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**Meeting Minutes**  
**Zoning Board of Adjustment (ZBA)**  
**July 20, 2022 at 7:00p.m.**

**1. CALL TO ORDER**

T. Hardekopf called the meeting to order at 7:00 p.m.

**2. ROLL CALL**

**Members Present:** Tracy Hardekopf, George Bailey, Andre Laprade, Paul Thibodeau, Cheryl Huckins

**Staff Present:** Town Planner: Vanessa Price, Code Enforcement Officer: John Huckins

**3. ACTION ITEM CONTINUED FROM JUNE 15, 2022**

A. [121-30-GR-22-Var \(Owner: Richard Townsend\)](#) Request by applicant for a variance from Article 4, Section 4.1.1 Table 2 to allow setbacks from two road frontages 18.7' and 27.3' from Hall Road and 27.3' and 21.8' from Rosemary Lane where 40' is required and 23.2' from the side where 30' is required on a .24-acre lot in the General Residential Zoning District.

V. Price explained that she received an email from the applicant and the surveyor that the lawyers have not come to an agreement on property boundary line.

T. Hardekopf appointed A. Laprade from an alternate to a full member.

*A motion was made by G. Bailey and seconded by C. Huckins to continue the application until August 17, 2022, at 7:00 p.m. The motion passed unanimously.*

Roll Call:

C. Huckins-Aye

A. Laprade-Aye

P. Thibodeau-Aye

G. Bailey-Aye

T. Hardekopf-Aye

**4. ACTION ITEMS**

A. [217-56-NR-22-Var \(Owners: Kellie Jones\)](#) Request by applicant for a variance from Article 4, Section 4.1.1 Table 2 to allow a setback from the side 21.8' where 30' is required on 2.04-acre lot to build a 24' x 28' detached garage (Map 217, Lot 56) at 635 Scruton Pond Road in the Neighborhood Residential Zoning District. BY: Brett W. Allard, Esq.; Shaughnessy Raich, PLLC. 24 Eastman Avenue, Suite C3; Bedford, NH 03110.

39 T. Hardekopf gave a brief description of the application.

40  
41 Brett Allard, Esq. from Shaughnessy Raich represented Kellie Jones from 635 Scruton Pond  
42 Road. Brett explained that they are before the Board for a variance on a 2.4-acre lot on a paved  
43 driveway with an existing well and septic. Brett explained that they are proposing a 2-car garage  
44 at the end of the driveway adjacent to the house. Brett explained that with the location of the  
45 existing driveway and the house relative to the 30' setback its not feasible way to construct even  
46 what there proposing. Brett explained that they are trying not to encroach to the side setback and  
47 that there was a wooden buffer in that area. Brett explained that they are requesting a variance  
48 from Article 4, Section 4.1.1, Table 2 to construct a garage approximately 21.8' from the side lot  
49 line where 30' was required.

50 Brett read the 5 criteria's as follows:

**1 & 2. Granting the variance will not be contrary to the public interest and will be  
consistent with the spirit of the ordinance.**

For a variance to be contrary to the public interest, the proposal has to conflict with the ordinance so much that it violates the ordinance's basic zoning objectives. The relevant tests are (1) whether the proposal will alter the essential character of the neighborhood; and (2) whether it threatens the public health, safety or welfare. Because it is in the public's interest to uphold the spirit of the ordinance, the Supreme Court has held that these two criteria are related. If you meet one test you almost certainly meet the other. See Farrar v. City of Keene, 158 N.H. 684 (2009). As such, the Applicant addresses these two criteria together.

The general purpose of side setback restrictions is to minimize overcrowding and congested development. Given the configuration of the lot, there is sufficient buildable area for the proposed garage. There will not be any congestion or overcrowding in the area if the variance is granted. Granting the variance will not threaten the public health, safety, or welfare. There will be no adverse impact or injury to any public rights if the variance is granted. Therefore, granting the variance would not be contrary to the public interest.

Moreover, the Applicant's proposal is consistent with the spirit of the Zoning Ordinance. The proposal will not alter the essential character of the neighborhood because the property will remain consistent with the neighborhood, which is primarily single-family residential. Indeed, many, if not most, other properties in the area maintain garages. The

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LAND USE OFFICE

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Applicant is only seeking to vary from the 30-foot setback requirement by 8.2 feet, with an undisturbed buffer of 21.8 feet remaining to the property line. Therefore, granting the variance will be consistent with the spirit of the Zoning Ordinance.

**3. Granting the variance would do substantial justice.**

The Supreme Court has held that measuring substantial justice requires balancing public and private rights. “Perhaps the only guiding rule is that any loss to the individual that is not outweighed by a gain to the general public is an injustice.” Harborside Assocs., L.P. v. Parade Residence Hotel, LLC, 162 N.H. 508, 515 (2011). There is no injury to the public if the variance is granted. There is no gain to the public if the variance is denied. There is only loss to the Applicant if the variance is denied. Therefore, when balancing public and private rights, the loss to the Applicant if the variance is denied outweighs any loss or injury to the public if the variance is granted. Additionally, since many other properties in the area have garages, the proposed garage is “appropriate for the area”. See U-Haul Co. of New Hampshire & Vermont v. City of Concord, 122 N.H. 910, 913 (1982). Granting a variance for an improvement that is appropriate for the area does substantial justice. Therefore, granting the variance would do substantial justice.

**4. The values of the surrounding properties will not be diminished.**

If the variance is granted, the lot will remain consistent with the residential character of the other lots in the neighborhood such that there will be no adverse effect on surrounding property values. The proposed garage is incidental to the existing single-family residential use of the property, which itself is consistent with abutting residential uses. Notwithstanding the side setback variance, there will be adequate distance between the proposed garage and the westerly/southerly abutter’s residence. In fact, there is a substantial wooded buffer west and south of the Applicant’s driveway that will not be impacted by the proposed garage. Additionally, as set forth in the enclosed letter, Michael Whitney, a real estate professional with Keller Williams, has reviewed the Applicant’s proposal and determined that the proposed garage will not diminish the value of surrounding properties. Therefore, surrounding property values will not be diminished.

**5. Unnecessary hardship.**

Unnecessary hardship will be found when the subject property has special conditions or circumstances that distinguish it from other properties in the area and (1) there is no substantial relationship between the purpose of the ordinance and the specific application of the ordinance as applied to the property; and (2) the proposed use is reasonable. See RSA 674:33.

The Applicant’s property is distinguishable from other properties in the area. The Applicant’s property is a wide, shallow lot. Per the Town’s GIS tax map, the Applicant’s property has more than double the road frontage of most other lots in the area. However, it has only half (or less) the depth of most other lots in the area. Notwithstanding its wide

shallow nature, the existing dwelling and driveway is situated along the westerly side setback. Other lots in the area do not share all of these unique characteristics.

Owing to these special conditions, among others, relative to other properties in the area, there is no fair and substantial relationship between the purpose and application of the Zoning Ordinance's 30-foot side setback restriction. As stated, the purpose of this restriction is to minimize overcrowding and congestion. Notwithstanding the requested variance, the size and configuration of the lot can support the proposed garage without creating any overcrowding or congestion. There will remain adequate distance between the proposed garage and the abutter's residence. There is a dense wooded buffer west and south of the Applicant's driveway that will not be impacted by the proposed garage. Given the location of the existing dwelling and well, and because the 30-foot side setback boundary runs through a substantial portion of the driveway, there is no feasible way to construct a garage on the property without encroaching into the side setback to some degree. However, many, if not most, other properties in the area maintain garages similar to that proposed by the Applicant, so the character of the area will remain unchanged. The Applicant is only seeking to vary from the 30-foot setback requirement by 8.2 feet, with an undisturbed distance of 21.8 feet remaining to the property line. Accordingly, the purpose that the Zoning Ordinance seeks to protect are not in any way threatened if the variance is granted.

54  
55 G. Bailey asked the applicant if they have considered any other location on the property for the  
56 garage?

57  
58 Brett explained that was considered in the design phase but in order to and nowhere else to put  
59 the garage directly in front of the house and between the roads. Brett explained that they couldn't  
60 but it there because there was a well there. Brett explained with the location of the driveway,  
61 well and house being all the way up against the westerly building.

62  
63 P. Thibodeau asked where the location of the driveway was that's practically where the garage  
64 would go because that would be the entrance.

65  
66 T. Hardekopf asked if there was anyone to testify in opposition to the variance.

67  
68 Kevin Schmidt abutter at 647 Scruton Pond Road explained that his driveway was paved and  
69 was a shared driveway.

70  
71 T. Hardekopf explained that the Zoning Board was there to handle hardships and provide relief  
72 when needed.

73  
74 Kevin explained that he doesn't want the garage that close.

75  
76 T. Hardekopf asked Kevin if there was any other fact that he would like to testify to in reference  
77 to the opposition.



79 Lisa They're inconsiderate and obnoxious and engines roaring all the time along with guns going  
80 off.

81  
82 T. Hardekopf explained that it needs to be in reference to the variance.

83  
84 Lisa doesn't want them 10' closer for that reason.

85  
86 T. Hardekopf asked if there was anyone to speak for the variance.

87  
88 T. Hardekopf closed public comment.

89  
90 *A motion was made by C. Huckins and seconded by P. Thibodeau to grant the variance for 635*  
91 *Scruton Pond Road. The motion passed unanimously.*

92 Roll Call:

93 C. Huckins-Aye

94 A. Laprade-Aye

95 P. Thibodeau-Aye

96 G. Bailey-Aye

97 T. Hardekopf-Aye

98  
99 G. Bailey stated further discussion that he felt the Board would be making a mistake granting the  
100 variance because of where the house was located along with the clearing around it. G. Bailey  
101 explained that there was ample room to move it to the front. G. Bailey asked John Huckins how  
102 far it would need to be from the well.

103  
104 John Huckins explained they didn't want it in front because of the well. John explained the  
105 applicant doesn't want to have to drive around the well to get into the garage.

106  
107 Kellie Jones stated that the septic is also there.

108  
109 G. Bailey showed the driveway coming up.

110  
111 Kellie Jones stated previous pavement showed on the plan and the septic.

112  
113 C. Huckins explained that when you put something like this on your property the applicant has  
114 the right to expect a reasonable position in proximity. C. Huckins explained that they put it  
115 where it avoids the well and put the garage in a reasonable proximity to the house.

116  
117 T. Hardekopf explained the impermeable surface and where it sits in relation to where the house  
118 sits.

119  
120 G. Bailey felt that was not a hardship.

121  
122 C. Huckins explained that you want your garage at your driveway.

123  
124 P. Thibodeau asked if they were conducting this building with the free-standing ones.

125  
126 Kellie Jones stated that was correct because that was the main entrance.

127  
128 P. Thibodeau asked if the roof was already there?

129  
130 Kellie Jones stated no the roof was not there.

131  
132 P. Thibodeau explained that an argument could be made that the garage could be moved over  
133 and attach to the house eliminating or reducing the size of that covered area. P. Thibodeau  
134 explained his perspective the elevation makes sense. P. Thibodeau explained that the driveway  
135 was already in the setback and makes no difference that if 3' more towards the house the or  
136 where they want to put the garage. P. Thibodeau asked if they built the house?

137  
138 Kellie Jones she said yes, and she has lived there 22 years.

139  
140 P. Thibodeau asked why the house was put there?

141  
142 Kellie Jones because of ledge.

143  
144 P. Thibodeau stated they should have mentioned that the placement of the home was due to a  
145 ledge.

146  
147 G. Bailey explained the ledge makes part of the hardship.

148  
149 **B. 234-25-V-22-Var (Owners: Daniel M. & Melissa Ayers)** Request by applicant for a  
150 variance from Article 4, Section 4.1.1 Table 2 to allow a setback from the front setback  
151 for Meetinghouse Road to be 38.6' and front setback on Oak Hill Road to be 37.5' where  
152 40' is required on 1.85-acre lot to install a prefabricated garage (Map 234, Lot 25) at 41  
153 Oak Hill Road in the Village Zoning District.

154  
155 T. Hardekopf gave a brief description of the application.

156  
157 Christopher Berry from Berry Surveying and Engineering represented Daniel and Melissa Ayers.  
158 Chris explained that the Ayers purchased the house that was on the corner of Oak Hill Road and  
159 Meetinghouse Road. Chris explained that there was a subdivision that was developed on  
160 Meetinghouse Road from Oak Hill Road all the way to Smoke Street. Chris explained that this  
161 house was on the corner of the intersection and there was a small wetland through the back of the  
162 site that drains. Chris explained that it was a small wetland but not small enough that it would  
163 not require the 50' wetland setback. Chris explained that when they developed Meetinghouse  
164 Road the developed an innovative stormwater feature off and they were able to capture all  
165 the stormwater from Meetinghouse Road and from Oak Hill Road. Chris explained that they  
166 were working with the Planning Board and Select Board they determined that corner area where  
167 that pond was this case would be much better incorporated into the right of way Meetinghouse

House Road. Chris explained that the Planning Board and Select Board wanted that area to be part of the road right of way. Chris explained that the Ayers felt the 21' x 21' in the house was too small for their truck when you consider stairs in the house.

Chris explained to place the garage in an appropriate area there was a well right in the middle of the area and because of the lot line there are two front setbacks because this was now a corner lot. Chris explained that because of this the garage would be a few feet in both front setbacks. Chris explained that the pad would be 21' by 31' its an odd size but it's how the manufactured sits on the pad and structure would be 20" by 30'.

T. Hardekopf asked the Board if she should recuse herself. The stated voted that she did not have to recuse herself.

Chris Berry read the 5 criteria.

Article 4 Dimensional Standards Table 2, front setback of 40' within the Village Zone.

1. Special conditions exist such that literal enforcement of the Ordinance will result in unnecessary hardship to the applicant as defined under applicable law.  
**The lot has two special conditions which make compliance with the ordinance not practical as noted above. Not having the ability to enjoy a small secondary use structure such as a garage or barn, but for a small variance to the actual front setback along Oak Hill Road due to the existing well placement does pose an unnecessary hardship on the applicant. Not having the same ability due to a peculiar ROW change which generates a front setback so far removed from the physical roadway does pose an unnecessary hardship to the applicant. Both of these situations are unique and specific to this parcel when compared to others in the neighborhood. There is no other place for this small and modest structure to be placed on this lot.**
2. Granting the variance would be consistent with the spirit of the Ordinance.  
**The spirit of the ordinance is to create a uniformity of rural nature within the town. Given that this is proposed to be a small secondary structure and will be imperceptible to the surrounding area, this is very consistent with the ordinance.**
3. Granting the variance will not result in diminution of surrounding property values.  
**Granting the variance will not result in diminution of surrounding property values. The owner is requesting a use that is permitted in the zone for a light residential use. The difference between the prescribed zoning and the request is not derivation enough to warrant diminution in values given the benign use.**
4. Granting the variance would do substantial justice.  
**Granting the variance would do substantial justice because it will allow the applicant to reasonably develop the lot with a use that's allowed in the zone.**
5. Granting of the variance would not be contrary to the public interest.  
**Granting the variance would not be contrary to the public interest because it will allow for the proper use of a parcel which could otherwise be used for the same, but for the two issues specifically related to the lot. Reasonable use of a real property is within the public interest. Given the special circumstances of the parcel, granting this variance will not erode the public interest within the zoning ordinance.**

T. Hardekopf asked if there was anyone to speak in opposition to the variance.

T. Hardekopf closed public comment.

187 T. Hardekopf asked if anyone has comments in motion to the variance.  
188 *A motion was made by C. Huckins and seconded by G. Bailey to grant the variance for 41 Oak*  
189 *Hill Road. The motion passed unanimously.*  
190 Roll Call:  
191 C. Huckins-Aye  
192 A. Laprade-Aye  
193 P. Thibodeau-Aye  
194 G. Bailey-Aye  
195 T. Hardekopf-Aye  
196  
197 C. **103-64-GR-22-Var (Owners: EOR Realty Development, LLC)** Request by  
198 applicant for a variance from Article 4, Section 4.1.1 Table 2 to allow setbacks from the  
199 right side to be 12'+/- and left side to be 22'+/- where 30' is required to build a 2-story  
200 colonial 24' x 32' on a .3-acre lot on Long Shores Drive in the General Residential  
201 Zoning District.  
202  
203 T. Hardekopf gave a brief description of the application.  
204  
205 The applicant called in virtually for the application.  
206  
207 The applicant, EOR Realty Development, LLC, explained that they purchased the property from a  
208 family member, and they received a variance on March 16, 2022. The applicant, EOR Realty  
209 Development, LLC, they received a variance for a manufactured single wide mobile home. The  
210 applicant, EOR Realty Development, LLC, explained to the Board that they would like to  
211 change the variance 24' x 32' colonial stick-built home.  
212  
213 T. Hardekopf asked the applicant to read the criteria's the variance request.  
214  
215 The applicant, EOR Realty Development, LLC, read the 5 criteria for the variance.



**PART IV – If this is a JUSTIFICATION FOR VARIANCE**

The Zoning Board of Adjustment may not authorize a zoning ordinance variation unless ALL of the following criteria are met. Please provide evidence that the requested Variance complies by addressing the issues below.

- ☐ 1. Special conditions exist such that literal enforcement of the Ordinance will result in unnecessary hardship to the applicant as defined under applicable law.

Literal Enforcement would cause a hardship because I  
would have an unbuildable piece of land.

- ☐ 2. Granting the variance would be consistent with the spirit of the Ordinance.

Granting the variance would be consistent with the spirit  
because I would be building a single family home which is  
consistent with the neighborhood.

- ☐ 3. Granting the variance will not result in diminution of surrounding property values.

The variance will not diminish the property values because  
I will be improving the property with a brand new home

- ☐ 4. Granting of the variance would do substantial justice.

The variance would do substantial justice because I could build  
a home on my land & improve the neighborhood with a new home

- ☐ 5. Granting of the variance would not be contrary to the public interest.

The variance would not be contrary to the public interest  
because it will improve neighborhood values & provide necessary  
additional housing.

**PART V – If this is a JUSTIFICATION FOR SPECIAL EXCEPTION**

Please provide evidence that the requested Special Exception complies by addressing the issues below.

P. Thibodeau remembered the variance in March, and it was a narrow mobile home and that was approved. P. Thibodeau expressed that the applicant comes back for more of a setback.

V. Price explained that the applicant was changing from their original application they are changing the size of the house to from a manufactured home to a stick-built home. V. Price explained that the footprint was changing.

John Huckins explained that if they built this house it wouldn't conform to the variance that was already approved. John explained to the applicant that he couldn't approve the building permit but there was justification for them to come back to the Zoning Board of Adjustment.

P. Thibodeau asked the applicant their hardship was they have that if they didn't get the variance, they would not be able to build if they did not receive the variance. P. Thibodeau expressed that it would be more accurate as you would not be to construct a stick-built home on this lot.

T. Hardekopf asked what the square feet was of the home that was approved?

235 The applicant, EOR Realty Development, LLC, stated the size was 14' by 60'.  
236  
237 The applicant, EOR Realty Development, LLC, stated 896 s.f.  
238  
239 C. Huckins asked if there was a reason why the home wasn't centered on the lot and why was it  
240 wider? C. Huckins stated that it looks like 22" on the side and more to the left to the center of the  
241 lot than the center of the lot.  
242  
243 The applicant, EOR Realty Development, LLC, explained the reason was set nicer on that side  
244 and the elevations are a little bit higher on the left side they drop off. The applicant, EOR Realty  
245 Development, LLC, stated they are trying to stay on the right-side footing.  
246  
247 T. Hardekopf asked what the size of the new home for the variance would be?  
248  
249 The applicant, EOR Realty Development, LLC, would be 1600 s.f. that includes a garage.  
250  
251 T. Hardekopf asked about the small square in the front on the plan from the neighbor's property  
252 to the left side in between the existing dwelling on the neighbor.  
253  
254 The applicant, EOR Realty Development, LLC, explained he wasn't sure he thought maybe a  
255 shed it was a lot to the left of there's not on their property.  
256  
257 G. Bailey expressed that the Board just received a construction plan date July 20<sup>th</sup> by Realty  
258 Development, LLC. G. Bailey explained that he was looking at the drawing and, in his opinion,  
259 has lack of information on the drawing. G. Bailey explained that it doesn't show how far back  
260 and asked if there was another drawing?  
261  
262 The applicant, EOR Realty Development, LLC, explained that the new dwelling was 50' of the  
263 road 22" from the west side and 13.9' from the right side.  
264  
265 P. Thibodeau asked what the front setback was?  
266  
267 John Huckins explained that they meet the front setback he was asking for relief from both sides.  
268  
269 T. Hardekopf expressed that if the property was the proposed new dwelling further to the back of  
270 the property there's twenty additional widths along the back and more leach field to the front. T.  
271 Hardekopf expressed that would allow for much more substantial setback to the sides.  
272  
273 P. Thibodeau explained that the well and septic are 75' separation. P. Thibodeau asked if the  
274 leach field was already designed.  
275  
276 The applicant, EOR Realty Development, LLC, stated that it was already designed by Farwell  
277 Engineers and approved.  
278 The applicant, EOR Realty Development, LLC, explained that this home would be a slab no  
279 basement.  
280

281 T. Hardekopf asked if there was anyone to speak in opposition to the variance.

282  
283 T. Hardekopf asked if there was a reason why the stick built didn't come before the Zoning  
284 Board of Adjustment in March.

285  
286 The applicant, EOR Realty Development, LLC, explained that at that time there was a different  
287 family member owner.

288  
289 T. Hardekopf asked if this would be their primary resident.

290  
291 The applicant, EOR Realty Development, LLC, stated no.

292  
293 *A motion was made by P. Thibodeau and seconded by C. Huckins to grant the variance for Map*  
294 *103, Lot 64 as submitted to the Zoning Board of Adjustment. Vote 3/2*

295 C. Huckins-Aye

296 A. Laprade-Aye

297 P. Thibodeau-Aye

298 G. Bailey-Nay

299 T. Hardekopf-Nay

## 300 301 **5. ACTION ITEM REQUEST TO APPEAL THE DECISION**

302  
303 A. Steve Martwichuck of 59 Cottage Lane requests a rehearing of the Zoning Board of  
304 Adjustment's June 15, 2022, decision to grant a variance in the following case:

305 [115-11-GR-22-ZBAVar \(Owners: The ELAR Realty Trust, George & Sar](#)  
306 [Grumbles\)](#) Request by applicant for a variance from Article 4, Section 4.1.1 Table 2-  
307 Table of Dimensional Standards to allow 13.7 and 19.1 from the front setback where 40'  
308 is required at 55 Cottage Lane (Map 115, Lot 11) on a .36-acre lot in the General  
309 Residential Zoning District. BY: N.H. Land Consultants; 683C First NH Turnpike;  
310 Northwood, NH 03261.

311 No public input will be taken on this request. If the request is granted, a public hearing  
312 will be scheduled at a later date.

313  
314 T. Hardekopf asked the Board if there was any justification to grant a rehearing for this case?

315  
316 T. Hardekopf stated that there was no motion to rehear case for 55 Cottage Lane.

## 317 318 **6. REVIEW AND APPROVAL OF MINUTES**

319 A. Review and approve minutes of the June 15, 2022, meeting.

320 *A motion was made by G. Bailey and seconded by C. Huckins to approve the minutes of June 15,*  
321 *2022, as written. The motion passed unanimously.*

322 C. Huckins-Aye

323 A. Laprade-Aye

324 P. Thibodeau-Aye

G. Bailey-Aye  
T. Hardekopf-Aye

## **7. OTHER BUSINESS THAT MAY PROPERLY COME BEFORE THE BOARD**

A. Board review of 2022 Draft of updated ZBA Rules of Procedure from 1992 by-laws.

The Board had lengthy discussion on the changes and went page by page for any comments. Town Planner and Town Counsel will review final changes. The Board made the decision to vote on the changes at the August 17, 2022 meeting. No Public comments were given.

## **8. ADJOURN**

A motion was made by T. Hardekopf and seconded by G. Bailey to adjourn the meeting.  
*The motion passed unanimously.*

C. Huckins-Aye  
A. Laprade-Aye  
P. Thibodeau-Aye  
G. Bailey-Aye  
T. Hardekopf-Aye

The meeting time ended at 8:40 p.m.

The next meeting will be held August 17, 2022, at 7:00 p.m. at the ECLC 77 Ramsdell Lane.