



# TOWN OF LITCHFIELD

## LITCHFIELD ZONING BOARD OF ADJUSTMENT

Litchfield, New Hampshire August 2, 2021

### DRAFT

Regular meetings are held at the Town Hall at 7:00 pm on the 2<sup>nd</sup> Wednesday of each month.

#### **ZBA Members in Attendance (indented if absent):**

Laura Gandia, Vice Chairman

Albert Guilbeault

John Brunelle

Kevin Cormier

Thomas Cooney (alternate)

Kyle D'Urso (alternate)

Mark Falardeau (alternate)

Jerry Sorenson (alternate)

Mike Salvo (alternate)

Mark Benoit (alternate)

#### **I. CALL TO ORDER AND ROLL CALL**

Laura Gandia called the meeting to order at 7:05 pm. Attendance was taken by roll call.

Attending: Laura Gandia, Vice Chair; John Brunelle; Kyle D'Urso, Alternate; Jerry Sorenson, Alternate; Al Guilbeault, Mark Falardeau, Alternate; Tom Cooney, Alternate; Mark Benoit, Alternate; Jeff Blackwell, Building Inspector.

Laura Gandia appointed Tom Clooney and Kyle D'Urso to the Board, resulting in a five member Board.

#### **II. CHAIRPERSON OPENING REMARKS**

Laura Gandia indicated this is a special meeting and reviewed the schedule for hearings.

#### **Case Number: 2021-09**

**Name of applicant:** Andrew & Jessica McLavey

**Owner of property:** Andrew & Jessica McLavey

**Location of Property:** 20 Birch St, Litchfield, NH 03052, Map 7 Lot 8

#### **Appeal Requested**

1. Special Exception from LZO Section 1208 to allow the installation of a sewage disposal system in the Wetlands Conservation District with a setback of 57 ft where a 100 ft setback is required.
2. Special Exception from LZO Section 1208 to allow the construction of an ADU (Accessory Dwelling Unit) in the Wetland Conservation District with a setback of 44 ft where a 75 ft setback is required.

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#### **Case Number: 2021-10**

**Name of Applicant:** BTW Construction/Ben Wood

**Owner of property:** Anmarie Reznik and Cory Gannon

**Location of Property:** 18 Greenwich Road, Litchfield, NH 03052, Map 13, Lot 99

### Appeal Requested

1. Variance from LZO Section 310 to allow the construction of a 24' x 24' garage and 10' x 16' breezeway, which will encroach 8 feet into the side setback where a 20 foot setback is required.
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### III. PUBLIC HEARING AND DELIBERATION

Notices of the Public Hearings were posted and published in the Union Leader. Notice of the meeting and agenda were posted at the town hall and public library.

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**Case Number: 2021-09**

**Name of applicant: Andrew & Jessica McLavey**

**Owner of property:** Andrew & Jessica McLavey

**Location of Property:** 20 Birch St, Litchfield, NH 03052, Map 7 Lot 8

### Appeal Requested

1. Special Exception from LZO Section 1208 to allow the installation of a sewage disposal system in the Wetlands Conservation District with a setback of 57 ft where a 100 ft setback is required.
2. Special Exception from LZO Section 1208 to allow the construction of an ADU (Accessory Dwelling Unit) in the Wetland Conservation District with a setback of 44 ft where a 75 ft setback is required.

Mr. McLavey thanked the Board for the special meeting. He indicated that he is looking to replace the failed existing septic system that has been failing for about 7 months. He noted he plans to build an ADU (accessory dwelling unit) for his in-laws. He noted that the property abuts conservation land and that in approaching the Planning Board, they had no issues with the project, but asked that no fertilizer is used on the back part of the property. Mr. McLavey indicated that he hired a wetland specialist who came out multiple times and found that the right side of the property is able to sustain a vernal pool, which is the far side of the property; there was no evidence that a vernal pool could be sustained on the left side of the property. The new septic system will be further away from the wetlands than the existing septic and the same with the addition. The current residence is closer than the addition would be to the wetlands. He noted that he has done everything to keep things within the existing envelope of the property.

Al Guilbeault asked if Mr. McLavey knew when the Conservation Commission acquired that land.

Mr. McLavey commented that he purchased the property from his parents about 5 or 6 years ago and believes that the land was acquired approximately 6 or 7 years ago.

Mr. McLavey addressed the special exception criteria:

***1. The proposed use, construction and/or alteration shall be constructed in such a way that does not unduly restrict the flow of water because:***

The proposed septic system has been state approved and will be located away from any water flow. The proposed ADU is located directly behind the existing structure and drainage from the roofline will not adversely affect any existing drainage.

***2. The proposed use is not in conflict with any and all of the purposes and intentions in Section 1200.01 of this Ordinance because:***

The lot falls under Section 1208.00 regarding setback exceptions. The proposed changes will also not violate any of the provisions described in 1200.01. To ensure the wetlands in the vicinity are not adversely effected, we chose locations which are no closer to the wetlands than any of the existing structure. Attached to the application is an evaluation from a certified wetlands scientist stating such.

**3. The use or activity proposed and its attendant impacts cannot reasonable be avoided because:**

As the home was built in the 1980's, it was not subject to the same setback rules as exists today. The lot and home location are also situated in a manner where the proposed location of the ADU (accessory dwelling unit) and septic are the locations which best protect the natural surroundings while still being practical.

**4. It can be shown that the least damaging route and methodology have been selected; and that which is being proposed is the best practicable alternative because:**

For the septic, the existing failed system is closer to the wetlands than the proposed system. For the ADU, the location is the most practical as it will not adversely affect the surroundings while also not diminishing from the character of the neighborhood as the ADU will be located behind the main structure, largely out of sight.

**5. It can be shown that reasonable and acceptable impact mitigation measures have been incorporated where necessary and appropriate to minimize wetland loss or degradation because:**

According to Pond View Wetlands Consultants, the forested wetland on the east side of the house does not appear to be capable of maintaining sufficient standing water to provide a viable vernal pool habitat. The west side wetland did appear to provide sufficient hydrology and some of the typical site conditions associated with a vernal pool habitat.

The field review of the Birch Street site was conducted on March 12, 2021 and April 23, 2021. The timing of the site visits was selected to provide a broad range of dates to coincide with the typical season for vernal pool breeding activities. The field review was conducted along the edge of the wetland as well as in the adjacent ponded areas. However, no evidence of breeding activity, such as egg masses of amphibians, were observed on the site. No secondary or other obligate indicators, such as caddis flies or fairy shrimp were observed.

Based on these findings, it has been determined that the wetland on the west of the house at 20 Birch Street does not appear to provide vernal pool habitat at this time. The septic system is environmentally friendly and not just pipe and stone.

Al Guilbeault asked if it is a chambered system

Mr. McLavey indicated it is and sounds much like what everyone is going with.

**6. No significant impact on the aquatic habitat of rare endangered species as listed by the state of New Hampshire or federal government will result because:**

This has been covered in the wetlands scientist response in #5.

**7. It can be shown that adequate erosion and sedimentation control methods appropriate to the use are incorporated as detailed by the current recognized BMP's (e.g. Stormwater Management and Erosion and Sedimentation Control Handbook for Urban and Developing Area in NH. Rockingham County Conservation District, NHDES, and Soil Conservation Service, August 1992, as amended because:**

This information may be found in the state approved septic design that has been attached to the application, as were the wetlands scientist document.

**8. It can be shown that State wetlands permits, as required, have been obtained because:**

This information has been provided in the wetlands scientist document attached to the application. I believe that it was signed off on by both the state and wetlands scientist –

Jerry Sorenson inquired about the plan for the existing failing system and if it will be abandoned in place.

Mr. McLavey indicated it is actually being removed because most of it is where the ADU is going.

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## Public Input

Hearing no questions from the Board, Laura Gandia opened public input.

Ben Wood, Litchfield, commented that he is in favor of a project like this because it helps the conservation area, helps improve the home and septic situation, and adds value to the home and neighborhood. He indicated that there is no impact on neighbors that abut the conservation areas.

Jessica McLavey, 20 Birch Street, commented that replacing the septic system is necessary and important.

Laura Gandia indicated that the Board has received letters from the Conservation Commission, the Planning Board and the Health Officer, which were read into the record. Chairman Lepore, Conservation Commission, wrote that the Board reviewed the special exceptions and voted 7-0 in favor to recommend the special exceptions on the condition fertilizer will not be used to prevent impacts to the wetlands adjacent to the property. Chairman Croteau, Planning Board, wrote that a special meeting was held to provide comments to the Zoning Board of Adjustment and to review two special exceptions, for which the Board voted 5-0 to recommend support for the exceptions under Section 1208. Mr. Nicols, Health Officer, wrote that he had no issues concerning the special exception for the setback for the septic system for the ADU.

Jerry Sorenson asked a procedural question, if there is a requirement for abutter notification.

Laura Gandia responded that abutters received notification for the first meeting in July, but there was no quorum. The abutters received notification for this meeting, that was sent out by the Town.

Hearing no further public input, Laura Gandia asked for a motion to close public input.

***All made a motion to close public input. Kyle D'Urso seconded. The motion carried by roll call vote: 5-0***

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## Board Deliberation

Laura Gandia asked if the Board agreed with the applicant's responses to the criteria for the special exceptions.

***1. The proposed use, construction and/or alteration shall be constructed in such a way that does not unduly restrict the flow of water.***

There were no concerns from the Board.

***2. The proposed use is not in conflict with any and all of the purposes and intentions in Section 1200.01 of this Ordinance.***

There were no concerns from the Board.

***3. The use or activity proposed and its attendant impacts cannot reasonable be avoided.***

There were no concerns from the Board.

***4. It can be shown that the least damaging route and methodology have been selected; and that which is being proposed is the best practicable alternative.***

The Board agreed.

**5. It can be shown that reasonable and acceptable impact mitigation measures have been incorporated where necessary and appropriate to minimize wetland loss or degradation.**

The Board agreed.

**6. No significant impact on the aquatic habitat of rare endangered species as listed by the state of New Hampshire or federal government will result.**

Laura Gandia read the wetland evaluation findings into the record:

This letter provides a summary of the findings regarding identification of vernal pool habitats located on 20 Birch Street (Map 7, Lot 8) in Litchfield, NH, as part of the ongoing permitting requirements for a septic design that has been approved by the State of New Hampshire. This review was conducted in coordination with Mike Seraikis (CWS) of Beaver Brook Planning and Design to provide multiple site visits to determine the viability of the wetland areas as vernal pool habitats.

The 20 Birch Street parcel is a 1.323-acre lot in a forested area with a seasonally saturated forested wetland located on the east side of the house plus a scrub-shrub wetland with standing water on the west side of the house. This house location pre-dates the Town of Litchfield's wetland buffer, as well as any wetland regulations specifically applying to vernal pools in New Hampshire. It should also be noted that the house and the associated developed area of the property already occur within the Town's wetland buffer.

#### **Vernal Pool Habitat Description**

Vernal pools are ephemeral wetlands which fill annually with precipitation, runoff, or groundwater. These pools are utilized by specific amphibian and invertebrate species for breeding or during other life stages. Typically, identification is based on the presence of these indicator species and specifically the presence of breeding activity by the indicator species. This evidence includes the presence of egg masses of the wood frog (*Rana sylvatica*) and mole salamanders or the presence of "obligate" vernal pool species like fairy shrimp.

#### **Findings**

The forested wetland on the east side of the house does not appear to be capable of maintaining sufficient standing water to provide a viable vernal pool habitat. The west side wetland did appear to provide sufficient hydrology and some of the typical site conditions associated with a vernal pool habitat.

The field review of the Birch Street site was conducted on March 12, 2021 and April 23, 2021. The timing of the site visits was selected to provide a broad range of dates to coincide with the typical season for vernal pool breeding activities. The field review was conducted along the edge of the wetland as well as in the adjacent ponded areas. However, no evidence of breeding activity, such as egg masses of amphibians were observed on the site. No secondary or other "obligate indicators", such as caddis flies or fairy shrimp were observed.

Based on these findings it has been determined that the wetland on the west of the house at 20 Birch Street does not appear to provide vernal pool habitats at this time.

The Board agreed.

**7. It can be shown that adequate erosion and sedimentation control methods appropriate to the use are incorporated as detailed by the current recognized BMP's (e.g. Stormwater Management and Erosion and Sedimentation Control Handbook for Urban and Developing Area in NH. Rockingham County Conservation District, NHDES, and Soil Conservation Service, August 1992, as amended.**

There were no concerns from the Board.

**8. It can be shown that State wetlands permits, as required, have been obtained.**

The Board agreed.

Al Guilbeault asked, had this not been a piece of conservation land, would the setbacks be different?

Laura Gandia indicated it is not a piece of conservation land, but rather it is how they are delineating the wetlands. She noted that anyone can own land if it has wetlands on it; that is where you get into the conservation buffer and this is what is pushing his building envelope to be smaller.

Al Guilbeault commented that he recalled Mr. McLavey said there is surrounding conservation land.

Mr. McLavey indicated that the Conservation Commission owns the land to the left of the property.

Laura Gandia clarified that Conservation could own this property and there may not be a wetland buffer, so Conservation can have a piece of land without wetlands on it, but this particular piece has wetlands. She noted when you have wetlands now you have a wetland buffer and then you have the setbacks from that. She added at the time when his house was built, those wetland buffers were not in effect.

Jerry Sorenson commented the addition seems to be outside of the buffer.

Al Guilbeault indicated it is inside the buffer.

Laura Gandia clarified it is inside the buffer, except for a piece of it. She indicated the setback requirement is 75 feet, but he only has 44 feet.

Kyle D'Urso commented even if he were to move the addition more toward the back of his house, he is still going to have a buffer on both sides.

Al Guilbeault commented the plan shows a 10' x 10' square next to the house.

Mr. McLavey indicated that is an existing deck.

Laura Gandia asked Jerry Sorenson if he had questions about the septic.

Jerry Sorenson indicated he just wanted to know if the existing septic would be filled in or removed and the answer was that it will be removed.

Laura Gandia commented that she would like to have one of the conditions be that the tank be removed.

Al Guilbeault commented the system you have now is stone and pipe. He asked if Mr. McLavey would keep the stone and pipe (leach field).

Mr. McLavey indicated that is going to come out and we will make it part of the lawn, and the tank is in the middle of where the ADU is going, so we have no choice but to remove the tank.

***Laura Gandia made a motion in Case 2021-09 to grant a special exception from LZO 1208 to allow the installation of a sewage disposal system in the Wetlands Conservation District with a setback of 57 feet where a 100 foot setback is required, with the conditions that the existing failed septic tank and leach fields be removed and that area be properly loamed and seeded, and that there be no fertilizer used in the back yard. John Brunelle seconded. The motion passed 5-0-0.***

***Laura Gandia made a motion in Case 2021-09 to grant the applicant's request for a special exception from LZO 1208 to allow the construction of an accessory dwelling unit not to exceed 25' by 32' in the Wetland Conservation District, with a setback of 44 feet where a 75 foot setback is required, with the condition there be no fertilizer used in the back yard. John Brunelle seconded. The motion passed 5-0-0.***

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**Case Number: 2021-10**

**Name of Applicant: BTW Construction/Ben Wood**

**Owner of property:** Annmarie Reznik and Cory Gannon

**Location of Property:** 18 Greenwich Road, Litchfield, NH 03052, Map 13, Lot 99

**Appeal Requested**

1. Variance from LZO Section 310 to allow the construction of a 24' x 24' garage and 10' x 16' breezeway, which will encroach 8 feet into the side setback where a 20 foot setback is required.

Ben Wood, BTW Construction, spoke on behalf of the applicant. He indicated that they intend to bring the existing home up to the neighborhood standards. The lot does not allow to build a structure off the existing home based on the way the lot is shaped: it is wide in front and narrowed at the back and requires an encroachment on the setback by 9 feet.

Mr. Wood indicated that the intention is to add a new attached 2 car garage with breezeway/entryway. The proposed new garage is 24 feet wide and 24 feet deep with a 10-foot wide by 16-foot-deep breezeway/entryway. As most houses on Greenwich Road already have, the new garage addition will bring the existing home in conformance with most of the existing neighborhood.

The current home is 46 (fourty-six) feet away from the "southwest" side yard setback. The new structure will land about 12 (twelve) feet from the southwest side yard setback (as viewed "left side" from the street). The new garage will have roofing and siding to match the existing house. The driveway will remain unchanged (location, size) after construction is completed. The placement of the existing house and the irregularly shaped parcel of land does not allow the construction of this addition while meeting the 20-foot side yard setback. The setback to the front of the street will remain the same as the existing house (approximately 93.2 feet as shown on the plot plan/survey). The back yard setback will remain unchanged as well. The right side yard setback will remain unchanged as there is no work being performed on that side (Northeast side). This new structure will comply with all local and state building regulations. The new garage will ultimately bring the value of the existing home, as well as surrounding homes up in value once completed. The construction process will be minimally invasive to the surrounding homes as there is plenty of room on site for trucks, equipment, and materials.

Al Guilbeault asked how many feet will the structure encroach on the setback?

Mr. Wood indicated approximately 9 feet.

Laura Gandia noted that the application states an 8 foot encroachment.

Mr. Wood commented the building would encroach by 8 feet.

Al Guilbeault asked if that includes the 1 foot overhang, which is how the Board determines the total encroachment.

Mr. Wood indicated that it does not include the overhang. He commented the breezeway is 10' and the garage is 24', so it would be 34' off the existing house, and then a 1 foot overhang for the eave.

Al Guilbeault asked about the frontage on the lot.

Mr. Wood indicated the plan notes the frontage is 184.65 feet. He addressed the criteria for the variance.

**1. The variance will not be contrary to the public interest because:**

The new garage will not disrupt any tree line/privacy to the southeast neighbor. There will be removal of a small group of sapling trees, but it does not affect the actual tree line and no privacy will be lost.

**2. The spirit of the ordinance is observed because:**

This is a private addition to an existing house. The addition variance is needed due to the irregular shape of the lot.

**3. Substantial justice is done because:**

We would bring this house to meet the neighborhood standard. Most homes on Greenwich Road already have an attached garage with a breezeway.

**4. The values of surrounding properties are not diminished because:**

We are adding value to the home and surrounding homes with the addition.

**5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship because:**

We are meeting the look and style of the other homes on that street, including the abutters. It will not be an extravagant addition and will be done in timely manner, which will be minimally disruptive to the neighborhood.

Jerry Sorenson asked if there was any thought about taking the garage and tilting the axis and then using that transition, your space, and create that connection so you can avoid the problem. He commented it is very linear and he understands that linears vary.

Ben Wood commented in order to use the existing driveway there is really no opportunity to tilt the structure. The house is set down on a hill and the driveway is sort of a straight shot in. If we were to tilt it or offset it in any manner, it would differentiate itself from the rest of the neighborhood. Everything else is pretty much standard to existing homes in the neighborhood with 8 foot or 10 foot breezeways with an overhang in the front and an attached garage. If it were tilted, it would not really mimic anything else in the neighborhood and it would not function for the purpose of the garage. It would be facing towards the hill where they would not be able to pull in directly or back out or use it functionally.

Laura Gandia commented that the fifth criteria deals with how this particular lot is unique from the others in the area. She asked what makes this lot different from the others?

Ben Wood indicated this lot is shaped like a piece of pie vs a square or rectangle or anything that has any width to it. It gets very narrow toward the back due to its being on the inside corner of the road. It is different from a lot of the other lots where it is restricted on width. There is not much you can do with the building location. There is not much space that you can move around in order to make it conform to the lot, whereas other lots on outside corners go out and get narrow at the front, or they go straight back, or they go diagonally back, but this particular lot is shaped like a piece of pie and there is just not enough room.

Laura Gandia asked if there is something at the back corner of the lot.

Ben Wood indicated there is a conservation easement at the back corner of the lot.

Laura Gandia noted that takes up part of the building envelope as well and that is a significant portion of the back yard.



Ben Wood indicated it is approximately just under half.

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## **Public Input**

Hearing no further questions from the Board, Laura Gandia opened public input.

Kevin Follet, 16 Greenwich Road, indicated he is an abutting neighbor. He commented that the applicants approached him and notified him of their intent. He noted that a 34' extension is bigger than the whole house and every house on the road is not like this. He indicated his home is 1800 sf and there is no garage, but he remains supportive. He commented when it was said they were going to cut a couple of trees down and it would be a handful of feet, and now it's up to 9' with 34' of structure, a fifth of the entire structure coming onto my property. He asked if he has to pay more in taxes or less in taxes? Additionally, he asked what would happen if he sold his house tomorrow, although indicated he has lived there for 24 years and does not have any intention of selling.

Laura Gandia indicated there is nothing going onto your property. She explained that for every particular lot you have a certain area that you can build in. Think of a square and draw a little square in the middle of that square and the spaces between the two squares is what are known as setbacks. So, they cannot build within the setback, which provides for separation between houses and structures and provides some privacy for neighbors. That is what you call the building setback. There is a 20 foot setback, so if you look at your property line and his property line, 20 feet over on one side and 20 feet over the other side there is not supposed to be any structures. What they are seeking to do is to encroach into that 20 foot setback, but they are still on their property, but just encroaching past that second line of the square. It will not affect your property. He would never be able to build something on your property.

Mr. Follet asked if it is going to affect his taxes any way because it is being built somewhere near his property.

Laura Gandia indicated it will not.

Mr. Follet commented this will not affect me at all except for the 9 feet.

Laura Gandia indicated that it would not affect him at all except that it may increase his property value because Mr. Gannon is making his house nicer so that would raise property values. She noted that was one of the things that Mr. Wood said as part of his presentation, but as far as your property lot, it has no effect on that at all.

Mr. Follet commented that was his main concern because otherwise there are just trees between the properties and he has lived there a long time. He noted he has no intention of selling, but just wanted to understand it better.

Laura Gandia asked if that answers all his questions.

Mr. Follet asked who comes to finalize the project and make sure everything is within a foot or two of what they promised?

Laura Gandia indicated the building inspector comes out to finalize the project.

Mr. Follet asked if he, as the abutter, is allowed to see any of the plans, how it frames and how many feet are involved?

Laura Gandia indicated those are public records.

Jeff Blackwell, Building Inspector, commented it will probably have to have a certified foundation plan so we will know exactly where it is on their property and you can determine that it will be exactly 8 feet or whatever it winds up being.

Al Guilbeault asked Mr. Follet if he is in support of the construction of the garage.

Mr. Follet indicated he was in support of the project.

Matt Schumacher, 20 Greenwich Road, commented that Mr. Wood did a great job and that he wanted to speak in support of the project as well because he has a very similar lot with similar challenges. He indicated he would like to accentuate one of the points Mr. Wood raised, which is if you had to twist the structure, which was a great question. He noted he has been trying to find ways to do his own. He indicated that the lots were filled in quite a bit and there are big drop offs behind the properties, including where Mr. Gannon is putting his garage there is a pretty intense drop off into his backyard and the gradient on the hills on the front of these properties are pretty intense. He noted even from his lot to their lot, it flattens out quite a bit, so there are really no options on how you can twist the structures or move them to get things into them. He commented it would be dangerous to drive a car down those hills. Mr. Schumacher noted that he has seen the work that they've been doing and it's been great. He indicated there are a lot of houses that don't have garages, but more people have been putting garages on their homes and he believes it really improves the character of the neighborhood because there are less cars sitting in driveways rusting and people are putting their bicycles in them as opposed to a plastic shed or tent garage. He commented that he has directly seen benefit in the property values that we've had from people improving their lots. He noted that we abut very nice neighborhoods and people have been doing a lot with our neighborhood (our particular road). He believes this is a good thing and hopes it is something the Board will grant because they will do a really nice job with the project.

Corey Gannon, 18 Greenwich Road, expressed his appreciation for his neighbors coming out to seek clarification and provide their support. He indicated he is sensitive to privacy and assured Mr. Follet that they will take down the minimal amount of limbs on trees and/or trees to respect his privacy. He noted this is a one story garage that is unobtrusive to sight lines from the road.

Jerry Sorenson asked if a single car garage was ever a consideration so that it would be within the setbacks.

Mr. Gannon commented it would have been a consideration, but he and his wife have five children and many cars in the driveway. He noted that he would like to get two of them tucked away inside.

Mr. Sorenson commented that the justification is to match the other homes and because it is an odd lot.

Mr. Wood added, in years past he has done other projects on the same street and it is evident that the styles are similar.

Jerry Sorenson commented they are all within the setbacks.

Mr. Wood indicated they are, but there are different lots where they had more flexibility with what they could actually do.

Jeff Blackwell asked about the purpose for the 10' breezeway. He noted that it was said the location of the garage is based on the driveway and asked if it could be moved any closer to the house.

Mr. Wood indicated there is an existing deck, so the garage is already offset and the purpose of the breezeway is to add that space as an entry to their house. He observed even parking two cars in a 24 foot garage is tight, especially with the size of vehicles these days, and it doesn't provide the space they need.

Mr. Gannon indicated the breezeway takes up the space of the existing deck and creates a necessary offset so that the driveway is a straight shot into the garage.

Hearing no further public input, Laura Gandia asked for a motion to close public input.

***John Brunelle made a motion to close public input. Al Guilbeault seconded. The motion passed 5-0-0.***

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#### Board Deliberation

Laura Gandia asked if the Board agreed with the applicant's responses to the five criteria for the variance.

1) The variance will not be contrary to the public interest.

The Board agreed because it meets the harmony of the neighborhood.

2) The spirit of the ordinance is observed.

The Board agreed because it will maintained privacy between neighbors.

3) Substantial justice will be done.

The Board agreed because the loss to the applicant is greater than the loss to the public.

4) The values of surrounding properties are not diminished.

The Board agrees the addition would add value to the property and surrounding properties.

Laura Gandia asked if the siding and character will remain the same.

Mr. Wood indicated the siding will be the same as is on the home, the roof shingles will be the same color, the doors and windows will be the same design.

5) Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.

The Board agreed that the property is unique because of the shape of the lot and the limit to the building envelope.

Jerry Sorenson commented that we need to be sure to identify that so we do not set a precedent that every time a case with even the simplest construction comes before the Board it is going to require a variance. He indicated they have to prove the lot is unique.

Laura Gandia indicated that Mr. Wood stated the lot is pie shaped, which is narrow in the back and the conservation easement takes up just under half the lot. The existing septic is on the opposite side and the existing driveway is already there, so to tilt it within the setback would require reworking driveway.

John Brunelle recalled that several cases of the same sort came before the Board in the past for the exact same reason and conservation easements keep on getting brought up around people, which closes development off too much in some respects.

Jerry Sorenson responded that a setback is put in place for a reason and we have to make sure whatever these reasons that they are applied.

John Brunelle commented that he believes the builder who built the home put the house where it was because he couldn't build it anyplace else because of the way he laid out that lawn. He noted those neighborhoods are all back filled in and houses are put where they will be stable.

Laura Gandia agreed that it is very important to identify the uniqueness. She noted the fifth criteria is always the hardest and next question is, is there a fair and substantial relationship between the general

purpose of the ordinance and the specific application of that provision to the property. She indicated that she feels there is not given uniqueness of the lot and because it is the only location for the garage.

The Board agreed.

Laura Gandia noted the criteria asks if the proposed use is a reasonable one. She indicated that it is reasonable.

The Board agreed.

Laura Gandia asked if there are any conditions the Board would like to add, for example, the size of the garage or breezeway and number of stories.

Tom Clooney asked if the encroachment is 8 feet or 9 feet into the setback.

Laura Gandia indicated it is 8 feet. Al Guilbeault agreed.

Laura Gandia commented she is not in favor granting a variance for a larger encroachment than what was published and noticed.

John Brunelle asked what it would change.

Laura Gandia indicated it is her understanding that when you notice that is what it is – it is the 8 feet and anything greater is a greater encroachment. She noted it should be re-noticed with the correct encroachment in that particular notice to the abutter.

Jerry Sorenson commented that the abutter is present.

Laura Gandia commented that she is saying from a process point of view she is not comfortable with granting a variance greater than what was requested, but if it is the Board's will to do that, then that is the Board's will.

John Brunelle commented that he seems to remember the Board granting such a variance once before and he believes Mrs. Gandia objected to it.

Laura Gandia commented that her position would be it was not properly noticed for the legal notice, which was an 8 foot encroachment and that is what he has for the setback. She indicated that is what she would be comfortable granting; however, if the Board wanted to do that she believes it would not be the proper process.

Mr. Wood asked if he was required to put more information in the letter to the abutters. He asked if they knew it was 8 feet or 9 feet?

Laura Gandia indicated the Town sends out the abutter letters and they state what the applicant has requested as it was submitted.

Kyle D'Urso asked if we were to approve it for 8' would the process be for them to come back and request another foot?

Laura Gandia explained they would have to go through the whole variance process again for that additional foot, which would require them coming back for another hearing, legal notice and abutter notifications again.

John Brunelle commented that he believes they have to get an approved engineering that shows the setbacks or a survey for the setbacks.

Board members asked about shrinking the breezeway or using a rake board instead of a 1 foot overhang.

Mr. Wood commented a rake board doesn't provide enough adequate water shed. He indicated that the purpose is to get the water away from the building even though it has no basement. He explained that he had other applications and had difficulty getting answers to his questions from other departments or not getting replies at all. He noted one of those questions was based on the criteria and how much room he needed, what he really needed to do, how likely the situation was because he is also trying to save his customer some money. He indicated he built in a bit of room, but it is going to be up to the actual surveyor to say whether it is exactly right there or not. He believes that, based on the math he has done for the plans provided from the town and everything, there is enough room to be actually within that 8 feet, but repeated it was difficult just to get some information beforehand on spending the money because surveys and engineering costs are not cheap.

Al Guilbeault asked if they are ready to go ahead with an 8 foot encroachment vs a 9 foot encroachment?

Mr. Wood indicated that they are ready to do so.

***Laura Gandia made a motion in Case 2021-10 to grant the request for a variance from LZO 310 to allow construction of a one story garage no greater than 24' x 24', with a breezeway no greater than 10' x 16' that will encroach 8' into the side setback where 20' is required. Al Guilbeault seconded. The motion passed 5-0-0.***

#### **IV. COMMUNICATIONS AND OTHER BUSINESS**

Laura Gandia announced the next regularly scheduled meeting is schedule on August 16. She indicated she has been speaking to Mr. Brown about training for Board members. She noted he will reach out to NHMA to have training provided. She commented members received updated ordinances and bylaws. She indicated that officer positions will be discussed at the next meeting.

#### **V. ADJOURNMENT**

***Al Guilbeault made a motion to adjourn the meeting and Tom Cooney seconded the motion. The motion passed 5-0-0.***

The meeting was adjourned at 8:14 p.m.

Respectfully submitted,  
Michele E. Flynn