

**Brentwood Board of Adjustment
Minutes May 24, 2021**

Members present: Chairman Doug Cowie, Ken Christiansen, Steve Hamilton, Alternate Kathy St. Hilaire and Alternate Daphne Woss.

Chairman Cowie opened the public hearing at 7:00 pm.

Motion made by Christiansen, 2nd by Hamilton, to give Woss and St. Hilaire voting rights. All were in favor. Motion carried.

Residents present for the entire meeting: Frank Albert; Regan Elliot; Jack Garber; and Doug Finan.

7:00 pm: Continued hearing: Applicant/Owner: Michael Kirby & Teresa Forsyth/Kirby, request a variance from Article III, Section 300.002.006.005A-Lot Area Requirements; frontage of 50' on a lot of record where 200' is required, in order to construct a single-family home. Referenced by tax map 210.024.000; Scrabble Road, Brentwood, NH 03833 in the residential/agricultural zone.

Present: Applicant Michael Kirby; Resident Paul Kirby.

Kirby requested a continuation to August 23rd, 2021 to give him some more time to hear back from TEC regarding a hammerhead driveway turnaround. Kirby has also reached out to the Fire Chief, Joe Bird.

Hamilton asked if Kirby's Engineer, Bruce Scammon had sent TEC the plans with a proposal yet? Kirby confirmed that he had sent the last plan that was proposed to TEC and they are awaiting an estimate for TEC to review it and make any recommendations.

Motion made by Christiansen, 2nd by Hamilton, to continue the hearing for the Kirby variance from the frontage requirement to August 23rd, 2021 at 7:00 pm at the Town Office. All were in favor. Motion carried.

7:00 pm: Variance Application: Applicant/Owner: Derek Butts. Applicant requests a variance from Article III, Section 300.002.006.007 to allow a garage to be built within the 25' setback. Property is located at 19 Gallant Drive, Brentwood, NH 03833 in the residential/agricultural zone, referenced by tax map 206.006.000.

Present: Applicant/Owner Derek Butts.

Abutters Present: Ryan Curtis; Eric Brown.

Butts said it's for a garage and they've altered the plans a number of ways and felt that this is the best way to orient the garage where it would have the least impact on the neighbors. From the plan, only a very small portion of the corner of the garage is actually affecting the setback between the two properties. Ryan Curtis is my neighbor, and our original plan would have blocked their vantage points, so we went back to the drawing board and came up with one that was less impactful.

Hamilton asked if the original plan impeded on the setback. Butts replied no it did not, but it impacted Curtis's view for what was happening down the street, watching the kids so we felt this was a better solution with only the corner there. This has been a project I've been wanting to do for a while.

Christiansen said the problem is that you have alternatives. Our Town Planner felt you could reduce the size and not impede on the setback whatsoever. Butts said in order to store the vehicles he needs the square footage of 30' x 40'. Butts can't locate it on the other side of the house due to the septic and the well. Christiansen continued the Town Planner suggested that you could consider 40' x 20' or 30' x 30'. Butts said if I'm going to do it, I'm going to do it the way I've designed it. I appreciate the sentiment. I've already talked to Kip and made a lot of adjustments based on his input. He

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guided me along the way, and I thought we came up with a plan that was reasonable for everyone. My main concern honestly was making sure I didn't impact the neighbors.

Hamilton said so the only reason you need this relief is for your neighbor's view. Butts said if the garage isn't angled and it's 90 degrees off the existing garage, it blocks their view coming down the street. I was understanding of that and re-designed it with my contractor who submitted the application. Hamilton said he was sympathetic to blocking their view to the street but it's not a very good reason for a variance. Butts said the impact is one corner of the garage, 10' into the setback. It's not going to change the property values or impact the fundamental use of the properties. Hamilton said so if we said just make is smaller, you just won't do it? Butts agreed, if it won't fit the cars and the dollar per square foot, he's paying is ridiculous so if I'm going to do it, I'm going to do it the way I want. I've been saving for years and would like to do it the way we engineered it. I've paid a lot just to get this point and thought this was reasonable considering all the variables.

St. Hilaire asked about any other relocation, closer to the pool. Butts said there's a swing set, kid's play area and the fence comes out to here. St. Hilaire said those are all movable and her concern is that the 25' setback is there for him and his neighbor, whoever that neighbor may be, but the regulations will run with the land, even if he's (*the neighbor*) 150% in favor of it. These setbacks, the 25' foot setback probably goes back to the original zoning, 1954 or so. It's been a standard unless you're in a cluster development and you have alternatives. She was sympathetic as well but didn't see a hardship, there are alternatives. Butts said I've had surveyors, architects, all come out to try to accommodate a 1,200 sq. ft. garage that is able to be built so it looks like part of the house.

Hamilton said but it comes down to you don't want to impede your neighbor's view. Butts replied that's part of it. So, what do you grant a variance for then?

Woss asked Cowie to go over the variance criteria line by line since she was fairly new. Butts said I'm aware of them. Woss said the review is for her since she was new to the ZBA.

Cowie read from the NH OSI Board of Adjustment Variance Criteria Guidelines (on file).

Cowie said so he would need to prove that...

1. *The variance is not contrary to the public interest.*
2. *The spirit of the variance is observed.*
3. *Substantial justice is done.*
4. *The valued of the surrounding properties are not diminished.*
5. *Literal enforcement of the ordinance would result in an unnecessary hardship.*

Unnecessary hardship can be shown in either of two ways:

First is to show that because of special condition of the property that distinguish it from other properties in the area: (a) There is no fair and substantial relationship between the general public purposes of the ordinance provision and the specific application of that provision to the property; and (b) The proposed use is a reasonable one. Alternatively, unnecessary hardship exists 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 a reasonable use of it.

Cowie asked the applicant to speak to that. Butts spoke to the hardship. Besides not restricting the neighbor's view from the Curtis's property, we wanted to access the garage from the house as in the winter to have to trudge through the snow to play with the toys is burdensome. There would be a breezeway that goes from the existing garage to the new garage. There was no plan, besides building it on the other side of the house which would require septic relocation and leach field issues. We researched every inch of the property for the least impact to get this project done. As far as the hardship's concerned, the original plan would have impacted their view and would not have given us access to the garage without

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having to go outside and trudging 25 yards to get there. Between their comments and what we wanted; it makes sense to put it closer to the house on the same side as the existing garage. It would be more effective for power as the other plan would require a separate power and separate grid. With this plan it can be tied into the existing power, electrical and plumbing exiting in the house. So, from a cost standpoint, this is a more reasonable solution, what's here in front of you.

Cowie commented so the hardship you're defining sounds more like the hardship is that it's not convenient. Butts replied if I'm going to build a garage, I want to build it where it's accessible from the house. We buy properties in NH and what we enjoy about being here is to modify our property with the governances that you have here. In the spirit of what we have here really the hardship can be defined a number of ways; it can be cost, it can be accessibility, it can be having the ability to access the building itself, the future use of the building is impacted. If I put this project in a different place on the property it would be significantly more money and wouldn't be what I'm looking for and I probably wouldn't do it. This is the only way we could come up with. Hardships can be defined by financial, impactful, issues with access, it would be cost prohibitive to build it elsewhere on the property, it just wouldn't happen. This is the only thing myself, my contractor, and the engineer could come up with that made sense for everybody.

Cowie asked for an overview of the use of the garage. Is the garage just to store automobiles? Butts replied no its my toy shop, to go in and play with my cars. It would be a heated building. I detail cars, restore them, nothing as far a paint or anything like that. I'm a car nut and my goal is to have all my cars on one piece of property. Currently my cars are stored all over creation. My goal when I bought this property is to live here for a time, I have two kids in Swasey, I'm not going anywhere, and I want to be able to have what I want on my property and be able to enjoy it. This would be an important addition to it.

Cowie said this is a fairly significant sized structure you would be putting up. It's half the size of the barn at my place, which is 40' x 60'. Hamilton asked where the neighbor's view would be affected. Butts pointed out the neighbor's parcel. So, the original plan would have the garage rotated more 90 degrees and back further. Hamilton said so if you move this 90-degrees, it's not just the view impacted? Butts said the driveway would need to be relocated. 1,200 sq. ft. has never changed.

St. Hilaire said so repositioned and within the setbacks. I feel bad but it was a lot created around 97' or 99' and that entire development was built to Town standards. It's not a pre-zoning lot and it's not really constricted in any way that I can tell, except that it's not the size that you like right now. There are no wetlands on this property, and it has options. I feel bad. I would love to say go ahead and do that, but I don't think legally we can. We are obligated by the rules that we have. He has options. You've given us some options Mr. Butts, not one's you particularly like. Butts said they aren't ones that are going to happen. It's unfair to ask a taxpayer to have to take the burden of...we're talking 10' of a corner of a garage into a setback, it's not substantial. Cowie said so you're saying it's either your way or it's the highway or no-way. Butts said I don't think it's an unreasonable request that I'm making. I've been respectful of what the variance says, I've worked with engineers and my construction company to come up with a plan that's the least impactful to everybody. Hamilton commented but if you do this, others want to and then the setbacks become meaningless. Butts disagreed. Cowie felt it would be an albatross in the neighborhood because the garage will be as big as the house. Butts disagreed with that assessment. Hamilton said this goes with the property, beyond you and your neighbor. I feel terrible but my first impression is to deny. St. Hilaire said we have granted variances within 15' of a property line but only when there's been no legal alternative on a constricted piece of property and that is what variances are for. I just don't think we can do this. There is nothing here to inhibit you except its size. St. Hilaire agreed with Hamilton as he has some alternatives. Butts said the alternatives add \$100,000 to the price of the building. Woss asked if he could go up instead of out. Butts said it won't work that way it's already 14' walls on the property and is doing that to match the elevations on the existing house to make it look right.

St. Hilaire continued the 25' setback is there for a reason. It's been in existence forever and pretty well enforced and the minute we start encroaching on it when there are alternatives... Butt's said the other alternatives weren't viable. St. Hilaire said I hate saying no and believe in landowner's rights but I'm not sure we have the legal right when there are alternatives, it's just not what you want.

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Butts said I imagine other variances have been granted when other people have other options this is simply...I don't see how this could impact any future development, any future property value, anything that would inhibit the Town from having future issues, legal or otherwise. You can't hang your hat on property value because it won't impact it and if anything, will increase it. I've already told you the number of different ways to handle the hardship, it could be cost, orientation, other part of the property; I can't control where the septic is. It's not my way or the highway, I don't appreciate that sentiment. I've been more than accommodating. I've been in to see Kip a number of times, he's seen the plan and never said anything to me about having an objection to it, but it would have to go through the variance process. Christiansen said that was his objection to it. He did not give you a building permit until you go through this process. Butts said we talked about it and moving things here and there and how it would impact. I didn't think he was under the impression that this would be a significant hurdle.

St. Hilaire commented if it were only 1 or 2 feet, that would be something to consider but here is almost 50% of the setback, 10' into the setback. Hilaire and Hamilton asked if that corner could be "cut off" or the shape changed so it would fit. Christiansen said the setback is the setback and he cannot personally vote to approve this. St. Hilaire says we still need to go through the criteria.

Butt's continued, I understand, I have a Real Estate license. Woss asked about the breezeway. Butts said the breezeway is from the back of the existing garage to the new garage and will overlap. It can't be shortened. One of the considerations was not having a breezeway putting the new garage up against the other with just one connecting door but due to the roof, two different elevated roofs so it would be an issue with runoff. The breezeway was a way to accommodate the two pitched roofs with different angles. The breezeway maybe could be 8' vs. 10' or 7' vs. 10' but even though it could be shorter, there would still be a variance issue. St. Hilaire asked if the breezeway could be eliminated and attach these two. Butt's reiterated that he didn't want to go outside to get into his garage which he didn't want to do. Everything would have been great if I could put it on the other side of the house, but it would require moving the driveway, culvert...it's more than the cost of the house. I wouldn't be in front of you if there was a way to avoid this, the project would have been started already.

St. Hilaire handed Glenn Greenwood's comments to Butt's to review. Butts said we considered repositioning it further back but that's where the deck is and that would have to come out. It's back as far as it can so the pool pumps can be accessed, it's as close as it can be. St. Hilaire commented can't you just turn it?

Cowie read through the variance criteria.

1. The variance is not contrary to the public interest. St. Hilaire said his neighbor is supportive, but that neighbor may not always be his neighbor and the next one may not like it. I would say that it is contrary to the public interest. All agreed.
2. The spirit of the ordinance is observed. Christiansen said a negative on my part. St. Hilaire said it goes against the ordinance; he has alternatives. All agreed.
3. Substantial justice is done. Christiansen said he feels that the complainant is doing a fair job of doing what he wants but it still doesn't meet our ordinance so I would have to disagree. All agreed.
4. The valued of the surrounding properties are not diminished. The Board agreed that they could not determine if the values of the surrounding properties would be diminished, there's no way to know that. All agreed.
5. Literal enforcement of the ordinance would result in an unnecessary hardship. No, there is no hardship as the applicant has other options. All agreed.

Cowie says it fails on four out of the five criteria.

Motion made by Christiansen, 2nd by Hamilton, to deny the variance to allow a garage to be built within the 25' setback. All were in favor. Motion carried.

The Board apologized to Butts and St. Hilaire said she hopes he can reposition the garage.

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Board Business:

- Chairman Cowie signed and dated the ZBA Rules of Procedure adopted at the April 12th, 2021 ZBA meeting.
- Resident Frank Albert is interested in becoming a ZBA alternate (letter on file).
- Resident Regan Elliot is interested in becoming a ZBA alternate (email on file) and has resigned as an alternate to the Planning Board.

This is the second ZBA meeting that both Albert and Elliot have attended. They had submitted letters of interest expressing their interest in becoming ZBA alternates and were both encouraged to attend a couple of meetings before being appointed.

Motion made by Christiansen, 2nd by St. Hilaire, to recommend that the Board of Selectmen approve the appointments of residents Frank Albert and Regal Elliot as alternates to the Zoning Board of Adjustment for 3-year terms. All were in favor. Motion carried.

Bickum to submit appointment slips to the Town Administrator for the Board of Selectmen to sign. Once the Board of Selectmen have signed, the Town Clerk will hold the appointment slips until the alternates can come before her to be sworn in. Alternates must be sworn in before being able to fill vacant member seats on the Board and have voting rights.

Approval of minutes – April 12, 2021

Motion made by Christiansen, 2nd by Hamilton, to approve the minutes from April 12, 2021 as presented. All were in favor with St. Hilaire abstaining. Motion carried.

Motion made by Woss, 2nd by Hamilton, to adjourn at approximately 7:47 pm. All were in favor. Motion carried.

Respectfully submitted,

Andrea Bickum
Administrative Assistant,
Brentwood Zoning Board of Adjustment