

**ZONING BOARD OF ADJUSTMENT
MEETING MINUTES
May 24, 2021
(Adopted)**

MEMBERS PRESENT: Bruce Kudrick, Chairman; Thomas Hebert, Vice Chairman; Dana Carlucci; Natalie Glisson; and Paul Paradis

ALTERNATES PRESENT: Blakely Miner III, Robert Bourque, and Wendy Chase

EXCUSED:

STAFF PRESENT: Carolyn Cronin, Town Planner and Paul Bacon, Code Enforcement Officer

Chairman Kudrick called the meeting to order at 7:00 p.m.

Attendance/roll call was taken by Alternate Member Chase.

PUBLIC HEARINGS:

CASE 21-09-Z A request has been made for a Variance under Article IXA Soucook River Development (SR) District, §143-72.6 Permitted Uses. The applicant, Steven Voydatch of 55 Jewett Rd., Dunbarton, NH 03046, is requesting a variance to allow sand and gravel excavation as a primary use. The property is located at 612-644 Pembroke St., Map 634, Lot 47 in the Soucook River Development (SR) District and is owned by MNP Realty, LLC.

Case 21-10-Z A request has been made for a Variance under Article IX Overlay Districts, §143-68, D. (8) Aquifer Conservation (AC) District Prohibited Uses. The applicant, Steven Voydatch of 55 Jewett Rd., Dunbarton, NH 03046, is requesting a variance to allow sand and gravel excavation in the Aquifer Conservation (AC) District. The property is located at 612-644 Pembroke St., Map 634, Lot 7 in the Soucook River Development (SR) District and is owned by MNP Realty, LLC.

Chairman Kudrick said that Planner Cronin received an email dated May 18, 2021 from Edward Roberge, PE, Principal, Managing Leader of Community Development for Stantec stating that he would like to continue the hearing for Case 21-09-Z and Case 21-10-Z until June 28, 2021.

MOTION: Vice Chairman Hebert moved to continue Case 21-09-Z and Case 21-10-Z to June 28, 2021 as requested. Seconded by Member Carlucci.

VOTE:	B. Kudrick – Y	T. Hebert – Y	D. Carlucci – Y
	N. Glisson – Y	P. Paradis – Y	

MOTION TO CONTINUE CASE 21-09-Z AND CASE 21-10-Z TO JUNE 28, 2021 AS REQUESTED PASSED ON A 5-0 VOTE.

Chairman Kudrick closed the hearing at 7:02 p.m.

Case 21-11-Z A request has been made for a Variance under Article V Dimensional and Density Regulations, §143-21, F. Front setback. The applicant, Brandon Murray, of 551 Cross Country Rd., is requesting a variance to construct a farmer's porch, 40' from the front setback where 60' is required. The property is located at 551 Cross Country Rd., Map 260, Lot 2 in the R3 Rural/Agricultural - Residential Zoning District and is owned by the applicant.

Applicant: Brandon Murray

Property Owner(s): Brandon Murray

Property Address: 551 Cross Country Road
Pembroke, NH 03275
Tax Map 260, Lot 2 in the R3 Rural/Agricultural - Residential Zoning District

Present: Brandon Murray

Alternate Member Chase read aloud the case and the list of abutters.

Chairman Kudrick opened the public hearing at 7:04 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 than what was presented, the Board reserves the right to reconsider the approval.

Mr. Murray said that he recently purchased his first house in June 2020. The house is located at 551 Cross Country Road. One of the things that he always wanted in a house was a front farmer's porch.

He said that the setback for the house was grandfathered in at 47 ft. He learned that the required setback is 60 ft. He presently has a 4 ft. landing space off the front steps. The proposed porch will be 7 ft. off the house. This will result in an additional 3 ft. from what was already grandfathered in.

As requested by Chairman Kudrick, the Applicant read the application aloud:

Please give a detailed description of your proposal below: I would like a variance to above article and section for the purpose of building a farmer's porch on the front of my house. It will be a 38 ft. x 7 ft. covered farmer's porch that will run parallel to the front of my house.

1. **The variance will not be contrary to the public interest.** The variance would allow me to add character to the house. Many houses around mine have farmer's porches. It would raise the character of the neighborhood.
2. **The spirit of the ordinance is observed.** The spirit of the ordinance is observed as I understand that the zone on which my property sits, requires a 60 ft. setback in the front. My house is grandfathered in at 47 ft. When my house was built, it was built in the spirit of the ordinance at the time.
3. **Substantial justice is done.** By allowing the variance justice will be done, as it is something I have always wanted in a home. It will be a welcoming character to the home and allow me to have a place to relax. I love saying hello to people as they pass by, and Pembroke, thus far, seems to be a very welcoming place!
4. **The values of surrounding properties are not diminished.** Allowing the variance would only increase the surrounding properties, as it would add value to my home. If my value raises, as does the neighborhood.
5. **Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. (A) 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: (i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and (ii) the proposed use is a reasonable one.** As stated above, the current house sits within a 47 ft. front setback where 60 ft. is required. My house currently has a 4 ft. landing step, therefore, I am asking for a variance for another 3 ft. My porch would come off the house 7 ft. as shown in the plans.

(B) If the criteria in subparagraph (A) are not established, and 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 enable reasonable use of it.

Alternate Member Bourque asked if Mr. Murray planned to add steps to the porch.

Mr. Murray said that there will only be a single step to the grass. The existing 4 ft. patio step is off the front door and will be replaced by the farmer's porch and will include one step to the grass.

Alternate Member Bourque stated that if Mr. Murray is requesting a 7 ft. farmer's porch and a step, than the plans would need to be changed in order to accommodate the additional width of the step.

Vice Chairman Hebert said that 10 inches is the minimum width which can be verified by the Building Inspector.

There were no other questions from the Board.

Victoria Brown said that she would like to have a farmer's porch.

No one spoke in opposition of the case.

Mr. Murray said that if the step is a sticking point, he would be happy to revise the plan.

As a point of clarification, Planner Cronin said that, according to the Zoning Regulations, steps and stoops are allowed in the required front yards. Therefore, Mr. Murray would only need the variance for the porch, and the step would be allowed in that area.

Chairman Kudrick said that, based on Planner Cronin's research, Mr. Murray would not need to change the plan.

Mr. Murray said that he spoke with all the abutters and no one objected to his plan.

There were no further questions by the Board.

Member Glisson summarized the case as follows: **Case 21-11-Z for a Variance under Article V Dimensional and Density Regulations, §143-21, F. Front setback.** The applicant stated that he bought the house recently and would like to build a new farmer's porch. He explained that it would be a 7 ft. porch coming off the front of the house and was asking for a variance for the frontage. The applicant read through the criteria. Alternate Member Bourque asked about the footage for steps and whether it was included in the 7 ft. The applicant clarified that there would be one step from the porch to the ground and Chairman Kudrick explained that he would have to factor the steps into the variance request. Victoria Brown spoke in favor and said that she would like a farmer's porch. No one spoke against. Planner Cronin clarified that steps are allowed in the setback so the applicant would not need to factor it into the request.

There were no further questions by the Board.

Chairman Kudrick stated that the Board would decide the case within 30 days. The Notice of Decision would be posted for public inspection within 5 business days of the decision and would be sent to the applicant. Chairman Kudrick said that once the hearing is closed, the applicant will no longer be allowed to speak, even if he does not agree with what the Board is saying. The Applicant said that he understood.

Chairman Kudrick closed the hearing at 7:14 p.m.

Chairman Kudrick said that the house was built before zoning and that there are a number of houses in that area that were built at the same time and are within the setback.

DELIBERATIONS: ZBA members discussed the Variance criteria.

1. **The variance will not be contrary to the public interest.** Member Carlucci agreed and said that he felt that there would be ample room for typical road widening. He said that the house was built in 1966 and the adoption of the zoning ordinance was 1975 so that the setback was typical in 1966.

2. **The spirit of the ordinance is observed.** Member Carlucci said that the setback is similar to abutting properties. Vice Chairman Hebert said that the online tax map appears to indicate that the front of the Applicant's house is in line with the other houses in the neighborhood.
3. **Substantial justice is done.** Member Carlucci said that the front porch would provide protection to the front of the house and provide leisure for the Applicant to sit outside.
4. **Property values are not diminished.** Chairman Kudrick said that they have no evidence to show to the contrary and the property values will probably improve with the porch.
5. **Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.** Chairman Kudrick said that a hardship is created because of the change in the ordinance which has resulted in the house being located in the setback.

Vice Chairman Hebert stated that the Board is looking at an additional 3 ft. from what he currently has. He clarified that the Applicant will remove the 4 ft. landing and the total encroachment will only be 3 ft. greater than what he presently has.

MOTION: Member Hebert moved to approve **Case 21-11-Z** for a **Variance under Article V Dimensional and Density Regulations, §143-21, F. Front setback** as presented with the following conditions: (1) The applicant must follow all state and local regulations; (2) construction must comply with the submitted plans showing no closer than 40 ft. from the front property line; and (3) prior to start of construction, the Applicant must coordinate a site inspection with the Code Enforcement Officer. The purpose of the site inspection is to identify the front lot line and location of the proposed addition in reference to that front lot line ensuring that the encroachment is no greater than what was granted through this hearing. Seconded by Alternate Member Miner.

VOTE:	B. Kudrick – Y	T. Hebert – Y	D. Carlucci – Y
	N. Glisson – Y	P. Paradis – Y	

MOTION TO APPROVE CASE 21-11-Z FOR A VARIANCE UNDER ARTICLE V DIMENSIONAL AND DENSITY REGULATIONS, §143-21, F. FRONT SETBACK AS PRESENTED WITH THE FOLLOWING CONDITIONS: (1) THE APPLICANT MUST FOLLOW ALL STATE AND LOCAL REGULATIONS; (2) CONSTRUCTION MUST COMPLY WITH THE SUBMITTED PLANS SHOWING NO CLOSER THAN 40 FT. FROM THE FRONT PROPERTY LINE; AND (3) PRIOR TO START OF CONSTRUCTION, THE APPLICANT MUST COORDINATE A SITE INSPECTION WITH THE CODE ENFORCEMENT OFFICER. THE PURPOSE OF THE SITE INSPECTION IS TO IDENTIFY THE FRONT LOT LINE AND LOCATION OF THE PROPOSED ADDITION IN REFERENCE TO THAT FRONT LOT LINE ENSURING THAT THE ENCROACHMENT IS NO GREATER THAN WHAT WAS GRANTED THROUGH THIS HEARING. THE MOTION PASSED ON A 5-0 VOTE.

Chairman Kudrick reiterated to the Applicant that he will need to meet with the building inspector and then will be “all set to go.”

Alternate Member Bourque asked Planner Cronin to clarify the page number of the aforementioned zoning reference. She said it is in the Table of Dimensional Requirements Page 44, Note No. 10 “Projections are not permitted into required yards or other required open spaces except steps or stoops.”

APPROVAL OF MINUTES – April 26, 2021

MOTION: VICE CHAIRMAN HEBERT MOVED TO ACCEPT THE APRIL 26, 2021 MINUTES AS AMENDED. SECONDED BY MEMBER CARLUCCI. UNANIMOUSLY APPROVED.

OTHER BUSINESS/CORRESPONDENCE - None

ADJOURNMENT

MOTION: VICE CHAIRMAN HEBERT MOVED TO ADJOURN THE MEETING. SECONDED BY MEMBER MINER. UNANIMOUSLY APPROVED.

The meeting was adjourned at 7:21 p.m.

Respectfully submitted,
Jocelyn Carlucci
Recording Secretary