



ZONING BOARD OF ADJUSTMENT BELMONT, NH

Wednesday, August 23, 2023
Belmont Mill & Zoom
Belmont, NH 03220

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

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 6:02 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: 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 they have received a request to continue until the September meeting in order to allow the applicant to finish the survey of the lot.

MOTION: J. Froumy 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 for a variance 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 to the September 27, 2023 meeting at this location.

M. Mastenbrook seconded the motion.

Vote: All in favor, motion carried (5-0)

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

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

P. Harris read the history of the lot into the record.

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; reason: variance required)
July 1987 – Special Exception & Variance application for deck 15' from water (denied; reason: proximity to shoreline)
September 1991 – Letter from CEO re: deck was 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'X 20' and 15' x 10')

He stated that they also received new comments from the Building/Code Enforcement Officer.

Building/Code Enforcement Officer:

- Previous owner built without proper permitting.
- Owner began work without permit, however did stop once issue was brought to light. Have to compliment owner on stopping work.
- Deck will be extremely close to abutter. May or may not be a concern?
- Deck will be up to water line.

- Deck is replacing what was there, but without proper permitting on the front end this is not a simple replace in kind.

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.
- The existing deck does not have “grandfathered” status.
- 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.

G. Pickering was present. He distributed more pictures to the Board. He stated that the actual footings were 3 feet from the water. He stated that bought the property in July of 2022. Right away he contacted the previous building inspector to get his thoughts on what could be done with the existing deck. Mr. Wheeler explained to him that he needed a DES Shoreland Permit. He applied for a Shoreland Permit in March, told DES that it was an in-kind replacement and they said that was fine. DES sent the permit and then in April they applied for the other permits, thinking that those were the only permits they needed. and they 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. 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 problem. 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. Mr. Pickering noted that there is an existing patio under the proposed deck.

K. Santoro read the Zoning Board minutes pertaining to this property from July 22, 1987:

July 22, 1987

Richard Ray, Foxhill Road

Mr. Ray owns a house on Fox Hill Road and would like to add a deck. Land is very steep. When they purchased the property, they saw decks around the lake and figured they could put a deck on their property at a later time. They had an open porch but closed it in.

Mr. Ray had a note from Mr. Pickering, abutter with no objection. (Note in file.) r. Fournier said this addition would only be 15 feet to the water. M. Booth said they have to be 50 feet from any waterway. No objection from the abutters in attendance.

Hearing closed.

Action:

B. Watterson moved; we deny due to the severity of the encroachment on the setback of a public waterway seconded by R. Fournier. Vote 4-0-0. Motion carried.

M. Mastenbrook noted that since he has been on this Board, he has not seen an approval for such a small distance. But looking at the picture, he noted that the footings were about 3 feet from the water. He asked if Mr. Pickering was amenable to shortening the deck to where the footing is? G. Pickering stated that he would be willing to do that. J. Froumy stated that he would need to submit a new drawing. K. Santoro stated that he could submit an as-built as a condition of approval.

Chairman Harris opened the public comment. There was no public present.

MOTION: J. Froumy moved to grant the variance to of Article 5 Table 2 of the Zoning Ordinance to replace two decks (27' x 20') and (15' x 10') approximately .5' from the side lot line, where 12.5' is required. Property is located at 96 Fox Hill Road, Tax Lot 111-058-000-000 in the Residential Single Zone. ZBA Case #17-23Z based on the following findings:

1. *The variance will not be contrary to the public interest because:* The proposed use doesn't conflict with the explicit or implicit purpose of the ordinance and doesn't alter the essential character of the neighborhood and it does not threaten public health, safety or welfare, or otherwise injure public rights, insofar as a structure in this area has become a portion of the essential character of the neighborhood and this is just a continuation of that.
2. *The spirit of the ordinance is observed because:* same answer as above.
3. *Substantial justice will be done because:* Any loss to the individual that is not outweighed by a gain to the general public is an incorrect judgment on behalf of the Zoning Board.
4. *The variance would not diminish the value of surrounding properties because:* The surrounding properties are all shorefront properties, and the all have decks and patios and things of that nature. This is an improvement on the structure that the applicant owns. As such, it's matching the properties in the area. The surrounding properties values will be enhanced by this improvement.
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:* Unnecessary hardship as defined by the law is hardship that is presented by the property, not a hardship that is experienced by the owner of the property. The property that the applicant has presented here is a shorefront property that is very small, with a small house as well, and it meets the criteria because the hardship cannot be overcome in a reasonable fashion and still meet the first four criteria.

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 the same.
- C. Approval expires on 8/23/25 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.
- D. Reduce the size of the deck by approximately 3 feet, and an as built plan be required showing the new dimensions.

M. Mastenbrook seconded the motion.

Vote: All in favor, motion carried (5-0)

MOTION: J. Froumy moved to grant 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

1. *The variance will not be contrary to the public interest because:* The proposed use doesn't conflict with the explicit or implicit purpose of the ordinance and doesn't alter the essential character of the neighborhood and it does not threaten public health, safety or welfare, or otherwise injure public rights, insofar as a structure in this area has become a portion of the essential character of the neighborhood and this is just a continuation of that.
2. *The spirit of the ordinance is observed because:* Same answer as above.
3. *Substantial justice will be done because:* Any loss to the individual that is not outweighed by a gain to the general public is an injustice, and an incorrect judgment on behalf of the Zoning Board.
4. *The variance would not diminish the value of surrounding properties because:* The surrounding properties are all shorefront properties, and the all have decks and patios and things of that nature. This is an improvement on the structure that the applicant owns. As such, it's matching the properties in the area. The surrounding properties values will be enhanced by this improvement.
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:* Unnecessary hardship as defined by the law is hardship that is presented by the property, not a hardship that is experienced by the owner of the property. The property that the applicant has presented here is a shorefront property that is very small, with a small house as well, and

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- C. Approval expires on 8/23/25 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.
- D. Reduce the size of the deck by approximately 3 feet, and an as built plan be required showing the new dimensions.

D. Dunham seconded the motion.

Vote: All in favor, motion carried (5-0)

Motion for Consideration of Rehearing: Susan Condodemetraky Revocable Trust (Tradz, LLC)
194 Gilmanton Road, Tax Lot 241-019-000-000, (ZBA Case #11-23Z)

Chairman Harris recused himself. J. Froumy stepped in as Chairman. R. Grey was appointed as a full member.

K. Santoro stated that this is simply a request to the Board to rehear this case. The Board will look at the application and the narrative to determine if there is enough information to grant a rehearing.

J. Froumy stated that this hearing is only about whether or not they will rehear this application, not about the merits of the application itself.

The Board discussed the testimony that was submitted along with the request to rehear the application.

MOTION:

M. Mastenbrook moved to grant the request for rehearing the Special Exception application of Article 5 Table 1 of the Zoning Ordinance to allow expansion of the existing contractor's yard to include towing of motor vehicles on a flatbed truck in the "R" Zone. Susan Condodemetraky Revocable Trust (Tradz, LLC) 194 Gilmanton Road, Tax Lot 241-019-000-000, because as a Board, we believe that in all fairness give the applicant every opportunity to present their case and to take into consideration any changes that have been applied that might allow for a different decision in this case.

S. Ciampi seconded the motion.

Vote: All in favor, motion carried. (5-0)

Chairman Harris returned to the table. R. Grey returned to Alternate member status.

Abutter's Hearing: CCSMK, LLC: Request for a variance of Article 4 of the Wetlands Ordinance, to demolish and rebuild a single family with an attached garage home with approximately 19.8' from the public water, where 50' is required. Property is located at 16 Walnut Street, Tax Lot 114-010-000-000 in the Residential Single Zone. **ZBA Case #19-23Z**

Chairman Harris read the lot history.

- 1940+/- Current structure built.
- Vertical file plan 1168 showing sewer line through property
- July 2023 Building permit – Demolish existing structure
- July 2023 Building permit (denied: requires granting of Variance) for new single-family home with attached garage.

He noted that the property is within the Aquifer Protection District.

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.

S. Ciampi seconded the motion.

Vote: All in favor, motion carried. (5-0)

Department comments

Staff Comments:

- Sewer line located in front yard of property
- Minimum lot size in RS Zone is 1 acre; lot is .34 acres
- Single family home on the lot will be demolished. Proposed single family home is more nearly conforming.
- Shoreland Permit will be submitted & received prior to the start of any work

Tim LeClair was present for the applicant. He stated that there was a single-family home on the lot that they have since demolished. The applicant would like to replace with a single-family home with an attached garage. The lot is pretty small, they have been able to meet the side setbacks but they are unable to meet the public water setback of 50 feet.

He stated that they did locate the sewer line. The 1978 plan showed where they thought the sewer line was, but it is actually further back than the existing structure was. They have to work around that easement.

Chairman Harris opened the public comment.

Matthew McCabe, 21 Walnut Street: He stated that what they are doing is an improvement because the last owners had a lean-to that encroached on his property. The Society for the Protection of NH Forests, who also holds the conservation easement on Mr. McCabe's property, wanted him to hire a lawyer and ask that they remove that lean-to, but they found out it was actually grandfathered in because it was built in 1920 before the Conservation Easement existed. The 13 feet side setback is actually an improvement. The only issue is the 3-story house with its roof line is 36 feet up. His concern is the increase of the height of the roof line, as the building gets bigger, the pitch gets higher. Would it be possible to lower the pitch so that the view is not obliterated? T. LeClair stated that he can ask the customer, but it's up to them. The proposed home does conform to the Town's height restrictions.

Chairman Harris asked if this proposed home similar to the surrounding houses? T. LeClair stated that they are all a little different, this house is very similar to the majority of the homes. M. McCabe stated that the majority of the homes in that area are camps, and there are 2 or 3 new homes.

Barbara Eckardt, 14 Walnut Street: She stated that she owns a camp that she lives in year-round. With this requested variance they are doubling the size. Will she also be able to add on to her home? Is this something that the Town will now allow?

K. Santoro stated that if Ms. Eckardt had a similar project, she would also need to go through the same process that this applicant is going through, as well as what Mr. McCabe went through. Every proposal is based on the merits of the application.

MOTION: J. Froumy moved to grant the variance of Article 4 of the Wetlands Ordinance, to demolish and rebuild a single-family home with an attached garage with approximately 19.8' from the public water, where 50' is required. Property is located at 16 Walnut Street, Tax Lot 114-010-000-000 in the Residential Single Zone.

1. *The variance will not be contrary to the public interest because:* The proposed use doesn't conflict with the explicit or implicit purpose of the ordinance and doesn't alter the essential character of the neighborhood and it does not threaten public health, safety or welfare, or otherwise injure public rights.
2. *The spirit of the ordinance is observed because:* The proposed use doesn't conflict with the explicit or implicit purpose of the ordinance and doesn't alter the essential character of the neighborhood and it does not threaten public health, safety or welfare, or otherwise injure public rights.
3. *Substantial justice will be done because:* Should we deny, the loss to the individual will be great. The community would gain nothing from such denial. That would be an injustice to the owner.

4. *The variance would not diminish the value of surrounding properties because:* The new structure will be more modern. It would be no doubt that the surrounding properties would be 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 hardship is presented by two limiting factors; the wetlands and a sewage easement. The house has been proposed to fit within those two.
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 8/24/25 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.
 - D. A Shoreland Permit must be acquired.

M. Mastenbrook seconded the motion.

Vote: All in favor, motion carried (5-0)

Abutter's Hearing: Loons of Winnisquam Rev. Trust Request a one-year extension of the approval for two variances 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'), (**ZBA Case #20-23**), and 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%. Property is located at 21 Gilman Shore Road, Tax Lot 111-069-000-000, in the Residential Single Zone. (**ZBA Case #21-23Z**)

Dennis Grimes was present for the application. He stated that the project has been delayed due to unforeseen circumstances, so he just needs an extension in order to complete the project.

K. Santoro stated that there are no changes to the Ordinance that would affect the project, and the original approval expires in September.

Chairman Harris opened the public comment. There was no public present

Staff Comments:

Zoning Ordinance Section 13:D

A variance shall expire if such use is not substantially acted upon within, or ceases for more than, two (2) years. For a use not substantially acted upon within two (2) years, a one-time, one-year extension may be granted upon application to the Zoning Board of Adjustment for good cause shown. Application for extension must be filed with the Land Use Office not later than thirty (30) days prior to the expiration of the original approval.

MOTION: M. Mastenbrook moved to grant the request for a one-year extension of approval of a variance approval to replace a preexisting nonconforming single-family dwelling (Front, Water & NE Sideline setbacks) closer (18') to the front property line than allowed (50'); Variance of Article 5, Table 2. ZBA Case # 20-23Z (Original Case #34-21Z). Property is located at 21 Gilman Shore Road, Tax Lot 111-069-000-000, in the Residential Single Zone. New date of expiration will be 9/22/2024

D. Dunham seconded the motion.

Vote: All in favor, motion carried (5-0)

MOTION: M. Mastenbrook moved to grant the request for a one-year extension of approval for 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%. ZBA Case #21-23Z (Original Case #35-21Z). Property is located at 21 Gilman Shore Road. New date of expiration will be 9/22/2024.

S. Ciampi seconded the motion.

Vote: All in favor, motion carried (5-0)

Minutes of July 26, 2023

MOTION: M. Mastenbrook moved to approve the minutes of July 26, 2023 as written.
D. Dunham seconded the motion.
Vote: All in favor, motion carried (5-0)

Staff Report

No staff report.

ADJOURNMENT

MOTION: M. Mastenbrook moved to adjourn at 7:44 PM.
S. Ciampi seconded.
Vote: All in favor, motion carried (5/0)

Respectfully Submitted,



Susan M. Austin
Land Use Assistant