

MINUTES
FOR
ZONING BOARD OF ADJUSTMENT

IN PERSON LOCATION-
Early Childhood Learning Center
77 Ramsdell Lane
Barrington, NH 03825

OR

You are invited to appear by audio phone or computer see below:

The public has access to contemporaneously listen and, if necessary, participate in the meeting through dialing the following phone #1-603-664-0240 and Conference ID: 941931286# OR link bit.ly/BarrZB210616

(Approved October 20, 2021)

September 15, 2021

7:00 p.m.

Please note that all votes that are taken during this meeting shall be done by Roll Call vote.

ROLL CALL

Members Present

Cheryl Huckins
Raymond Desmarais, Vice Chair
Dave Whitten
George Bailey
Paul Thibodeau

R. Desmarais explained to the public that the Board was going to make a motion to change the order of the action items cases due to the large crowd for case #5 to be moved to #1.

A motion was made by G. Bailey and seconded by D. Whitten to move case #5 to case #1 then continue in order. The motion carried unanimously.

Roll Call:

C. Huckins-Aye
G. Bailey-Aye
D. Whitten-Aye
P. Thibodeau-Aye
R. Desmarais-Aye

ACTION ITEM

1. [220-54.16-GR-21-ZBAVaer \(Owners: Robert & Allison Russell\)](#) Request by applicant for a variance from Article 7.3 Home Occupation to continue running a Home Occupation that is non-

compliance in the General Residential Zoning District. BY: Brendan A. O'Donnell, Esq., DTC Lawyers; 164 NH Route 125, Unit 2, Merrimack, NH 03253.

R. Desmarais explained to the applicant that there are two issues that they need to discuss.

1. If you have exceeded a Home Occupation

2. Asking for a Variance

R. Desmarais asked the applicant to present the Home Occupation first.

Attorney Brendan A. O'Donnell from DTC Lawyers represented applicant Robert Russell owner of 2A Tactical, LLC. Attorney O'Donnell asked if he could explain the property and the business with the reasons they are asking before the Zoning Board of Adjustment.

Robert Russell owner of 2A Tactical at 99 Tolend Road gave a brief description of his business. Robert explained that he started his business in 2015 with no employees and was just doing gunsmithing. Robert explained that his business grew so he added a part-time employee and added new things that they sold. Robert explained that his business has grown larger that where he is at now, so he is buying 9 acres to expand his business. Robert expressed that they are doing what they can so that they business doesn't possibly get shut down.

Attorney O'Donnell gave the Board updated photos of the property and explained what the photos were. Brendan explained that he felt this was relevant to hardship and commitment of relocating Robert's business. Attorney O'Donnell explained that Dwayne Watson from Unified Builders would be building the new building and read a brief statement from him, and that Robert explained that needed to move in six months which would be impossible. Attorney O'Donnell explained that plans were delivered to the Land Use Department for Site Review on September 14, 2021. Attorney O'Donnell gave an outline of the project for the new location.

Documents for full reading can be found on Town of Barrington website under Map [Lot 54.16 | Barrington NH](#)

R. Desmarais asked Brendan if he could narrow the argument to the home occupation.

Attorney O'Donnell explained that he was trying to get there.

R. Desmarais asked that Brendan gets more to the variance that they are asking for.

Attorney O'Donnell stated that they are there for a variance, but he questioned whether a variance was needed. Attorney O'Donnell expressed that the Town has produced no evidence that the premises rendered the neighborhood objectionable or detrimental based on traffic or parking no photos along with no citations. Attorney O'Donnell explained to the Board that the property across the street was zoned Commercial and all the uses in this zone are allowed as a matter of right. Attorney O'Donnell expressed that with the current operation and selling retail that can't constitute traffic that would render the neighborhood objectionable or detrimental. Attorney O'Donnell explained that when this complaint was brought to Mr. Russell in November 2020 the Town only received one complaint which was from a Town official from his Town email to internal code enforcement and other Town officials. Attorney O'Donnell explained that the Town received no other documents to back up the complaint and they asked for a 91a request on that. Attorney O'Donnell expressed that the Certificate of Occupancy does not restrict retail use.

Certificate of Occupancy Received

2015 for gunsmithing

2018 Manufacturing

Either occupancy does not say they can't have retail use.

Home Occupancy in Zoning Ordinance

Does not prohibit retail for a Home Occupation for customers come to your house

Attorney O'Donnell explained that the larger part of the basement of Mr. Russell's home was being used for the business. Attorney O'Donnell explained that what area that was being used was within the 30% of the home occupation statute. Attorney O'Donnell explained that outdoor accessory structures are within a certain size are allowed. Attorney O'Donnell explained that Mr. Russell was storing product for his store in three of the five trailers and the other 2 are for personal use, customers are not allow to come to these units. Attorney O'Donnell explained that this was his piece for no variance required.

R. Desmarias explained that they are talking about the home occupation whether or not it has exceeded the definition.

R. Desmarias read the following:

The zoning district permit establishment home occupation all such uses must comply with the following provisions Section 7.3 Home Occupation 7.3 (1) to 7.3 (7) from the Zoning Ordinance.

Attorney O'Donnell explained that the business complies with Home Occupation thus no variance was required. Attorney O'Donnell explained that Mr. Russell operated the business from 2015 to 2018 without a single complaint which was evidence that this business has not been detrimental to the neighborhood for any reasons that were listed. Attorney O'Donnell explained there was not a single complaint from 2018 to 2020 with no complaints until November 2020 not a single complaint related to anything that the business has been detrimental to the neighborhood.

C. Huckins asked how many employees work at this location?

Attorney O'Donnell explained that Mr. Russell has 8 full-time employees and other that occasionally fill in but not full-time employees.

G. Bailey asked how many?

Robert explained that he has 8 full time employees and a pool of approximately six-to-eight-part timers.

C. Huckins asked if there was a limit on Home Occupation for employees?

G. Bailey expressed that on July 9, 2015, that he read and understood the rules of the Home Occupancy in the Zoning Ordinance that the way it set forth. G. Bailey stated that later that Robert had made a statement that business has taken off. G. Bailey asked Robert that he had made a statement that he was new to business and learning when Robert knew between 2015 to 2018 that the business was taken off at that time, you didn't think that you would have to move or expand.

Robert expressed that he certainly did and didn't go about it the best way and explained that there were a variety of reasons why they didn't move the business.

G. Bailey asked that when the occupancy was updated you (Robert) was in the process applying for a new Federal License with BATFE that was the reason the occupancy was changed.

Robert explained that he needed a new certificate when he changed to manufacturing because that was ATF requirement.

R. Desmarias asked if the applicant was arguing now that this business does not exceed the home occupation on the property and what basis was the Town using to say that you have.

Attorney O'Donnell explained that they are arguing that they have not exceeded the limits of Home Occupation. Attorney O'Donnell explained that the following was in the lawsuit that was filed:

a) The business renders the residential character of the neighborhood objectional detrimental due to traffic or parking.

Attorney O'Donnell explained that it wasn't as much that it exceeded Home Occupation it was exceeded what the Town had characterized as implied conditions in the Certificate of Occupancy for 2015 and 2018.

C. Huckins asked Attorney O'Donnell if the on certificate of occupancy they were talking about wasto occupy a residence.

John Huckins explained that Home Occupation was issued by Code Enforcement and a Home Business has a higher standard they would need to go to the Planning Board.

C. Huckins asked about the provision in home occupation that you can use 30% of your dwelling living space.

R. Desmarias read that no more than 30% of the dwellings living area shall be devoted to such use.

C. Huckins asked if the basement considered living space.

Attorney O'Donnell explained that its not normally considered living space in assessing if it's a finished basement regardless of what the basement was characterized and even using the full basement it does not exceed 30%.

D. Whitten asked if the entire business was in the basement.

Robert stated the majority was.

G. Bailey asked what percentage.

Robert explained that they took a measuring tape and measured his entire home that was being used and it was under 30%. Robert explained that the Town has never came in and measured his house.

C. Huckins asked about the outside storage and wasn't that outside the limits of a Home Occupation.

Attorney O'Donnell explained that the way it written a business shall be conducted in the detached single-family dwelling. Attorney O'Donnell explained that it was for storage which all businesses have.

R. Desmarias explained that by having the trailers your kind of both as far as a requirement. R. Desmarias explained that a Home Occupation may only be conducted within a detached single-family dwelling so that should that be the garage space or one of the storage spaces.

C. Huckins expressed that it appears storage units are needed for the business.

Robert explained that he has never said that they have not grown bigger, and they need to move.

C. Huckins stated that they have 8 employees and asked if a limit.

John Huckins explained that the Home Occupation regulations it does not state how many employees are allowed.

G. Bailey stated in Section 7.3(6) when the applicant talked about traffic with no evidence of or pictures or evidence that it occurred. G. Bailey explained it states that as determined by the Barrington Fire Department and that the Fire Department would make the determination on the over parking, and you stated you went to the Police Department. G. Bailey asked if they have asked the Fire Chief about the parking issue.

Attorney O'Donnell explained that he did not, and he believed that requirement was about storing hazardous materials. Attorney O'Donnell explained that the following sentence stated that the Building Inspector would issue a certificate of occupancy once they verified the proceeding standards are confirmed.

G. Bailey said after the comma it said traffic emissions of odor smoke dust noise on-site storage of hazardous materials as determined by the Fire Chief by the Barrington Fire Department.

Attorney O'Donnell stated they have not asked the Fire Department and wasn't sure if the Code Officer asked the Fire Department when approving in 2015 to 2018.

D. Whitten asked if this a variance request.

R. Desmarais explained that this was not part of the variance, and the Board was just talking about the Home Occupation. R. Desmarais explained that the Board was trying to determine whether or not this operation exceeds the definition of a Home Occupation by the Barrington Zoning Ordinance.

D. Whitten asked how this would affect the Board in this decision.

R. Desmarais explained that they admitted that they have exceeded their business whether or not it exceeds occupation.

Attorney O'Donnell explained that if it does not exceed it no variance would be needed.

Robert explained that they were told that they must come to the Zoning Board for the Home Occupation.

D. Whitten asked if it was for a Home Occupation?

Robert stated it was for a variance.

G. Bailey stated that they were told they would not discuss it.

Robert stated they were banned for there constitutional right to speak to the Board of Selectmen was taken away from them. Robert explained that they were told by the Town Attorney that they were not to talk to them about this issue and the only remedy was to come before the Zoning Board.

R. Desmarais explained to Robert was that the Board can enforce the Barrington Zoning Ordinance and whatever State Law support it.

Robert explained the all the people were there to try and save his business and that they were told to come before the Zoning Board. Robert explained that they are under a lawsuit. They went to the Selectmen and Town Attorney said they need to go to the Zoning Board.

P. Thibodeau explained that he went to the shop yesterday to look around because he wanted to see what is he's going on. P. Thibodeau explained he learned that the procedure, you're required to go first to this Board for this Board's determination and then the Selectmen can hear you. P. Thibodeau explained that it can't be the other way around. The Selectmen have the power over anything the Zoning Board does. P. Thibodeau asked if the Selectmen can authorize a temporary extension.

John Huckins explained that zoning would be the ones to give relief that was why the applicant is at this Board. John explained that the Selectmen technically are the ones that enforce zoning through him.

R. Desmarias expressed that they are almost in compliance except for the Fire Department on the trailers for the outside storage.

C. Huckins expressed that she has seen that they also have several cars parked in the road.

Attorney O'Donnell stated that you can't park on the pavement that was how the Police Chief enforces it and none of the cars have been on the pavement they are allowed to park on the shoulder.

R. Desmarias stated that he would like to continue this part until next month to deal with the Fire Department portion.

Attorney O'Donnell asked if the Board wanted them to ask the Barrington Fire Department in the opinion if the neighborhood was rendered objectional detrimental because appearance traffic dust, noise.

Robert yelled to the public if Chief Walker was still there?

C. Huckins asked if hazardous materials were stored in the outside storage containers.

Robert explained that there was some ammunition which was not considered a hazardous material and there's paper, office supplies, in the containers.

Attorney O'Donnell understood about the Home Occupation being continued until next month and asked if they wanted to hear the variance or would the Board be prepared to hear the variance.

R. Desmarias explained that they would want to discuss the variance.

A motion was made by G. Bailey and seconded by R. Desmarias to continue the Home Occupation to October 20, 2021.

Roll Call:

C. Huckins-aye

D. Whitten-aye

P. Thibodeau-aye

G. Bailey-aye

R. Desmarias-aye

Robert explained to the chair that on November 15, 2020, they are asking for an emergency injunction to shut his business down and forty thousand dollars.

R. Desmarias explained to the applicant that they are requesting for a temporary variance which doesn't exist in law. R. Desmarias explained that the applicant needed to apply for a variance which they can do and if that was what they wanted the notifications would need to be amended for next month. R. Desmarias explained that they could hear a variance request not a temporary variance they can do this.

Attorney O'Donnell explained that he described as a temporary variance but what he envisions was a variance to the Board and the Board has the power to add conditions variances as they feel fit to impose conditions. Attorney O'Donnell explained that they would accept a condition on the variance that says effectively that it's valid only as long as it takes to relocate.

R. Desmarias explained that the variance runs with the land in perpetuity long after Mr. Russell is gone. The variance goes with the land for ever. R. Desmarias explained that the abutters have been notified that this was a temporary variance and if it was a variance they may show up.

Robert expressed that they didn't tell them it was temporary.

R. Desmarias explained that the notice that came out says "temporary variance".

Attorney Mark Puffer was the attorney representing Zoning Board (not the Town Attorney). On a regular basis the Town Attorney was involved in an enforcement action on 2A Tactical that was why he has been asked to give independent advice. Attorney Puffer explained that the applicant is calling it a temporary variance but you are asking for a permanent variance. Attorney Puffer explained that the complete application has temporary all the way through it respect to each of the five criteria you rely at least in part on the fact that use was only going to be temporary.

Robert asked Attorney Puffer who he represents.

R. Desmarias explained that he was the Zoning Board lawyer.

Attorney O'Donnell asked if there was a condition added that to the variance would terminate it then the variance would be temporary nature regardless of whether you call it a temporary variance or a variance with a condition.

Attorney Puffer stated now you are asking for a temporary variance and his advice to the Board was that you can not grant a temporary variance. Attorney Puffer expressed that you can't grant permanent variance because that was not what you asked for.

R. Desmarias explained that they have given the applicant a chance to amend the notification and come back next month if they want to apply for a variance.

Robert asked if they were being told that there was not such thing as a temporary variance.

R. Desmarias explained that they can apply for a variance but not a temporary one. R. Desmarias explained that there were no criteria to follow to grant a temporary variance.

Robert asked if the Board gave him a variance that would last forever, and it goes with the property, it's a business property, right? Robert explained that was probably not going to happen which means the Town was going to get their lawsuit on the 15th of November.

R. Desmarias explained that the Town isn't going to decide the variance case with this Board.

R. Desmarias explained that the reason the case can not be heard was because the notices were sent to all the abutters for a temporary variance and that needs fixed to let abutters know that was a variance request.

R. Desmarias explained that they can come back next month and argue their case for variance and a new notification that needs to go out.

Attorney O'Donnell asked that regardless of whether it's in a condition if they're saying they wouldn't grant that condition they still need to re-notify people, so they know. Attorney O'Donnell explained he would need to adjust his arguments.

Robert stated that Conner (Town Administrator) said they should almost certainly not get a variance.

R. Desmarias explained that he's not sitting on this Board.

Robert stated that it sounds like Conner has a great deal of influence.

R. Desmarias expressed that he doesn't and if he had any conversation with Conner, he would need to recuse himself.

Attorney O'Donnell explained this was the Zoning Board hired attorney from a different law firm than the Town's normal council it specifically separates the Zoning.

R. Desmarias explained that they are trying to give you time to deal with this.

G. Bailey explained it just the fact that temporary was put in.

Robert stated that the original complaint came from Peter Royce Town Treasurer that began this entire process.

R. Desmarias explained that the Board did not get to the point where they could open public comment and if they do next month, the public can speak.

Robert explained that some people drove far to come to the meeting and asked if the public able to speak?

R. Desmarias stated no.

A motion was made by G. Bailey and seconded by C. Huckins to continue the case for a variance to October 20, 2021.

Roll Call:

P. Thibodeau-aye

C. Huckins-aye

D. Whitten-aye

G. Bailey-aye

R. Desmarias-aye

2. **118-21-GR/SPO-21-ZBAVar (Owners: David R. & Joyce Torrey)** Request by applicant for a variance from Article 4-Dimensional Standards Table 2, Section 4.1.1 Minimum Standards to allow 7.9', 7.8 and 11' on the right side where 30' is required and to allow 7.8 and 11' on the left side where 30' is required. Also, to allow 29.6' in the front where 40' is required at 68 Rocky Point Road (Map 118, Lot 21) in the General Residential Zoning District. BY: Raymond A. Bisson, Stonewall Surveying; PO Box 458; Barrington, NH 03825.

Raymond Bisson from Stonewall Surveying represented the applicants David & Joyce Torrey that are on line from 68 Rocky Point Road on the existing conditions. Ray explained that the property was created in 1961 and showed the Board the plan should the house that was built in the 1950's which was a one level camp with a wooden Deck no basement. Ray gave a description of all the structures and what was on the lot along with septic and well location.

Ray read the following:

The proposed plan is to replace the one-story house with a two story 24' deep by 34' wide house that would be centered on the lot and parallel with the property lines. The well and septic would be updated, and the driveway would be adjusted to allow for two cars and in a fashion that is more user friendly for turning around. Dry wells will be installed under the deck to capture rainwater from the roof. Ray explained that the fireplace on outside will not be there would be inside. Ray explained that the lot size was 51.7' wide and 92.4' long and there's a 13' elevation drop from the road to the shore. The shed would be relocated in front of the house.

Ray read the following:

Per the zoning ordinance Article 11, section 11.3, existing lots of record created prior to July 28, 1988, are exempt from the shoreland setback provisions to the extent it can be demonstrated that conformance is impossible. Based upon the State septic guidelines, the septic needs to be minimum of 10' from lot lines and 15' from a foundation with drains.

Below was the relief that Ray was asking for:

Variances requested from dimensional requirements:

Relief from front setback for Rocky Point Road from 40 feet to 29.6 feet.

Relief from left setback from 30 feet to 7.8 feet. The existing setback is 7.8 feet to house and 3.2' from the wood walkway.

Relief from right setback from 30 feet to 7.8 feet. The existing setback is 7.3 feet to house.

5 criteria for a variance to be met

- ☐ 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 existing lot is 51.7' wide where the proposed building will be placed and 92.4'± long. The regulations require a lot to be 60' wide just in setbacks. Therefore it is not possible to meet the current regulations and the literal enforcement creates an unnecessary hardship on the owner.

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

There have been many improved homes or new homes placed on non-conforming lots in the Town and in the immediate area. The house on Lot 22 was replaced in 2013 and the house on lot 20 was built in 1998, both are two story homes. Granting the variance would be consistent with the spirit of the Ordinance as it allows for improvements consistent with the surrounding area along with the improvement of the septic system for better protection of Swains Lake.

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

The proposed addition would not impact abutting property values in a negative way as the improved home will increase abutting property values. The proposed home will compare better to size of the abutting homes.

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

This home cannot be improved without a variance. Many homes in this area are close to the property line. The existing layout of the existing house does not lend itself to be added onto or a second story to be built and would still require relief from the Board. Granting the variance would do substantial justice by allowing the owner to update the home and still enjoy the area that they have been living in for more than 20 years.

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

The proposed addition will not have an impact on the public, neighbors or landscape. The proposal decreases lot coverage and the improvements along the shore will be more appealing from the water and have a positive impact along the shoreline, therefore granting the variance is not contrary to public interest.

C. Huckins asked about be closer to the water and did they get NHDES approval?

Ray explaine that the deck was 24.4' amd it was 29.1'.

G. Bailey expressed that it was 5'.

Ray explained that the house was 22.7' from the road and now they are 29.6 from the road.

G. Bailey asked if the got a shoreland permit.

Ray explained that they would do that once they have approval.

G. Bailey explained that he was not happy with setback facing the water because there's a stonewall or was the stonewall only on the left side.

Ray explained that it was a retaining wall and less than 4' would not be a structure under the ordinance.

G. Bailey asked the Chair how would the fire trucks get in the back.

R. Desmarias opened public comment.

R. Desmarias closed public comment.

R. Desmarias and G. Bailey felt the right side was to close.

D. Whitten felt that it was more that it was and he was okay with it.

G. Bailey asked if the setback included the setback for the roof overhang.

Ray stated that it does include the roof overhang.

A motion was made by P. Thibodeau seconded by C. Huckins to grant the Variance for 68 Rocky Point Road.

Roll Call:

P. Thibodeau-aye

C. Huckins-aye

D. Whitten-aye

G. Bailey-nay

R. Desmarias-aye

2. [216-20-GR/Isling-21-ZBA \(Owners; Todd & Sara Calitri\)](#) Request by applicant for relief from Article 11, Section 11.2 (2) 100' Isinglass River Overlay Zone to allow 67.2' where 100' is required to add a 16' x 28' screened porch and a 16' x 10' deck to the previously permitted rebuilt structure at 267 Parker Mountain Road, (Map 216, Lot 20) in the General Residential/Isinglass River Overlay Zoning District. BY: Pohopek Surveyors & Septic System Design, LLC; 42 Flagg Road; Rochester, NH 03839.

Jason Pohopek from Pohopek Surveyors & septic System Design, LLC represented Todd & Sara Calitri. Jason explained that the applicant has a variance for Article 11 Section 11.2 (2) No structure of any type including, by way of example in part by way of location. Jason explained that the structures need to be constructed 75' of shoreline. Jason explained that this property was located on the Isinglass River needs to be 100' from the Isinglass River. Jason explained to the Board that he was a direct abutter to the Calitri's and was in support of this application. Jason explained that this lot is 13.7 acres and has a lot of frontage to the north side of this home placement along the Isinglass River. Jason explained that the Calitris has this home reconstructed into the current home that they live in now. Jason explained that the applicant went to the Planning Board and received a 9.6 Special Permit along with going to the Zoning Board of Adjustment for the same variance. Jason explained that they also received a shoreland permit from NHDES. Jason explained that are before the Board for a modification to the same footprint to add a 16' x 36' covered porch with a 16' x 10' extension to the deck for access. Jason explained that most of these fits with the 100' setback from the river.

Jason read the 5 criteria's for the variance request:

☐ 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 special condition that exists is that the house is located within the 100' Isinglass overlay zoning making the construction of a porch impossible without the relief of this variance request.

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

The spirit of this specific ordinance is intended to protect the natural resources. This proposed construction poses no threat to the resource.

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

The addition of the porch and deck cannot be seen by any abutting properties and will have no effect on surrounding values.

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

It would allow for reasonable use and enjoyment of the property.

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

With no detrimental effects to the natural resource and not visible to any public. The relief is not contrary to the public interest.

P. Thibodeau asked when the house was built.

Jason stated 2013.

R. Desmarias opened public comment.

R. Desmarias closed public comment.

A motion was made by D. Whitten and seconded G. Bailey to grant the variance for 267 Parker Mountain Road.

Roll Call:

P. Thibodeau-aye

C. Huckins-aye

D. Whitten-aye

G. Bailey-aye

R. Desmarias-aye

3. [121-16-GR/SPO-21-ZBAVar \(Owners: Michael R. & Brenda M. Zahner\)](#) Request by applicant for a variance from Article 4-Dimensional Standards Table 2, Section 4.1.1 Minimum Standards to allow 10.6', 6.7' and 5.0' from the back where 30' is required and 34.8', 35', and 36.1' from the front where 40' is required at 14 Loon Cove (Map 121, Lot 16) in the General Residential Zoning District. By: Raymond A. Bisson, Stonewall Surveying; PO Box 458; Barrington, NH 03825.

Raymond Bisson from Stonewall Surveying represented applicant Michael and Brenda Zahner located at 14 Loon Cove. Ray explained that the applicant purchased the property in 2017 existing house was a one

level camp with a porch. Ray explained to the Board location of what was on the existing property. Ray explained that the lot was narrow it was 68' wide near the existing house and approximately 250' in length. Ray explained that no structure could go between the existing house and Hall Road because the septic was there. Ray explained that they are proposing to add a second story and a garage the proposed workshop would be attached to the side of the garage to eliminate the encroachments. They would redesign the driveway by eliminating the circular shape and the reduction in added vegetation helping the runoff. Ray explained that the placement of the structure was based on the current positioned on the current structure windows. Ray showed location of the window that they would be able to see the lake from that window trying not to lose that view also showed location of the well.

D. Whitten asked Ray to describe what he was talking about.

Ray showed the Board the location on the left side where there was an old stone well. Ray explained that would make a 5' setback to the overhang of the property line. Ray explained that the proposed improvements maintain maximum separation from the house across the street reducing hazards created by the increased structure and improvements.

Ray explained the following variance that he was requesting:

Relief from front setback for Loon Cove from 40' to 34.8'

Relief from rear setback is 5" from 30' the right rear of garage

Ray explained the proposed improvements are in line with the surrounding area and around Swain's Lake with no negative impact on surrounding properties. Ray explained that the Board received a letter from the neighbors the Hawkins.

Ray read the 5 criteria's

☐ 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 existing lot is 68.4' where the addition is proposed and 83.9' at it's widest point (at the leach field). The regulations require a lot to be 70' wide just in setbacks. It is not possible to meet the current regulations

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

There have been many improved homes or new homes placed on non-conforming lots in the Town, granting the variance would be consistent with the ordinance as these are allowed. The ordinance does allow for expanding non-conforming structures, except this property cannot adhere to the 15' requirement. The proposed setback is consistent with the neighborhood as many homes are close to the property lines. The reduced rear setback also provides greater separation from the shore in the shoreland zone.

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

The proposed addition would not impact abutting property values in a negative way as the improved home will increase abutting property values. Having the proposed addition farther away from Loon Cove Road would be more appealing by allowing the parking to be farther from the roadway. The elimination of the encroachments will also benefit the neighboring lot.

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

This home cannot be improved without a variance. Just like a septic system installed in the 1950's needs to be updated to today's standards, a home needs to be updated to accommodate modern life. Many homes in this area are close to the property line. Behind the rear of the property is a wetland and cannot be improved and the abutting neighbor is 177'± away from the proposed structure so there is plenty of structure separation. Granting the variance would do substantial justice since it would allow the improvement of a non-conforming structure and lot.

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

The proposed addition will not have an impact on the public, neighbors or landscape. The parcel is currently serviced by public water and the home is already using the private street, so there is no additional impacts to these. The proposal decreases lot coverage and eliminates an encroachment, which are both improvements to the area. Therefore granting the variance is not contrary to public interest.

C. Huckins asked if they need a shoreland permit.

Ray stated they would need a shoreland permit once they receive approval.

G. Bailey asked what the space above the garage would be.

Ray explained that would be used for living space.

R. Desmarias opened public comment.

Michael Zahner homeowner explained that above the garage would be for storage and open area with a workshop at the far end of the garage.

R. Desmarias closed public comment.

R. Desmarias expressed that he was concerned with the 5' and the argument was the window not really a hardship. R. Desmarias explained that he felt the Board would like to see the 5' moved away from that property line and increase the 5' some.

R. Desmarias asked if the applicant would want to continue the case and come back with something else for the setback?

Ray explained that he would like to continue the case but explained that the 13' wouldn't work.

G. Bailey explained that number was just to show some of the other past properties that they have looked at was not the intent to go to 13'.

Ray explained that in the ordinance basically on the frontages it requires 80' between plus a right of way. Ray explained that the separation for the house across the street was 60' from the garage. Ray explained for safety having the garage back farther was better. The neighbor abutting the 5' has no issue.

P. Thibodeau expressed that with the wetlands abutting that side and they are 5' from the other side nobody can ever build and felt 5' away from the road was better than pulling closer to the road.

P. Thibodeau was in favor of leaving it there because the wetland was a natural buffer.

D. Whitten expressed that R. Desmarias issue was the space between the two houses and asked what the width of the road was there.

Ray explained that it was 5' at the closest it does get a little bit wider the farther away and explained safety factor was his main concern. Ray explained that the neighbor was 177' away and received a letter that they did not have a problem with this project.

D. Whitten expressed to maintain the width on this road if a fire truck had to get in there they need as much room as possible.

A motion was made by G. Bailey and seconded by C. Huckins to continue the application until October 20, 2021.

Roll Call:

P. Thibodeau-nay

C. Huckins-aye

D. Whitten-nay

G. Bailey-aye

R. Desmarias-aye

4. [270-2&3 273-49-GR-21-ZBAVar \(Owners: Anthony & Janis Serra\)](#) Request by applicant for a variance from Article 6.2.6 Conservation Subdivision Perimeter Buffer requesting the perimeter buffer be eliminated for the proposed lot containing the existing house and remain for the proposed Conservation Subdivision. This is located at 44 Meadowbrook Road (Map 270, Lots 2 & 3 & Map 273, Lot 49) located in the General Residential Zoning District. BY: Barry Gier, Jones & Beach Engineers, Inc; PO Box 219; Stratham, NH 03885.

Barry Gier from Jones & Beached represented the applicants Anthony & Janis Serra for the property located at 44 Meadowbrook Road. Barry explained that this was for three lots total lot size was 58.9 acres in the General Residential Zoning District. Barry explained that currently it has one single family home and has a large wetland complex to the west side of the property. Barry explained that their intent was to construct a 11 lot Conservation Subdivision on a cul-de-sac. Barry explained that they are trying to conserve 42.3 acres of the 58.9 acres.

Barry explained that they are seeking a variance to Article 6.2.6 of the Conservation Subdivision requirement and explained the article requires a 100' perimeter buffer Conservation Subdivision around the entire project. Scott explained that the existing house was located 33.7' from the rear property line therefore, cannot have a perimeter buffer. Barry explained that the applicant was only asking for the variance for the existing house on the Conservation Subdivision. Scott explained the Conservation Subdivision that they are proposing on the plan.

G. Bailey asked how much upland soils was.

Barry stated 21 acres.

Barry read the 5 criteria's

- ☐ 1. No detriment to property values in the vicinity of the proposed development will result on account of: the location or scale of buildings, structures, parking areas, or other access ways; the emission of odors, smoke, gas, dust, noise, glare, heat, vibration, or other pollutants; or unsightly outdoor storage of equipment, vehicles, or other materials.

Existing house is located 34' from rear property line of a 58.9-acre parcel. Sufficient landscaping exists to screen existing house from abutting homes.

- ☐ 2. No hazard will be caused to the public or adjacent property on account of potential fire, explosion, or release of toxic materials.

The intent of the ordinance is to provide screening to abutting properties from the conservation subdivision. The requested variance is for the existing house only which has sufficient landscaping for screening.

- ☐ 3. No creation of a traffic safety hazard or substantial traffic congestion will result in the vicinity of the proposed development.

The variance is only for the existing house lot, which is sufficiently screened from the abutting properties, therefore we don't anticipate sensitive area while keeping the existing house.

☐ 4. No excessive demand on municipal services and facilities, including, but not limited to waste disposal, police and fire protection, and schools.

Granting the variance allows applicant to construct a Conservation Subdivision thereby protecting 42 acres of environmentally sensitive area while keeping the existing house.

☐ 5. The proposed use will not result in the degradation of existing surface and groundwater quality standards, nor will it have adverse effects on the natural functions of wetlands on the site that would result in the loss of significant habitat or flood control protection.

Granting the variance allows the applicant to keep the existing house which will meet all other setback requirements and will therefore not be contrary to the public interest.

R. Desmarias opened public comment.

Dan Ayer explained to the Board that the Conservation Commission supports the Conservations Subdivision but doubt that they would take over the open space. Dan explained that he believed the comment was a good home association tied in with a lot that was their recommendation.

R. Desmarias closed public comment.

A motion was made by G. Bailey seconded by C. Huckins to grant the variance for 44 Meadowbrook Road.

Roll Call:

P. Thibodeau-aye

C. Huckins-aye

D. Whitten-aye

G. Bailey-aye

R. Desmarias-aye

MINUTES REVIEW AND APPROVAL

6. Approval of July 21, 2021, meeting minutes.

A motion was made by D. Whitten seconded by G. Bailey to approve the minutes as written.

The motion carried unanimously.

ADJOURNMENT

The next meeting will be held on October 20, 2021, at 7:00 p.m. at ECLC 77 Ramsdell Lane.

Without objection the meeting adjourned at 8:53 p.m.

The motion carried unanimously.