

**ZONING BOARD OF ADJUSTMENT  
MEETING MINUTES  
August 24, 2020**

**Approved September 28, 2020**

**MEMBERS PRESENT:** Bruce Kudrick, Chair; Tom Hebert, Vice Chair; Dana Carlucci, Natalie Glisson, Paul Paradis

**ALTERNATES PRESENT:** Robert Bourque, Blakely Minor III

**EXCUSED:**

**STAFF PRESENT:** Dana Pendergast, Code Enforcement Officer; Susan Gifford, Recording Secretary  
The clerk took the roll call and seven members were present.

Chairman Kudrick called the meeting to order at 7:00 p.m. The meeting is being recorded at Town Hall. Masks and hand sanitizer are available for all in attendance to use.

**Case #20-11-Z**

Applicant: Jason and Gail Dexter  
458 Fairway Drive  
Pembroke, NH 03275

Property Owner(s): Jason and Gail Dexter  
458 Fairway Drive  
Pembroke, NH 03275

Property Address: 458 Fairway Drive  
Pembroke, NH 03275  
Tax Map 565 Lot 92-13 in the LO Zoning District.

Present: Jason Dexter; Paul Stauffacher. PS Construction, representing applicant

**Case 20-11-Z** A request has been made for a **Variance under Article V Dimensional and Density Regulations, Section § 143-21-H Minimum Yard Depth-Rear**. The applicant, Jason & Gail Dexter of 458 Fairway Dr. Pembroke NH 03275 is requesting a **Variance** to construct a 26' X 26' (676 sq. ft.) attached garage on lot 565-92-13 with in 3' of the rear setback where 40' is required. The property is located at of 458 Fairway Dr. in the R-1A Zoning District and is owned by Jason & Gail Dexter of 458 Fairway Dr.

The clerk read the case description and the list of abutters.

Chairman Kudrick opened the public hearing at 7:05 p.m.

Chairman Kudrick stated the rules of the hearing: (1) Applicant will present its case; (2) Those in favor of the application will speak; (3) Those opposed will speak; (4) Rebuttal by the applicant and those in favor of the application will speak; (5) Rebuttal by those in opposition to the application will speak. All people wishing to speak must give their name, address, and interest in the case. All questions and comments will be directed to the Chairman. The Board will base their decisions on facts presented by the applicant. If any of the presented facts are found to be different from what was presented, the Board reserves the right to reconsider the approval.

Assessing cards and a garage addition plan dated July 2020 prepared Advantage Residential Designs, 24 Elk Drive, Bedford NH were provided in the agenda packet.

Paul Stauffacher gave a detailed description of the proposal:

Property owners seek to construct a 26' X 26' (676 sq. ft.) attached garage on lot 565-92-13 with in 3' of the rear setback where 40' is required as demonstrated in the attached plans. The location of the garage will not adhere

to the 40 foot rear minimum yard depth required by Article 143-21 required of properties zoned R1-A. We seek waiver of the requirement. The homeowners association owns the buffer, which is located in conservation land held in common. Tom Hebert asked how far from the back of the existing house the garage will extend. Paul Stauffacher explained that the garage would be moved up approximately 6-8 inches from the house in the rear. Patrick O'Rourke of Advantage Residential Design is adjusting the plans.

The driveway in existence is wider than the proposed garage, creating a little more space for the neighbor on the side. Paul Stauffacher referenced a sketch of the house with the attached garage. Bob Bourque asked if there was a plan showing the house and garage on the lot. Jason Dexter noted that he had to get approval from the homeowners association to locate the garage to the right of the house. Paul Stauffacher provided a copy of the correspondence confirming the association approval for the file. Board members discussed the orientation of the garage. The profile is the view one would have standing at the street. The water and sewer come in at the left of the house. The building is behind the electric meter located on the right of the house. There are only eight houses in the homeowners association. Natalie Glisson asked what the rules are regarding building near conservation land. Bob Bourque explained that it depends whether ownership and management of the conservation land is deeded to the town/Conservation Commission. In this instance, the conservation land is owned and held in common by the homeowners association. There is 11+ acres of privately owned land that is most likely in current use.

Jason Dexter addressed the Variance criteria:

1. **The variance will not be contrary to the public interest.** The rear side of our property line abuts a 40-foot "buffer" that is owned jointly by the "Fairway Meadows Village Homeowners Association" of which we are members. The public has no interest in those 40 feet.
2. **The spirit of the ordinance is observed.** The 40-foot buffer is designed to meet the spirit of the ordinance. I believe the 40-foot buffer was designed to avoid the need to request such waivers as this. Abutters on Pembroke Street are sufficiently protected by the buffer.
3. **Substantial justice is done.** Multiple homes in Fairway Meadows are located within the 40 feet of their rear property lines, including my own.
4. **The values of surrounding properties are not diminished.** True. The investment in our home will improve property values.
5. **Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.**
  1. **For purposes of this subparagraph, "unnecessary hardship" means that, owing to special conditions of the property that distinguish it from other properties in the area:**  
**No fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property; and: ii. The proposed uses is a reasonable one.**  
The general public has no fair and reasonable interest as described in 5 (A) and the building of an attached garage in New Hampshire is reasonable.
  2. **If the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to make a reasonable use of it.**

Chairman Kudrick asked about the chimney which now is vented through the roof. Paul Stauffacher noted that the owner has the option to keep or remove the chimney, or direct vent the gas fireplace out of the garage.

Natalie Glisson summarized the case. This is **Case 20-11-Z, a request for a Variance under Article V Dimensional and Density Regulations, Section § 143-21-H Minimum Yard Depth-Rear**. The applicant, Jason & Gail Dexter of 458 Fairway Dr. Pembroke NH 03275 to construct a 26' X 26' (676 sq. ft.) attached garage on lot 565-92-13 with in 3' of the rear setback where 40' is required. The property is located at of 458 Fairway Dr. in the R-1A Zoning District and is owned by Jason & Gail Dexter of 458 Fairway Dr. The homeowners association privately owns the buffer in the rear of the house, and it is part of 11+ acres of conservation land held in common by all members. Paul Stauffacher spoke on behalf of the applicant and provided a copy of the correspondence confirming the association approval for the project. The proposed attached garage will extend no further than the house and will be 3 feet from the rear property line. Board members discussed the orientation of the garage. There are only eight houses in the homeowners association. Natalie Glisson asked what the rules are regarding building near conservation land. Bob Bourque explained that it depends if ownership and management of the conservation land is deeded to the town/Conservation Commission. In this instance, the conservation land is owned and held in common by the homeowners association. No one spoke in favor or against the application.

There being no further comment, Chairman Kudrick closed the public hearing at 7:21 p.m. The Board will decide all cases within 30 days.

**Deliberations:** ZBA members discussed the Variance criteria.

1. The variance will not be contrary to the public interest. Considering the lot size and amount of space, the application is not contrary to public interest.
2. The spirit of the ordinance is observed. The owner of the buffer has no opposition to the garage location.
3. Substantial justice is done. Multiple homes in Fairway Meadows are located within the 40 feet of their rear property lines.
4. Property values are not diminished. The attached garage should improve property values.
5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.

**MOTION:** Tom Hebert moved to approve **Case 20-11-Z, a request for a Variance under Article V Dimensional and Density Regulations, Section § 143-21-H Minimum Yard Depth-Rear**. The applicant, Jason & Gail Dexter of 458 Fairway Dr. Pembroke NH 03275 to construct a 26' X 26' (676 sq. ft.) attached garage on lot 565-92-13 with in 3' of the rear setback where 40' is required having been presented to the Board

Approval is subject to the following conditions:

1. Applicant will follow all state and local regulations.
2. Construction will adhere to site plan as submitted and attached garage will be 3 feet from rear lot line.
3. Prior to construction, applicant will coordinate a site visit with the Code Enforcement Officer. The purpose of the site visit is to determine the location of the garage and verify it is 3 feet from the rear lot line.

Paul Paradis seconded.

**VOTE:** PAUL - YES TOM - YES BRUCE- YES  
DANA- YES NATALIE - YES

**MOTION TO APPROVE VARIANCE WITH CONDITIONS PASSED ON A 5-0 VOTE**

### **MINUTES OF PREVIOUS MEETINGS**

**MOTION:** Tom Hebert moved to approve the minutes of June 22, 2020 as amended. Bob Bourque seconded.

**VOTE:** PAUL - YES TOM – YES BRUCE – YES BOB-Y  
DANA- YES NATALIE - YES

MINUTES OF JUNE 22, 2020 APPROVED AS AMENDED ON A 6-0 VOTE.

### **ELECTION OF OFFICERS –**

**MOTION:** Bob Bourque moved that Bruce Kudrick serve as Chairman of the Zoning Board of Adjustment for the coming year. Tom Hebert seconded.

**VOTE:** PAUL - YES TOM – YES BRUCE – YES  
DANA- YES NATALIE - YES BOB - YES

MOTION FOR BRUCE KUDRICK TO SERVE AS CHAIRMAN APPROVED ON A 6-0 VOTE

**MOTION:** Bob Bourque moved that Tom Hebert serve as Vice Chairman of the Zoning Board of Adjustment for the coming year. Dana Carlucci seconded.

**VOTE:** PAUL - YES TOM – YES BRUCE – YES  
DANA- YES NATALIE - YES BOB - YES

MOTION FOR TOM HEBERT TO SERVE AS VICE CHAIRMAN APPROVED ON A 6-0 VOTE

### **NEXT MEETING**

**Date of next ZBA meeting –** Chairman Kudrick noted the next ZBA meeting would be on **Monday, September 28, 2020 at 7:00 p.m.**

**ADJOURN** **Motion:** Bob Bourque moved to adjourn. Natalie Glisson seconded. Vote was unanimous in favor of motion. Meeting adjourned at 7:25 p.m.

Respectfully submitted,  
Susan P. Gifford  
Recording Secretary