N. Patten yes and M. Mastenbrook yes.

Mr. Chris Bouchard stated (by zoom) they are willing to grant the 5 day extension and have the new public hearing at the October 27, 2021 Zoning Board meeting.

#### **BOARD'S ACTION -MINUTES:**

**MOTION:** On a motion by M. Mastenbrook, seconded by P. Harris it was voted to accept the minutes of August 25, 2021 as written. (4-0-1) Roll Call P. Harris yes, M. Mastenbrook yes, J. Froumy yes, S. Ciampi yes and N. Patten abstained.

#### **ADJOURNMENT:**

**MOTION:** On a motion by M. Mastenbrook seconded by N. Patten it was voted unanimously to adjourn at 6:51pm. (5-0) Roll Call N. Patten, P. Harris, M. Mastenbrook, J. Froumy and S. Ciampi.

Respectfully submitted,

Elaine M. Murphy  
Administrative Assistant