



# ZONING BOARD OF ADJUSTMENT BELMONT, NH

Wednesday, January 27, 2021  
Remotely by Zoom

Members Present: Chairman Peter Harris; Vice Chair Norma Patten; Members Mark Mastenbrook, John Froumy and David Dunham.

Staff: Elaine Murphy and Dari Sassan.

The Chairman opened the meeting at 6pm and welcomed those in attendance.

He announced that as Chairman of the Belmont Zoning Board of Adjustment, he finds that due to the state of emergency declared by the governor, 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 113, and the meeting will be recessed until access can be restored for all parties.

The Chairman asked that the Board start the meeting by taking a roll call attendance, with each attendee stating their name and that they report if anyone else is attending the meeting from that same location.

Chairman Peter Harris, office  
Vice Chair Norma Patten, home  
Mark Mastenbrook, office  
John Froumy, home  
David Dunham, home  
Town Planner, Dari Sassan stated he is at the Belmont Town Hall with Elaine Murphy.  
Fire Chief Mike Newhall  
Phong Tran  
Terry Tran  
ML (unidentified)  
Steve and Michelle Castle  
Jim Todd  
Kevin & Shelly Fay  
Bob & Susan Schaller  
Joline Caron  
David Paquette

Dennis Grimes  
Owner (unidentified)

D. Sassan said that, as always, Chairman Harris shall direct and control the meeting, but that as the administrator of the digital meeting platform, he himself would assist with calling on those who wish to speak. He explained that those that call in press \*9 star on the phone to raise their hand. Press \*6 to toggle in and out of mute.

**ABUTTERS HEARING – TIMOTHY & SUSAN SCHALLER:** Continuation of a request to add new building footprint and add a second floor:

1. A Variance of Article 5 Table 2 of the Zoning Ordinance closer (0.8') to the side property line than allowed (12.5') but not closer than the existing structure. ZBA #1220Z. WITHDRAWN BY APPLICANT
2. A Special Exception of Article 11.A.3.c of the Zoning Ordinance closer (9.1') to the side property line than allowed (12.5') but not closer than the existing structure. ZBA #1120Z  
Property is located at 11 Gilman Shore Road in an "RS" Zone, Tax Lot 111-064-000-000.

Mr. Bob and Susan Schaller presented the application.

The members that visited the site were: P. Harris, N. Patten, M. Mastenbrook, J. Froumy and D. Dunham.

P. Harris read the staff report. The current owner purchased the property in February of 2016. The variance request initially submitted has been withdrawn. During the 11/18/2020 ZBA meeting ZBA members were concerned with adding living space (bedrooms) very close to a side property line where a carport currently sits. Through submission of the revised plan, the applicant has addressed this concern by eliminating any proposed new footprint or floor space within the western side setback area. Instead, a new building footprint is proposed in front of the existing building and the addition of a second story will now only require this special exception. The applicant also submitted information indicating that the existing carport is a legally nonconforming element of the property.

Mr. Schaller stated that he took into consideration the recommendations from the November meeting and relocated the addition to the front of the house and eliminated the expansion of the carport.

J. Froumy wanted to clarify that the newest revised plan was the one that shows the 9.1' from the eastern property line and the carport roof over the property line by .6". Mr. Schaller stated that is correct.

The chairman opened the hearing to public comment.

Mr. David Paquette, an abutter, stated he is in agreement with the plan.

P. Harris stated a letter was provided by the previous owner that states the carport was built in either 1982 or 1983. It was also shown on a plan done by Mr. Bryan Bailey in 1985. This puts the

construction done prior to zoning. His concern is how close they are to the neighbors and fire safety to get fire apparatus around the structure. Fire Chief Mike Newhall also stated that he is concerned about the close proximity of structures and the ability to fight a fire. He also wanted the applicant to know when the insurance company calls the fire station to get the rating his rating is affected by the closeness of buildings.

M. Mastenbrook wanted to know what they are using to heat the house. Mr. Schaller stated currently they are using kerosene but will be changing to oil. He also stated that there is space on the left side of the property for the emergency apparatus to get around in that area.

Fire Chief Newhall wanted to know if the carport is enclosed. Mr. Schaller stated it is held up by 3 posts and is open. Chief Newhall wanted to know if it is connected to the house. Mr. Schaller stated it is.

J. Froumy stated the applicant did a good job revising the application to make it more conforming.

There being no further questions or comments the chairman closed the public hearing.

#### **BOARD ACTION – TIMOTHY & SUSAN SCHALLER:**

**MOTION:** J. Froumy moved to grant a Special Exception of Article 11.A.3.c of the Zoning Ordinance to add new building footprint closer (9.1') to the side property line than allowed (12.5') but not closer than the existing structure as it meets all the criteria.

1. The proposal is specifically authorized as a special exception by the ordinance.
2. The proposal satisfies applicable Special Exception criteria set forth in Ordinance Article 13.F. does not apply.
3. The proposal is not incompatible to other uses in the area through the creation of noise, fumes, dust, odor, lighting, smoke or other impacts. It is compatible with other uses for shorefront residences.
4. The proposed location is of adequate size. It is sufficient for the intent and design.
5. The proposal does not create undue traffic congestion or unduly impair vehicular or pedestrian safety. This is a residential project and has no negative impact unlike industrial and commercial uses.
6. The proposal does not overload any existing water, drainage, sewer or other system, nor will there be any significant increase in stormwater runoff onto adjacent property or street. The project construction is in the same footprint and the use remains the same.
7. The proposal does not create excessive demand for municipal services and facilities. It is a residential request with no greater demand on municipal services.
8. The proposal does not create hazards to the health, safety or general welfare of the public. This is a residential project. The building will be safer and more attractive when complete.

Additional conditions:

1. Revise plan to identify 9.1-foot distance between easterly side property line and northeasterly corner of second floor addition (completed). All setbacks certified at the commencement of construction and as may otherwise be required.
2. 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.
3. Comply with Shoreland Permit conditions.
4. Comply with Aquifer Protection District requirements.
5. All representations made by the applicant during the public hearing are incorporated as a condition of this approval.
6. The applicant and owner are solely responsible to comply with the approved plan and conditions of approval. Contractors should be sufficiently warned regarding same.
7. Approval expires on 1/27/2023 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 and carried (5-0) Roll call: Peter Harris yes, Norman Patten yes, Mark Mastenbrook yes, David Dunham yes and John Froumy yes.

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 – FAY FAMILY TRUST:** Request for a variance of Article 5 Table 2 of the Zoning Ordinance to add a second story closer (17.3') to the front property line than allowed (50'). Property is located at 113 Tucker Shore Road in the "RS" Zone, Tax Lot 107-018-000-000, ZBA #0121Z.

Mr. Kevin and Shelley Fay were present for this application.

**MOTION:** M. Mastenbrook moved that the proposal does not have a potential regional impact.

The motion was seconded by N. Patten and carried (5-0) Roll call: Peter Harris yes, Norman Patten yes, Mark Mastenbrook yes, David Dunham yes and John Froumy yes.

Mr. Kevin Fay stated they have a detached 2 car garage that they received ZBA approval for in April 1996. They are using the same footprint just adding a second floor. They want to remove the roof and add a second floor for two bedrooms, a full bathroom and TV room.

M. Mastenbrook noted that the front setback on the plan show 17.3' for the second story on the garage. Mr. Fay stated that is correct they want to extend the second floor.

P. Harris stated the garage footprint was granted a variance by the Board but not the ability to use it for living space or bedroom quarters. There is a difference between a garage and living space. The habitation of a building is a different use. The Board in the past have put conditions on approvals not allowing habitable use of a garage. He referred to three cases where garage floor space was approved in the setback but usage was restricted. Having bedrooms on the second floor constitutes dwelling space. He is concerned about safety. Fire proof walls may be required if they go forward. He has no issue with a second story, but habitable space is a different situation.

M. Mastenbrook stated that the Board has denied a similar case on Tucker Shore Road. He stated by adding more bedrooms they are also adding more congestion. He is concerned that there is not enough room for parking. Turning the garages into dwelling space creates more congestion. Mr. Fay stated it will not create more congestion he already has 21 people at a time in the house. They are using couches and sleeping bags on the floor now and that is a hazard when people try to walk around them in the middle of the night. That is why they need the addition to make it safer and more comfortable for those people.

Chief Newhall stated that they will have to meet fire codes. Fire rated walls, carbon monoxide detectors, and specific window size for bedrooms. Mr. Fay stated he will meet all the safety requirement to keep his children and parent safe.

P. Harris said this is more a change of use and addressed the substantial justice requirement stating paying substantial taxes and using the property only seasonal are not reasons to grant an approval. Mr. Fay stated the property is used predominantly seasonal. P. Harris stated the property has the right to be used year-round and could impact the school system and other municipal services. In the 1980's prior to zoning there was no control on growth around the lake. Through the Master Plan they could control growth and the impact on the lake. There were huge campgrounds and trailer parks that turned into full time residents. The Board granted relief for a garage and now they want to put people in that footprint. It is a tenth of an acre and they want 5 bedrooms. Mr. Fay stated they are not expanding the footprint. He doesn't see how adding more bedrooms changes the use. They are not changing the use just making it safer.

P. Harris stated they have reasonable use of the property with three bedrooms. The use of the garage for bedrooms can have an impact. There will be more vehicles in and out. He referred to other ZBA approvals where changing a garage into a sleeping area were not allowed. The garage was allowed with the condition that the second story be used as a family room only, prohibiting extension of water and sewer facilities and prohibiting sleeping quarter. Another approval for a garage had the condition put on it that no residential use of the garage shall be permitted. A third case established the condition that no potable water, sewer or heat source may be installed and a condition prohibiting residential use or habitable space. His concern is not the big family there now but when they are gone and someone else moves in, they may abuse the property and turn it into rental apartments. The Board has to take into consideration what could happen down the road. A variance goes with the land not with the individual. They have to be concerned with what happens down the road.

J. Froumy agreed that a variance is forever, it is granted to the property not an individual. Family size isn't a persuading argument for granting a variance. Paying substantial taxes also cannot be considered. We cannot grant variances because the town could make more money on taxes. J. Froumy also noted that the bedrooms are for Mr. Fay's parents and the outside stairs have not been taken into consideration. Can the parents climb all those stairs? What about snow and ice on the stairs?

J. Froumy stated another concern is the 50' setback from the road. They have reviewed other properties where they were 45' off the road and there were concerns about the fire department maneuvering around in that area. Is 17' wide enough for fire apparatus to do their task? They are close to the property line, is the distance between the existing garage and the adjacent building enough space in the event of a building collapse. Is there adequate space for emergency apparatus to get through to the house?

Chief Newhall stated the 17' front setback is not his biggest concern. There is no fire code for space needed to get between buildings but it is a concern and it should be for everyone.

M. Mastenbrook wanted to know what the hardship is, it cannot be monetary. We can't look at the family size. He wanted to know where the 21 people park. Mr. Fay stated they have enough room for parking 7 vehicles. Two park in the garage and five in the driveway and some park alongside the garage. He wanted to know if the hardship cannot be monetary or family size then what can it be. P Harris stated the hardship has to do with the land, slopes, wetlands, ledge those sort of issues. Mr. Fay stated the house is a log cabin and you can't add on to it that is why they are going above the garage because it can be done through regular construction. P. Harris stated it is a nice home in the area but it should be only three or four bedrooms. The Board is concerned about setting a precedent. Mr. Fay stated that many two-bedroom camps in the area have been tore down and replaced with five-bedroom houses on smaller lots. J. Froumy explained that every time a variance is requested it is dealt with on its own merit. That merit is why some receive a variance and others have not. The hardship criteria having to deal with the property is a Supreme Court decision and is the only way the Board can only provide relief. The hardship as defined by the Supreme Court has to do with physical hardship in the land. Mr. Fay stated the footprint already exist. They need to grow the property, what do they do? D. Sassan stated it is not the Board's job to come up with an alternative option. Mr. Fay stated this proposal has little impact. They are just making use of the property while keeping his parents safe. P. Harris stated the Board has to look at the safety and welfare of everyone. Growth around the lake is out of control expansions are not uncommon but it comes at a cost. Mr. Fay stated he doesn't want to be penalized because of what happens around the lake. His house is unsafe with people sleeping on floors and couches. P. Harris said the Board doesn't want to set a precent in the wrong direction. They don't want to deny the variance and are willing to work with the applicant like they did with the previous applicant. That applicant changed his proposal and was able to receive an approval.

The Board concerns have to do with health and safety. They are concerned about parking 7 cars on the lot and the additional demand on municipal services such as fire and police. Mr. Fay stated he is doing this to improve safety for his family. The number of cars will remain the same. He shouldn't be penalized for what may happen in 50 years.

The chairman opened the hearing to public comment.

Mr. Jim Todd, an abutter, stated he is a neighbor and has no concerns about the parking. If they do have concerns they talk among themselves. There is a vacant lot across street that they park cars on.

Another attendee joined the meeting but did not identify themselves.

J. Froumy stated that the vacant lot across street cannot be considered. It is nice to get along but the variance is forever. The house could sell and then what happens? The Board looks to protect the future. They don't like to deny an application but they have an obligation to protect the rules set by the court. P. Harris stated they have to be concerned about how many new dwelling units there are and the impact they have on municipal services and the roads. P. Harris stated what currently on the property is a good use of the property. J. Froumy wanted to know how many stories the house is. Mr. Fay stated it is two stories.

P. Harris stated if the garage has a second story it can be used as an entertainment center but making it living quarters changes everything. If the proposal for the second story gets approved they can put a condition on the plan that if cannot get changed to a dwelling unit. D. Sassan wanted to verify that P. Harris would consider approving a living room or function room on second floor more than approving bedrooms. P. Harris stated as long as it is not used as habitable space only storage space.

D. Sassan stated there has been a reasonable discussion on the application and working to put conditions on the approval to limit what can be done with that space. They had a successful process with the last applicant that took what the Board said and came up with a plan that the Board approved today. He stated that they could continue the application to the next meeting which is February 24<sup>th</sup> with a submitting deadline February 3<sup>rd</sup> or they could table it to a date certain to allow the applicant time to take what was discussed and see if he can make changes that would meet the criteria for a variance. J. Froumy stated a denial is not in the best interest.

Mr. Fay agreed to a continuation.

There being no further questions or comments the chairman closed the public hearing.

### **BOARD ACTION – FAY FAMILY TRUST:**

**MOTION:** J. Froumy moved to table a variance of Article 5 Table 2 of the Zoning Ordinance to add a second story closer (17.3') to the front property line than allowed (50') to March 24, 2020 at 6 PM to allow the applicant time to research and make changes to the application to better meet the criteria for a variance.

The motion was seconded by D. Dunham and carried (5-0) Roll call: Peter Harris yes, Norman Patten yes, Mark Mastenbrook yes, David Dunham yes and John Froumy yes.

**ABUTTERS HEARING – PHONG N TRAN:** Request to convert existing restaurant space into two additional dwelling units:

1. A Variance of Article 5 Table 1 of the Zoning Ordinance to establish a 4- unit multi-family use in the rural district. ZBA #0221Z.
2. A Variance of Article 5 Table 2 of the Zoning Ordinance to establish a density greater (2 units/acre) than allowed (0.33 unit/acre) ZBA #0321Z.

Property is located at 88 Ladd Hill Road in an “R” Zone, Tax Lot 201-068-000-000

Mr. Phong Tran was present for this application.

**MOTION:** P. Harris moved that the proposal does not have a potential regional impact.

The motion was seconded by N. Patten and carried (5-0) Roll call: Peter Harris yes, Norman Patten yes, Mark Mastenbrook yes, David Dunham yes and John Froumy yes.

P. Harris read the Department comments.

Public Works has concerns about the elevated header to the culvert pipe in the upper driveway is a right-of-way obstruction and should be repaired to ground level. Mailboxes should also be installed to the correct height and distance from the roadway.

Code Enforcement Officer stated that converting a restaurant into two apartments units will require a Code Evaluation Summary of the whole building, prepared by a Registered Design Professional (RDP) through the International Existing Building Code (IEBC) involving what level of alteration it falls under. Full detailed plans are required and stamped by an RDP for review by Code Enforcement Officer. Will require Fire Department review of the plans.

The Land Use Technician’s comments stated that they will need site plan for multi-family. While conversion from a restaurant to two additional housing units in the building is a reasonable request, increasing the density of this lot to six times the density per the Ordinance may not be. The acreage requirement for the two existing units is six acres where only two are provided. To add two more units requires another six acres.

Mr. Tran stated he is hoping to convert the family restaurant into two additional dwelling units. He will lose his investment if he can’t do anything with it. He only wants to do something good by providing shelter to people that need a place to live. It is better than having a restaurant there where people get drunk and curse.

The chairman opened the hearing to public comment.

Chief Newhall stated that by increasing the two dwelling units to four units there are addition fire codes that they need to follow including but not limited to a fire protection system, sprinkler and fire proof walls. M. Mastenbrook wanted to know if the restaurant has a sprinkler system now. Chief Newhall stated no it was prior to those requirements. J. Froumy wanted to know if they have to go to the Planning Board for a change of use and will the department’s concerns be brought up at that meeting. D. Sassan stated they have to go to the Planning Board meeting and the

departments will get packets for their review prior to that meeting. They will also have to go before the ARC where departments can voice any concerns or requirements.

D. Dunham wanted to know if 6 acres is needed for this proposal. They have more than adequate parking spaces for this proposal. D. Sassan stated the zoning requirement is .33 dwelling units per acre that is one of the variances needed. He did agree that this site has quite a bit of parking. J. Froumy stated they would need 12 acres in the rural setting to meet the criteria for the additional units. Part of the criteria is the character of the neighborhood. Four units requires 12 acres but they have to take into consideration the large parking lot and the restaurant that was there. Also, the character of the neighborhood, there is a pro shop across the street. They also have to take into consideration if the proposal would corrupt the rural character of the area. What else could go in there, a restaurant but that has been gone for more than two years but not much else. There are several multi-family homes in the area. D. Dunham stated that he heard that a developer is purchasing the golf course for a highend residential development. D. Sassan stated nothing has been finalized. Ms. Joline Caron, an abutter, stated that she heard something about that.

P. Harris stated the proposal is in one of the oldest buildings in town with a substantial amount of land. The concern is for 4 units in the rural zone, the density and the noise. He did explain that converting the house into two more units has associated additional cost for fire and safety improvements and he wanted to know if Mr. Tran was aware of those cost. Mr. Tran stated he does not have any estimates for the sprinkler or alarm systems. He plans to hire someone to put up walls in the restaurant. He also stated that there was more noise inside and outside the restaurant than there would be with the additional units. Chief Newhall stated there is more to the project than putting up walls. They need fire stops and must have significant up-grades to the building to meet fire codes. J. Froumy stated if they get approval they will have to deal with those things. Receiving a variance approval will not remove those road blocks. P. Harris wanted to know if the Code Enforcement Officer will do a preliminary review of the property and offer guidance on what is needed. Chief Newhall stated he also will do a preliminary review to address the needs. P. Harris informed Mr. Tran that the town will work with him on what is needed for the repairs and upgrades need to meet fire and building codes. D, Sassan reminded Mr. Tran that there are still steps that he needs to through. He still needs to go to the Application Review Committee (ARC) and the Planning Board for site plan approval.

J. Froumy wanted to know what they could use the large parking lot for. Would they want another restaurant there with many cars going in and out? They are asking for just two more apartments with fewer parking issues.

Mr. Tran, stated he wants to put in two modern units and he asked if they need a sprinkler? Chief Newhall explained with three or more units it needs to meet the commercial fire code. He stated that he is willing to give Mr. Tran directions on what they need to do to meet code if he gets approval tonight.

N. Patten wanted to make sure that Mr. Tran understands what he needs to go through to convert the restaurant to dwelling units. She wanted to know what the most reasonable way is to get him to understand everything that he needs to do.

**MOTION:** N. Patten moved to table the Variance of Article 5 Table 1 of the Zoning Ordinance to convert existing restaurant space into two additional dwelling units to establish a 4-unit multi-family use in the rural district to allow the applicant time to consult with Land Use Staff, the Fire Department and the Building Official on the codes necessary for the conversion.

There was no second. Motion did not carry.

D. Sassan stated that he has a comment from Ms. Joline Caron. She stated that she would rather have a quiet neighborhood with no drugs.

Mr. Dennis Grimes stated that it was a single-family residence then became a restaurant and there has been no interest in another restaurant going in there. It would be better for the neighborhood allowing the two additional units. The restaurant has been vacant for a long time and this would be moving in the right direction and would be good for the neighborhood.

P. Harris stated it has to be built to code and still has to go to the ARC and Planning Board before he can start construction. He wanted to make sure that the applicant is aware of the comments from the Town Department Heads. D. Sassan stated that he has had many phone conversations and has exchanged emails with Mr. Tran on the process.

Ms. Caron stated the restaurant is vacant but there are two apartments that are currently occupied.

There being no further questions or comments the chairman closed the public hearing.

### **BOARD ACTION – PHONG N TRAN:**

**MOTION:** J. Froumy moved to grant a Variance of Article 5 Table 1 of the Zoning Ordinance to convert existing restaurant space into two additional dwelling units to establish a 4-unit multi-family use in the rural district as it meets all the criteria.

1. The variance will not be contrary to the public interest because it is proper use of the property. There is plenty of parking. There could be less favorable uses of the vacant property than what is proposed. They are not altering the character of the neighborhood as there are multi-family homes nearby. They are changing from a commercial use, restaurant, to multi-family housing. Approval is based on the past and present use.
2. The spirit of the ordinance is observed because it is proper use of the property. There is plenty of parking. There could be less favorable uses of the vacant property than what is proposed. They are not altering the character of the neighborhood as there are multi-family homes and commercial uses nearby. They are changing from a commercial use, restaurant, to multi-family housing. Approval is based on the past and present use.

3. Substantial justice will be done because denying the application will cause injury to the applicant and is not outweighed by the gain to the general public. This is a constructive use of the property.
4. The variance would not diminish the value of surrounding properties because there are similar uses in the area. The property use was a commercial use but the character of the neighborhood is rural and commercial. Property values will not be diminished by having a 4-family unit.
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 this is a large property that can accommodate a multi-unit dwelling and there may not be any other reasonable uses for the property. The proposal homogenizes with other uses in the neighborhood.and
  - b. the proposed use is a reasonable one because it is a residential use in the rural zone and there are other similar uses nearby.
6. The applicant has been made aware of the Department's concerns.

Additional conditions.

1. Site Plan approval shall be obtained from the Planning Board prior to installation of additional dwelling units.
2. All representations made by the applicant during the public hearing are incorporated as a condition of this approval.
3. The applicant and owner are solely responsible to comply with the approved plan and conditions of approval. Contractors should be sufficiently warned regarding same.
4. Approval expires on 1/27/2023 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 and carried (4-0-1) Roll call: Peter Harris yes, Norman Patten abstain, Mark Mastenbrook yes, David Dunham yes and John Froumy yes.

**MOTION:** J. Froumy moved to grant a Variance of Article 5 Table 1 of the Zoning Ordinance to convert existing restaurant space into two additional dwelling units to establish a density greater (2 units/acre than allowed (0.33 unit/acre) as it meets all the criteria.

1. The variance will not be contrary to the public interest because it is proper use of the property. There is plenty of parking. There could be less favorable uses of the vacant property than what is proposed. They are not altering the character of the neighborhood as there are multi-family homes nearby. They are changing from a commercial use, restaurant, to multi-family housing. Approval is based on the past and present use.
2. The spirit of the ordinance is observed because it is proper use of the property. There is plenty of parking. There could be less favorable uses of the vacant property than

what is proposed. They are not altering the character of the neighborhood as there are multi-family homes and commercial uses nearby. They are changing from a commercial use, restaurant, to multi-family housing. Approval is based on the past and present use.

3. Substantial justice will be done because denying the application will cause injury to the applicant and is not outweighed by the gain to the general public. This is a constructive use of the property.
4. The variance would not diminish the value of surrounding properties because there are similar uses in the area. The property use was a commercial use but the character of the neighborhood is rural and commercial. Property values will not be diminished by having a 4-family unit.
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 this is a large property that can accommodate a multi-unit dwelling and there may not be any other reasonable uses for the property. The proposal homogenizes with other uses in the neighborhood.

and

  - b. the proposed use is a reasonable one because it is a residential use in the rural zone and there are other similar uses nearby.
6. The applicant has been made aware of the Department's concerns.

Additional conditions.

1. Site Plan approval shall be obtained from the Planning Board prior to installation of additional dwelling units.
2. All representations made by the applicant during the public hearing are incorporated as a condition of this approval.
3. The applicant and owner are solely responsible to comply with the approved plan and conditions of approval. Contractors should be sufficiently warned regarding same.
4. Approval expires on 1/27/2023 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 and carried (4-0-1) Roll call: Peter Harris yes, Norman Patten abstain, Mark Mastenbrook yes, David Dunham yes and John Froumy yes.

**ABUTTERS HEARING – STEVE & MICHELLE CASTLE:** Request three variances of Article 5 Table 2 of the Zoning Ordinance and one variance of Article 4 of the Wetlands Ordinance to construct a dwelling unit and garage.

1. Closer (40.1') to the highwater mark than allowed (50'). ZBA #0421Z
2. Closer (3.5') to the west side property line than allowed (12.5'). ZBA #0521Z
3. Closer (6.5') to the east side property line than allowed (12.5'). ZBA #0621Z
4. Closer (18.2') to the front property line than allowed (50'). ZBA #0721Z

Property is located at 13 Gilman Shore Road in an "RS" Zone, Tax Lot 111-065-000-000.

Mr. & Mrs. Steve Castle were present for this application.

**MOTION:** P. Harris moved that the proposal does not have a potential regional impact.

The motion was seconded by M. Mastenbrook and carried. (5-0) Roll call: Peter Harris yes, Norman Patten yes, Mark Mastenbrook yes, David Dunham yes and John Froumy yes.

Mr. Steve Castle explained that they have been living there for 10 years. Last summer during a micro-burst a tree fell on the house. The house was a total loss. He wanted to thank the town and fire department for the unbelievable help they have provided. The house was destroyed but they are going to rebuild it. They are moving the house backwards further away from lake. The house was nonconforming and the new design will be more conforming than the original house was.

J. Froumy reviewed the new dimensions on the plans. Mr. Castle stated the old dimensions from the house to the westerly boundary line was 2.7' and now it will be increasing to 3.5'. The width of house did not change but the length has and they are adding a garage. This will help out with permeable surface. The State is happy with them sliding it back from the highwater mark. J. Froumy stated it is similar to others in the area.

The chairman opened the hearing to public comment.

Mr. Grimes stated he is confused about the plan drawings. The width of the lot is 50' across the front and 52' across the lakeside if they center the house on the lot they should have 12.5' setback on each side. Mr. Castle stated that he had the plans done by Turning Point Surveys and he is confident that Mr. Bryan Bailey knows what he was doing.

Mr. Grimes stated there is a 5' ROW and he is confused because the GIS maps and surveyor drawing do not match. He did note that he does like the proposed design. Mr. Grimes continued stated the in the 1930's the lots in that area were created with 50' of frontage for each lot. D. Sassan stated that the GIS maps are only a representative of the maps. The plan has a surveyor's stamp and is presumed to be accurate. Mr. Grimes stated there are so many inconsistencies with measurement done by this surveyor it would be a benefit for Mr. Castle to have Mr. Bailey relook at the plans and do it correctly. He has gone through this many times on his own lots. J. Froumy stated they found a pin to work from and that measurement is dependable in most cases. P. Harris stated that they have more room on the lot which weighs in the applicant's favor. When they begin building the setbacks will be verified. D. Sassan stated that granting a variance relies on the accuracy of the survey and the ability of the surveyor to do the survey correctly. If it is found that the plan was done incorrectly then it would have to be addressed at that time. D. Dunham wanted to know if the survey matches the title. Mr. Castle believes it does but that is why he hired a surveyor to do that. J. Froumy stated that surveyors usually pull titles for surveys and he expect that the experts do it right.

P. Harris wanted to know if the Board grant a dimensional setback could the applicant build it bigger if there is enough room. D. Sassan stated they cannot expand the footprint. It is stated in the conditions of approval. All representations made by the applicant during the public hearing are incorporated as a condition of this approval. The footprint of the house will remain the same as

depicted on the plan. The applicant and owner are solely responsible to comply with the approved plan and conditions of approval. Contractors should be sufficiently warned regarding same. J. Froumy stated the building dimensions must remain same.

J. Froumy stated the structure's dimension 48' x 24' wide is small by today's standards. The driveway is permeable, why build a garage that encroaches in setback that is not part of the original structure. He noted that everyone on the street has a garage or a storage unit. This is a small garage and is a reasonable encroachment in the setbacks They have the right to have a building there.

P. Harris stated that this is a pre-existing structure and the situation, a micro burst, leading up to the replacement needs to be taken into consideration. There is a garage around the corner from this site that is 17' from the road.

P. Harris read Article 11.B.I that dictates that nonconforming buildings destroyed by fire or other natural disaster may be repaired or replaced within 3 years of its destruction if the degree of nonconformity is not altered. Thus, the proposed new building configuration is evaluated as if it were an alteration to the still-grandfathered, now-destroyed structure, potentially eligible for relief as prescribed in Article 11.A.3. However, in this case, aspects of the alterations disqualify it from the provisions of Article 11.A.3. The alterations on the easterly and southerly side of the structure will result in new building footprint extending further into the setbacks than the existing (destroyed) structure on those sides, thus disqualifying it from the provisions of Article 11.A.3.d. Although the alterations on the westerly and northerly sides of the structure do not extend further into the setbacks than the existing (destroyed) structure, the total square footage of useable space of all the expansions exceed 40% of the original structure, thus disqualifying it on that basis. \*

*\*The plain writing of the Ordinance prescribes that the square footage limit for qualifying for the allowance made under Article 11.A.3.d is exceeded when the total square footage of the proposed structure exceeds 40% of the total square footage of the existing structure. In reviewing past agendas, it is evident that there may have been instances when the 40% rule was interpreted to include only nonconforming square footage into the calculation. While that may seem to be an appropriate method, we find it is not how the Ordinance is written.*

There being no further questions or comments the chairman closed the public hearing.

D. Sassan informed the Board that the first variance is of Article 4 of the Wetlands Ordinance and not of the Zoning Ordinance as stated on the agenda.

### **BOARD ACTION – STEVE & MICHELLE CASTLE:**

**MOTION:** J. Froumy moved to grant a variance of Article 4 of the Wetlands Ordinance to construct a dwelling unit and garage closer (40.1') to the highwater mark than allowed (50') as it meets all the criteria.

1. The variance will not be contrary to the public interest because the property was originally a residential use that was destroyed by a natural act. The property owners are moving the building back from the highwater mark to satisfy the public interest.
2. The spirit of the ordinance is observed because the property was originally a residential use that was destroyed by a natural act. The property owners are moving the building back from the highwater mark to satisfy the public interest.
3. Substantial justice will be done because the loss to the individual is not outweighed by a gain to the general public is an injustice.
4. The variance would not diminish the value of surrounding properties because the building is a suitable size for the narrow lot and is similar to other properties. It will probably be aesthetically pleasing and other properties in the neighborhood have garages. Property values may diminish if the variance is not allowed.
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 this is a narrow lot and they are building a suitable house for the size of the lot. The lot size is the hardship.and
  - b. the proposed use is a reasonable one because the reuse of the property is for a residential use.

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 as applicable.
5. All representations made by the applicant during the public hearing are incorporated as a condition of this approval. The footprint of the house will remain the same as depicted on the plan.
6. The applicant and owner are solely responsible to comply with the approved plan and conditions of approval. Contractors should be sufficiently warned regarding same.
7. Approval expires on 1/27/2023 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 and carried (5-0) Roll call: Peter Harris yes, Norman Patten yes, Mark Mastenbrook yes, David Dunham yes and John Froumy yes.

**MOTION:** J. Froumy moved to grant a variance of Article 5 Table 2 of the Zoning Ordinance to construct a dwelling unit and garage closer (3.5') to the west side property line than allowed (12.5') as it meets all the criteria.

1. The variance will not be contrary to the public interest because the property was originally a residential use that was destroyed by a natural act. The property owners are moving the building back from the highwater mark to satisfy the public interest.
2. The spirit of the ordinance is observed because the property was originally a residential use that was destroyed by a natural act. The property owners are moving the building back from the highwater mark to satisfy the public interest.
3. Substantial justice will be done because the loss to the individual is not outweighed by a gain to the general public is an injustice.
4. The variance would not diminish the value of surrounding properties because the building is a suitable size for the narrow lot and is similar to other properties. It will probably be aesthetically pleasing and other properties in the neighborhood have garages. Property values may diminish if the variance is not allowed.
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 this is a narrow lot and they are building a suitable house for the size of the lot. The lot size is the hardship.and
  - b. the proposed use is a reasonable one because the reuse of the property is for a residential use.

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 as applicable.
5. All representations made by the applicant during the public hearing are incorporated as a condition of this approval. The footprint of the house will remain the same as depicted on the plan.
6. The applicant and owner are solely responsible to comply with the approved plan and conditions of approval. Contractors should be sufficiently warned regarding same.
7. Approval expires on 1/27/2023 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 and carried (5-0) Roll call: Peter Harris yes, Norman Patten yes, Mark Mastenbrook yes, David Dunham yes and John Froumy yes.

- MOTION:** J. Froumy moved to grant a variance of Article 5 Table 2 of the Zoning Ordinance to construct a dwelling unit and garage closer (6.5') to the east side property line than allowed (12.5') as it meets the criteria.
1. The variance will not be contrary to the public interest because the property was originally a residential use that was destroyed by a natural act. The property owners are moving the building back from the highwater mark to satisfy the public interest.
  2. The spirit of the ordinance is observed because the property was originally a residential use that was destroyed by a natural act. The property owners are moving the building back from the highwater mark to satisfy the public interest.
  3. Substantial justice will be done because the loss to the individual is not outweighed by a gain to the general public is an injustice.
  4. The variance would not diminish the value of surrounding properties because the building is a suitable size for the narrow lot and is similar to other properties. It will probably be aesthetically pleasing and other properties in the neighborhood have garages. Property values may diminish if the variance is not allowed.
  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 this is a narrow lot and they are building a suitable house for the size of the lot. The lot size is the hardship.and
    - b. the proposed use is a reasonable one because the reuse of the property is for a residential use.

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 as applicable.
5. All representations made by the applicant during the public hearing are incorporated as a condition of this approval. The footprint of the house will remain the same as depicted on the plan.
6. The applicant and owner are solely responsible to comply with the approved plan and conditions of approval. Contractors should be sufficiently warned regarding same.
7. Approval expires on 1/27/2023 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 and carried (5-0) Roll call: Peter Harris yes, Norman Patten yes, Mark Mastenbrook yes, David Dunham yes and John Froumy yes.

- MOTION:** J. Froumy moved to grant a variance of Article 5 Table 2 of the Zoning Ordinance to construct a dwelling unit and garage closer (18.2') to the front property line than allowed (50') as it meets all the criteria.
1. The variance will not be contrary to the public interest because the property was originally a residential use that was destroyed by a natural act. The property owners are moving the building back from the highwater mark to satisfy the public interest.
  2. The spirit of the ordinance is observed because the property was originally a residential use that was destroyed by a natural act. The property owners are moving the building back from the highwater mark to satisfy the public interest.
  3. Substantial justice will be done because the loss to the individual is not outweighed by a gain to the general public is an injustice.
  4. The variance would not diminish the value of surrounding properties because the building is a suitable size for the narrow lot and is similar to other properties. It will probably be aesthetically pleasing and other properties in the neighborhood have garages. Property values may diminish if the variance is not allowed.
  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 this is a narrow lot and they are building a suitable house for the size of the lot. The lot size is the hardship.and
    - b. the proposed use is a reasonable one because the reuse of the property is for a residential use.

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 as applicable.
5. All representations made by the applicant during the public hearing are incorporated as a condition of this approval. The footprint of the house will remain the same as depicted on the plan.
6. The applicant and owner are solely responsible to comply with the approved plan and conditions of approval. Contractors should be sufficiently warned regarding same.
7. Approval expires on 1/27/2023 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 and carried (5-0) Roll call: Peter Harris yes, Norman Patten yes, Mark Mastenbrook yes, David Dunham yes and John Froumy yes.

**OTHER BUSINESS:**

**BOARD'S ACTION -MINUTES:**

**MOTION:** On a motion by M. Mastenbrook, seconded by N. Patten it was voted unanimously to accept the minutes of December 16, 2020, as written. (5-0) Roll call: Peter Harris yes, Norman Patten yes, Mark Mastenbrook yes, David Dunham yes and John Froumy yes.

**ELECTION SIGN UP:**

D. Sassan reminded the Board that there is still time to sign up for reelection. Sign up end Friday January 29<sup>th</sup> at 5:00PM. Call ahead to make an appointment.

**ADJOURNMENT:**

**MOTION:** On a motion by P. Harris seconded by M. Mastenbrook it was voted unanimously to adjourn at 8:37pm. (5-0)

Respectfully submitted,

Elaine M. Murphy  
Administrative Assistant