

**SOMERSWORTH ZONING BOARD OF ADJUSTMENT
MINUTES OF MEETING
NOVEMBER 1, 2023**

MEMBERS PRESENT: Matt Keiser – Chair, Richard Brooks, Keith Perkins, Ken Hilton-Alternate, and Brad Fredette

EXCUSED MEMBERS: Ken Vincent, Anthony Jones

STAFF PRESENT: Dana Crossley, Planning Technician
Anna Stockman, Planning Secretary

The meeting was called to order at 7:00pm.

Keiser appointed Hilton as a voting member.

- 1) **Approval of the minutes:**
Fredette MOVED to approve the October 4th, 2023 minutes.
The MOTION was SECONDED by Perkins.
The MOTION CARRIED 5-0-0.
- 2) **OLD BUSINESS**
 - a. Any old business that may come before the Board.
None.
- 3) **NEW BUSINESS**
 - a. **Kurt Stallsmith is seeking a Variance from Table 5.A.1 to allow the expansion of a front porch to be located within the 15' side setback on a property located at 15 Maple Street, in the Historic Moderate Density District, Assessor's Map 11 Lot 131, ZBA#15-2023, HDC#30-2023. PUBLIC HEARING**

Keiser opened the public hearing.

Crossley provided an overview of the application. She stated the applicant is seeking to expand a five-foot porch to a ten-foot porch, which would encroach on the fifteen-foot side setback by three feet. She stated the applicant received Historic District approval for the aesthetics of the proposed expansion of the porch. She said one of the conditions of that approval was for the applicant to seek a variance as proposed. She stated the applicant has addressed all five variance criteria and the application is ready for the Board's review.

Kurt Stallsmith, the property owner, was in attendance to represent the application. He stated he would like to expand the porch to increase the porch's functionality and his involvement in the neighborhood. He provided an overview of the variance criteria. He stated the proposed expansion would improve the functionality and visual appeal of the porch. He said granting the variance would not be contrary to public interest as the variance would not create a clustered appearance to the adjacent property. He said the functionality of the current porch is limited due to restricted size, and the proposed use is a reasonable one because the porch would only be established within the footprint of the house. He said the porch would not impact the value of surrounding properties and it would not clutter the appearance of the neighborhood.

Keiser referenced the existing structure and asked whether there is part of the structure that encroaches on the setback. He asked about the width of the existing porch.

Stallsmith responded yes, the existing structure encroaches two feet into the setback, so within thirteen feet of the property line. He stated the existing porch is five feet wide and the new porch would have an approximate width of ten feet.

Fredette stated criteria #3, hardship, seems to be a hangup for this board. He asked about what is unique about this property that distinguishes it from other properties in the area that would make granting the variance reasonable.

Keiser stated in other words, what about this property is different such that the Zoning Ordinance, as it applies to this property, is unfair.

Stallsmith stated the current side yard is useless for any use, there is a lot of shade in the area which would not support lawn growth. He said its overall appearance is unappealing. He said expanding the porch would get rid of that portion of grass that is unable to grow.

Fredette asked about the total encroachment the applicant would be into the fifteen-foot setback.

Stallsmith stated the expansion would go two feet into the setback.

Hilton referenced the depth of the porch and asked the applicant for the width.

Stallsmith stated the porch would be approximately twenty feet lengthwise. He said it would be midway on the front of the house and then wrap around from there. He said the area of the porch that faces the road will not be expanded upon beyond the current width of five feet.

Keiser pointed out a visual the applicant provided in their application.

Brooks asked for the applicant to explain how granting the variance would not be contrary to public interest. He noted the significance of setbacks in terms of fire safety.

Stallsmith stated he understands the fairness of the situation for everyone else who is not allowed a variance on their property to build within the fifteen-foot setback. He said his overall hangup with the porch is making it functional as currently there is no real use for it. He said the expansion would allow for more of a presence of whoever is residing on the property to be more present in the neighborhood. He stated he is hung up on the hardship as well because it is not exactly a hardship that his porch can't be larger. He said he doesn't know if he has a great answer to that question.

Brooks stated the hardship is commonly the hardest thing to prove. He said that sometimes lot size plays a role in hardship but most properties in the subject area are of a similar size.

Keiser closed the public hearing.

Regional Impact:

MOTION: Brooks MOVED that the variance request of Kurt Stallsmith **DOES NOT HAVE POTENTIAL FOR REGIONAL IMPACT**.

The MOTION was SECONDED by Perkins.

The MOTION CARRIES 5-0-0.

Fredette stated there are times when he really wants to grant a variance. He said the request is practical and reasonable, yet, he can't see the hardship. He said as a Board, they often look at the shape, size, and frontage of the property but there is nothing substantially unique about the shape or size of the property. He said the

location of the building on the property is not unlike others in the area. He said as a Board member, he is mindful that a decision he makes may impact future decisions, and to allow somebody to expand a porch into a setback, the bar would have to be higher.

Hilton stated the hardship criteria continues to come up all the time. He said he believes the hardship is requiring applicants to come before the Board. He said if the applicant had built the porch and not said anything, nobody would have known. He noted the applicant is trying to do what's right to obey the law. He said the rules should be changed to make it easier for residents to obey the law because they are trying. He said he would vote for the variance because the applicant is trying to do the right thing.

Keiser stated he doesn't think the proposal would impact property values of other properties and it would not be contrary to public interest. He said there wouldn't be a negative impact to the public besides potentially some access. He said it would give the applicant a usable porch. He said adding that porch would not necessarily change characteristics of the neighborhood. He provided clarification on the interpretation of the hardship criteria. He said in this case, unfortunately, the applicant couldn't demonstrate that the property has any unique characteristics that unfairly apply the Ordinance to it. He said in his opinion, the Board can't grant the variance.

Brooks stated he understands where Hilton is coming from. He said that zoning is a hardship for everyone. He noted that the regulations within the Zoning Ordinance are based on criteria required by state law. He said he doesn't see the hardship. He said the fifteen-foot setback is pretty standard. He noted the construction eight-foot porch would be permitted without a variance.

Fredette stated the Board needs to keep in mind the fifteen-foot setback is in a quarter-acre lot. He said there are many lots of this size or smaller in Somersworth. He stated the fifteen-foot setback is not uncommon nor is it unreasonable.

Hilton stated if the applicant wanted to put up a junky storage shed on the property line, he could do that without coming before the Board. He said if somebody wants to make their property better, that is a hardship in his opinion.

Keiser stated that may be a hardship but it is not a hardship with regard to the Zoning Ordinance.

Fredette noted the five criteria the Zoning Board is required to review in relation to each case.

MOTION: Brooks MOVED that the request of Kurt Stallsmith for a Variance from Table 5.A.1 to allow the expansion of a front porch to be located within the 15' side setback on a property located at 15 Maple Street be DENIED FOR THE FOLLOWING REASONS:

1. The hardship criteria has not been satisfied as the Board found the property does not have unique characteristics that make the property unfairly disadvantaged by the Zoning Ordinance.

The MOTION was SECONDED by Perkins.

The MOTION CARRIES 4-1-0, with Hilton opposing.

- b. **Drew Serbin of Burr Signs on behalf of Forget Management LLC is seeking a Variance from Section 19.20.c.3.b and 19.20.D.4 to allow (3) directional signs greater than 4 SF and 277.35 SF of wall and freestanding signs on a property located at 285 Route 108, in the Commercial Industrial District, Assessor's Map 47 Lot 08, ZBA#16-2023. PUBLIC HEARING**

Keiser opened the public hearing.

Crossley stated the applicant is seeking to install 277.35 square feet of wall and freestanding signage in addition to three directional signs greater than four square feet. She stated directional signs are typically exempt but they are required to be four square feet. She stated the applicant had been granted a variance in 2003 to allow for more than one freestanding sign where only one is permitted and a freestanding sign that was greater than sixteen feet. She said the applicant has addressed all five criteria and it is ready for the Board's review.

Keiser asked for clarification on the total signage the applicant is seeking.

Crossley provided clarification of the applicant's request. She said a copy of what they are looking to install has been provided with the application.

Brendan Forget, one of the owners of Somersworth Nissan, was in attendance to represent the application. He stated they have consulted with Nissan on what they can cut out of their proposal. He said based on the 220 square feet of signage that they currently have, they would like to reduce their request to three signs. He said they have spoken with Nissan about eliminating signs B, G, E, and F, as indicated on page four in the Board's packets. He said their revised variance would be 215 square feet compared to the 144 square feet of signage they are allowed.

Keiser asked for clarification on the signs Forget is seeking to eliminate from their application. He asked if the applicant is no longer asking for a variance for the directional signs, and clarified the total signage would equal 215.38 square feet. He asked the applicant to provide an overview of their responses to the variance criteria.

Forget stated in response to the hardship criteria, the business needs to stay competitive. He stated it would put the business at a disadvantage if they are not keeping up with the marketing of other dealerships. He said the signs they have now are the old emblem.

Drew Serbin, president of Burr Signs. The fact that the variance was approved for more signage back in 2003, there were very specific reasons why the variance was allowed at that point. The building is unique to its purpose and the property itself is unique. He said, because of that, it needs additional signage to be effective. He said there was 303 square feet of signage being requested on the original application, and this revised request is well below that.

Keiser asked if there were any abutters that would like to speak to the application.

Ethan Clark, a resident of Somersworth, stated he is affiliated with Somersworth Nissan. He said they are one of the only properties on Route 108 that is set down. He said that diminishing the signage would make them less known. He said he would be in full support of the variance request being granted.

Keiser clarified that the property currently has two freestanding signs, and the proposal is to only have one. He stated the A, C and D signs are the only signs being proposed.

Fredette asked if the applicant already has 220 square feet of signs, and they are reducing to 215 square feet of signs, whether they would still need a variance.

Keiser stated they would be grandfathered to the 220.91 square feet.

Crossley referenced the Loss of Legal Nonconformity section in the Sign Ordinance in Section 20 and cited its guidelines for compliance. She confirmed the applicant would need a variance.

Forget stated they are proud to be in Somersworth and want to improve the dealership.

Keiser closed the public hearing.

Hilton stated he would vote in favor of this. He said the proposal would be reducing the size of the signs but improving the business in the long run.

Brooks stated the Board is looking at a reduction of what they had already been approved for. He said he thinks the Board should honor the old variance approval. He said would be in favor of the variance.

Fredette stated he is in favor of the variance as well. He said the applicant made a valid point that it is in a unique location and that literal enforcement of the Sign Ordinance would create a safety hazard. He said he thinks this is a reasonable request.

Regional Impact:

MOTION: Hilton MOVED that the variance request of Drew Serbin of Burr Signs on behalf of Forget Management **DOES NOT HAVE POTENTIAL FOR REGIONAL IMPACT.**

The MOTION was SECONDED by Brooks.

The MOTION CARRIES 5-0-0.

Keiser stated the signage would not impact the value of surrounding properties or be contrary to public interest. He said substantial justice is done and the proposal would not impact the existing characteristics of the neighborhood. He stated the property's uniqueness is that they already have a variance for greater signage than what is permitted. He said not granting this variance would be wrong.

MOTION: Keiser MOVED to APPROVE the request of Drew Serbin of Burr Signs on behalf of Forget Management LLC for a Variance from Section 19.20.D.4 to allow A, C, and D in the Somersworth Nissan signage package dated July 12th, 2023, as presented, on a property located at 285 Route 108.

The MOTION was SECONDED by Perkins.

The MOTION CARRIES 5-0-0.

- c. **Myles Adams is seeking a Variance from Table 5.A.1 to allow the construction of a deck to be located within the 15' side setback on a property located at 118 Indigo Hill Road, in the Residential/Single Family/A District, Assessor's Map 03 Lot 140, ZBA#17-2023. PUBLIC HEARING**

Keiser opened the public hearing.

Crossley provided an overview of the application. She stated the applicant has addressed the five criteria and the application is ready for the Board's review.

Keiser asked whether this would be considered a nonconforming structure because it does not have the required frontage.

Myles Adams, the property owner, was in attendance to represent the application. He provided an overview of his responses to the five criteria. He noted the project would increase the property value of his home, and benefit the City's tax base. He stated the project would not be contrary to public interest. He stated his property's hardship is the slope of the property, as it is currently located on a hill. He stated if it were not for the slope, he could build a patio instead of a deck. Regarding substantial justice, he stated he is a disabled veteran that was medically discharged due to brain cancer. He said he is partially paralyzed on the left side of his body and to currently use the grill he has to use stairs. He stated his wife has diabetes and arthritis, which increases her challenge in climbing stairs as well. He stated he does not believe his request is unreasonable. He

noted the only abutter that would be able to see the deck is not opposed to the project. He said would appreciate the Board's support.

Keiser asked about the size of the deck outside of his side door.

Adams stated it is an eight-by-eight enclosed sun porch that he built about a year ago. He said he would like to build an eight-by-eight deck that is exposed and feasible for grilling. He said the new deck would hide the unappealing appearance of the dirt hill that is in the space currently.

Keiser asked whether the applicant has a back door to their house.

Adams responded yes. He provided details on the location of the door and noted that is how he enters the house. He said if the driveway was flat, this would not be necessary, but it is currently not feasible with its slope. He stated it had been suggested to him to build a patio but it can't be done with the geometry of the house.

Brooks stated he was conducting research about a State law that requires a grill be located a certain distance from a structure. He said a couple years ago, a resident lost their home from a fire that erupted from a grill on their deck.

Keiser asked about the distance the deck would encroach on the setback.

Adams responded approximately ten feet. He provided clarification on the location of the property line between his and his neighbor's home.

Keiser stated the applicant's house is located in close proximity to the property line. He stated the deck would be encroaching on the setback by seven feet.

Fredette asked whether the applicant shares a driveway with their neighbor. He asked about the distance from the right edge of the sunroom to the edge of the driveway where it enters the applicant's yard.

Adams stated the distance is approximately fifteen feet. He stated he would appreciate the Board's consideration. He said his abutters are in support of the project.

Brooks noted his source states that the State requires a grill to be located a minimum distance of ten feet away from a structure.

Adams confirmed the grill would be located over ten feet from the house.

Keiser closed the public hearing.

Regional Impact:

MOTION: Brooks MOVED that the variance request of Myles Adams **DOES NOT HAVE POTENTIAL FOR REGIONAL IMPACT.**

The MOTION was SECONDED by Hilton.

The MOTION CARRIES 5-0-0.

Fredette asked for clarification on how the eight-foot deck with a grill on it could be ten feet away from the building.

Keiser clarified that there is an existing eight-foot deck and if the deck were expanded upon by another eight feet, it would equal sixteen feet.

Fredette stated he finds there is more hardship with this application than the last application because of the topography of the lot. He said he thinks there have been other options voiced by City staff and he sees where those options would satisfy the Ordinance and meet the criteria.

Brooks stated it appears as though there would be room to build towards the front that would not encroach on the setback.

Hilton noted the medical issues of the applicant and his wife could apply towards the hardship. He referenced a past application where the Board granted a variance due to medical issues. He noted the challenge of building a patio with the property's existing slope.

Keiser pointed out the Handicap Hardship which is referenced in Table 5.A.1. He said, unfortunately, the line only applies to ramps or how to get in and out of the building and not adding onto the structure.

Fredette stated he thinks the concept of having the shared driveway adds a level of complexity for granting this. He said in light of the applicant's testimony, the abutter has a structure in her side of the setback. He expressed his concerns about access purposes.

Keiser stated it could be argued either way on whether the project would diminish the value of surrounding properties. He said he doesn't think the project would have a negative impact on the character of the neighborhood. Regarding the hardship criteria, he stated there is a slant that makes it difficult to negotiate the property. He posed the question of whether there is another location where one could locate the deck and accomplish the same task. He said there could be a patio built off of the cellar stairs or additional decking in front of the house.

MOTION: Hilton MOVED to open the public hearing.

The MOTION was SECONDED by Brooks.

The MOTION CARRIES 5-0-0.

Keiser opened the public hearing.

Adams stated he could not build the deck in front of the current deck because he does not have a lot of front yard space and there is already a walkway there. He said that option would require him to remove bushes which would take away from the aesthetics of the property. He said that having the deck on the side of the property would be best.

Brooks asked if the current deck were expanded upon, whether it would be at the same height of the existing deck.

Adams stated if the deck were built in the front of the property, he would need to remove a walkway that was recently installed, as well as existing bushes.

Brooks stated he drives by every property the Board considers. He said his thought is, a front porch or deck is not an unusual structure to have.

Adams noted the slope his property has that the previous applicant did not have.

Keiser closed the public hearing.

Fredette stated there are many lots in the surrounding area that are exactly the same size as the subject property. He said as much as he wishes he could reason through it, there is not enough of a hardship to grant the variance.

MOTION: Fredette MOVED that request of Myles Adams for a Variance from Table 5.A.1 to allow the construction of a deck to be located within the 15' side setback on a property located at 118 Indigo Hill Road be DENIED FOR THE FOLLOWING REASONS:

1. The hardship criteria have not been satisfied as the Board found the property does not have unique characteristics that make the property unfairly disadvantaged by the Zoning Ordinance.

The MOTION was SECONDED by Brooks.

The MOTION CARRIES 4-1-0, with Hilton opposing.

- d. Any other new business that may come before the Board.
None.

MOTION: Hilton MOVED to ADJOURN the meeting.

The MOTION was SECONDED by Brooks

The MOTION CARRIES 5-0-0.

The meeting was adjourned at 8:13pm.

Respectfully submitted,

Anna Stockman
Planning Secretary