

Town of Canterbury, NH  
Zoning Board of Adjustment  
Date: 2024 March 27  
Location: Meeting House

Members Present: Joseph Halla (Chair), F. Webster Stout, Calvin Todd, Jim Wieck, Christopher Evans

Members Absent: Lisa Carlson (Alternate), Sean O'Brien (Alternate)

Others Present: Kristin Silveria, Greg Bibaud, Joe Maynard, John Weincek, Jason Reimers, Kent Ruesswick, Sam Papps, Beth Blair,

1. Call to Order
  - a. The meeting was called to order at 7:00 p.m.
2. Chairman Halla decided to postpone reading of the previous minutes.
3. Case No. 2024-1 Variance
  - a. Chairman Halla advised those present that Kristin Silveria is seeking a variance. The application involves Tax Map 203, Lot 51 located at 31 Harmony Lane South in the Natural Resource District.
  - b. The proposed use states "To allow construction of a new home on a preexisting non-conforming lot of record, where the proposed home will be 19 feet from the Harmony Lane South ROW and 50 feet from the high-water mark of Rocky Pond where a minimum of a 50' front setback is required from a ROW and a minimum setback of 75 feet is required from the highwater mark of the pond where this lot has 17,036 sq. ft. of land area and approximately 137' of frontage on a private road." The application references Article 5, Section 5.2A.
  - c. Chairman Halla gave a detailed description as to the conduct of the hearing procedure.
  - d. Chairman Halla read a letter from Kristin Silveria, authorizing Benchmark LLC to represent their application.
  - e. Joe Maynard from Benchmark LLC presented Kristin Silveria's variance application.
    - i. Mr. Maynard provided a map of the lot pre-development and post-development.
    - ii. Mr. Maynard described the shape of the lot. On the North side is a steep hill to the next property. On the South side is wetlands. On the West side is Harmony Lane South. On the East side is Rocky Pond. The middle of the property is currently cleared and a camper has been parked on the property for several years. There is a temporary electrical service for the camper.
    - iii. Mr. Maynard distributed photo exhibits to the Board.
    - iv. Mr. Maynard described the proposed construction. The existing trailer will be removed and a single family home will be constructed in the center of the property. The proposed structure consists of a garage, house, and deck. There will also be a driveway from Harmony Lane South to the entrance of the garage. The deck is outside of the 50 foot shoreland setback that is required by the State, but within the 75 foot shoreland setback required by the Town. The closest corner of the garage is 19 feet from the ROW.
    - v. There is a 30% cap on impervious surfaces in this area. The proposed construction would be at 18% impervious.
    - vi. The construction will also be in compliance with the Unaltered Shoreline Regulation, leaving 25% in an unaltered state. They have submitted a shoreline application and are waiting to hear back.
  - f. The Board asked Mr. Maynard questions about the application.

- i. Chairman Halla asked what the square footage of the house is. Mr. Maynard replied that the base house is 36' x 28'. Including the garage, the bird's eye square footage is 1,680 sq. ft.
  - ii. Mr. Stout asked where one of the pictured neighboring houses is on the presented map. Mr. Maynard pointed out the location.
  - iii. Mr. Weick asked for more details about the septic system. Mr. Maynard described the septic system. It is a pre-treatment system with 3 compartments and aeration.
  - iv. Mr. Stout asked for confirmation that the application is in with the State. Mr. Maynard confirmed that the application has been with the State for almost 30 days and 30 days is the limit for the State to respond. They usually reply on day 30 with more questions.
  - v. Mr. Stout asked if the driveway would be paved. Mr. Maynard confirmed that the driveway would be paved and is included in the 18% impervious coverage.
- g. Chairman Halla asked if anyone present wanted to speak in favor of the proposed variance. No one spoke.
- h. Chairman Halla asked if anyone wanted to speak in opposition of the proposed variance.
- i. Jason Reimers of BCM Environmental & Land Law, PLLC represented John and Jennifer Wiencek and presented a letter in opposition on their behalf.
- i. The Wiencek's are owners of the abutting property at 29 Harmony Lane South, Tax Map 203 Lot 52. The property is used as a seasonal camp.
  - ii. Mr. Reimers stated that the applicant must get a special exception to build a single-family residence in the Natural Resources district. Chairman Halla clarified that if this variance is approved, the applicant must return for a separate hearing to get a special exception. The applicant must get both and one does not override the other. Due to this clarification of the process, Mr. Reimers skipped section I of his letter.
  - iii. Mr. Reimers argued that the application does not satisfy the requirements for submission because it is missing dimensions of the proposed building, the 75 foot setback like from Rocky Pond, and the distance from the proposed septic system to Rocky Pond.
  - iv. Mr. Reimers argued that because this property is in the Natural Resources district, the application should have addressed how this development wouldn't adversely affect the ecology of the area.
  - v. Mr. Reimers notes that the applicant's deed requires that the owner "will do nothing to obstruct the natural flow of surface water from the westerly side of said road or passway through said culvert."
  - vi. Mr. Reimers distributed photos and a packet containing a copy of the applicant's deed, a map of the parcels in the Natural Resource District near Rocky Pond, and a map of the lot.
  - vii. Mr. Reimers described the photos. The 1<sup>st</sup> is the entrance to Harmony Lane South. The 2<sup>nd</sup> is the Wiencek's property. The 3<sup>rd</sup> is the applicants property. The rest are of other properties along the road.
  - viii. Mr. Reimers argued that the application does not address all of the five variance criteria in RSA 674:33, I(a) and (b). He read the criteria aloud and said that items (C) "Substantial justice..." and (E)(A) "No fair and substantial..." are not addressed.
  - ix. Mr. Reimers argued that the application does not satisfy the variance criteria that are addressed.
    1. (A) "The variance will not be contrary to the public interest" and (B) "The spirit of the ordinance is observed" are not satisfied because this development would alter the essential character of the neighborhood. Mr. Reimers described the map of the parcels in the Natural Resources district near Rocky Pond that he distributed. He argued that the makeup of the current dwellings in the area show that this is a "camp neighborhood" and the Natural Resources district only allows single-family homes by special exception.

2. (C) “Substantial justice is done” is not satisfied because the land-owner had knowledge of the restrictions when they bought the property, and the property can still be developed while respecting the 75 foot shoreland setback. Mr. Reimers described the map of the lot he had distributed. It shows where the 75 foot shoreland setback and the 25 foot front setback are. It also shows the area that is buildable and estimates that to be 2,444 sq. ft.
3. (D) “The values of the surrounding properties are not diminished” is not satisfied because the applicant did not submit any evidence for this. The application says “These improvements will only add value to the property”, but Mr. Reimers believes that statement is about the applicant’s property, not the surrounding parcels.
4. (E) “Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship... owing to special conditions of the property that distinguish it from other properties in the area” is not satisfied because this property is not different from those around it (all are non-conforming and have a similar small size), this would undermine the purpose of 75 foot setback (to protecting the pond), and there is still enough buildable land to construct a smaller home.
  - x. Mr. Reimers gave Chairman Halla a copy of the letter.
- j. Chairman Halla asked if anyone else wanted to speak in opposition to the proposed variance.
- k. John Weincek confirmed that Chairman Halla would read the letter from the Crawford’s aloud.
- l. Chairman Halla asked again if anyone else wanted to speak in opposition to the proposed variance. No one spoke.
- m. Chairman Halla read aloud a letter in opposition to the proposed variance from Liane and Don Crawford that was received March 21, 2024.
  - i. The Crawford’s are owners of the abutting property at 31 Harmony Lane South, Tax Map 203 Lot 50.
  - ii. They wrote that they checked with the Town last summer when the lot was sold and were under the impression that the lot was not buildable.
- n. The Board addressed questions to the applicant.
  - i. Chairman Halla asked Mr. Maynard if it was true that the lot was buildable while still respecting the setbacks. Mr. Maynard argued that the structure would have to be less than 20’ x 20’ and 400 sq. ft. is not enough to build a home with modern building codes.
  - ii. Mr. Maynard said that although the septic tank is within the 75 foot setback, it is a sealed vessel and the septic field is outside of the setback.
  - iii. Mr. Maynard argued that the proposed house size is comparable to other houses in the area.
  - iv. Mr. Maynard argued that the lot is unique because the steep slopes and wetland provide an unusually narrow building area. The area that will be built is already cleared. Although the camper is technically moveable, it hasn’t been moved in years.
  - v. Mr. Stout clarified that Canterbury requires both the tank and the field for the septic system be outside of the setback. Mr. Maynard said he could make that work.
  - vi. Mr. Evans asked for the hardship to be addressed more clearly. Mr. Maynard responded that the hardship is in the land itself (referring to the slopes and wetland), and the applicant cannot purchase more land.
  - vii. Mr. Evans asked what the hardship is that prevents the applicant from using the property. They may not be able to use the property as intended, but they can still use it. If the building code prevents them from building a smaller house, then that would be a hardship.
  - viii. Mr. Stout checked the math of the potentially buildable area and came up with 2,400 sq. ft. that could be built upon without a variance. He cautioned that his calculation could be off by a couple hundred sq. ft.
  - ix. Mr. Maynard did a calculation and came up with 840 sq. ft.

- o. Mr. Maynard asked for a break to talk to Ms. Silveria privately. While he did this, the Board continued to check the math and discussed how much space is actually needed per the building codes.
  - p. Mr. Maynard returned from speaking with his client and said that in light of the discussed buildable area calculations, Ms. Silveria will withdraw her application. They will rework the building plan and refile for a special exception at a later date.
4. Adjournment
- a. Chairman Halla made a motion to accept the application withdrawal. Jim Wieck seconded. All in favor by roll call, motion carried.
  - b. The meeting was adjourned at 7:47 p.m.

Minutes submitted by Kathleen McKay, Administrative Assistant