

TOWN OF AMHERST
Zoning Board of Adjustment

November 21, 2023

APPROVED

1 In attendance: Doug Kirkwood (Chair), Danielle Pray (Vice Chair), Jamie Ramsay (Secretary),
2 Charlie Vars, Tracy McInnis, and Tony Ortiz (alternate)
3 Staff present: Nic Strong, Community Development Director, and Kristan Patenaude, Recording
4 Secretary (remote)

5

6 Doug Kirkwood called the meeting to order at 7:00pm. He outlined the process for the meeting,
7 including that the applicant will make a presentation, the public will then have a chance to
8 comment and ask questions through the Chair, and the Board will have the ability to comment at
9 any time. The Board will then move into the deliberation section of the meeting, at which time
10 public comment will cease. The Board will review regional impact of each case and consider
11 approval or denial with/without conditions. If an applicant does not agree with the decision, they
12 can apply for a request for a rehearing within 30 days of this meeting. In the application for a
13 rehearing, the applicant needs to add a letter explaining why they think the rehearing is
14 necessary. If the applicant is still not satisfied after the rehearing, there is recourse to the
15 Superior Court, within 30 days from the rehearing date.

16

17 Doug Kirkwood introduced the Board members.

18

19 **PUBLIC HEARINGS:**

20

21 **1. CASE #: PZ18134-110223 -VARIANCE**

22 **Thistle Real Estate Holdings, LLC (Owner) & James Ramsay (Applicant); 5 Limbo**
23 **Lane, PIN #: 006-060-000** – Request for relief from Article IV, Section 4.6, Paragraph 3
24 to occupy an existing building for residential use only. *Zoned General Office.*

25

26 Danielle Pray read and opened the case.

27

28 *Jamie Ramsay recused himself from this item. Tony Ortiz sat for Jamie Ramsay.*

29

30 Jamie Ramsay, applicant, stated that he has owned the property at 5 Limbo Lane since 1988.
31 This property is located in the General Office Zone. He explained that he is seeking relief to
32 allow for use of this property as his personal residence in perpetuity. He has no intention of ever
33 using the property for any sort of commercial use. Per the current Zoning Ordinance, residential
34 occupancy within a General Office Zone is restricted to use of only 25% of the gross square
35 footage of any building. The desired use of this property is restricted under Section 4.6. General
36 Office Zone because mixed use development is limited to office and residential uses. He stated
37 that he believes this is a directive, ordering that both uses shall exist concurrently. 5 Limbo Lane
38 was built as a residential dwelling around 1952 and both the exterior and interior configurations
39 of the building are virtually unchanged since the property was built. Outwardly, there is no
40 question that the building was realized as a single-family dwelling. Jamie Ramsay stated that he
41 does not propose or envision any forms of exterior expansion, or reconfiguration of the interior.
42 He stated that his proposal will impose no adverse impact upon neighboring properties in the
43 General Office Zone.

44

TOWN OF AMHERST
Zoning Board of Adjustment

November 21, 2023

APPROVED

45 Jamie Ramsay addressed the variance criteria.

46

47 *1) How will granting the variance not be contrary to public interest?*

48 Jamie Ramsay stated that the General Office Zone was created presumably to allow for
49 mixed-use development in close proximity to the Amherst Village. The proximity of 5 Limbo
50 Lane in particular is unique. It is within the closest of three General Office Zones in the town
51 of Amherst, located right on the edge of the Historic District. Limbo Lane was created when
52 the Route 101 bypass was constructed in the 1970s. This section of Amherst was historically
53 a mix of residential, commercial, and other uses that went away when Limbo Lane became
54 part of the General Office Zone. 5 Limbo Lane is located at the intersection of Limbo Lane
55 and the terminus of Manchester Road, with the latter being the boundary of the Historic
56 District. Jamie Ramsay stated that his property is surrounded with every characteristic of a
57 residential neighborhood, including the properties of 2 and 7 Limbo Lane and 23 Manchester
58 Road. It is indistinguishable as to where the Residential Zone begins and ends next to the
59 General Office Zone. He stated that he proposes neither physical nor aesthetic alterations of
60 the property and the desired use shall cause no impact upon Limbo Lane regarding its
61 functioning as a General Office Zone. The use that he seeks is reasonable.

62

63 *2) How will granting of the variance ensure the spirit of the ordinance will be observed?*

64 *Please explain.*

65 Jamie Ramsay stated that there shall be no physical alteration of the property or the proposed
66 use and the proposed use that he seeks shall cause no adverse impact to the existing
67 functioning of the Limbo Lane General Office Zone.

68

69 *3) How will substantial justice be done?*

70 Jamie Ramsay stated that 5 Limbo Lane was originally constructed in 1952 as a single-family
71 home and all sections of the building have remained consistent to their original design and
72 configuration. He proposes no change to these items. Currently the permitted use of this
73 property is restricted to only mixed-use occupancy which conflicts with his vision and desire
74 to use it as his personal residence. At this time and in perpetuity, Jamie Ramsay stated that he
75 does not intend to use any portion of the property for a commercial purpose. His property is
76 unique within the Limbo Lane General Office Zone as the other Limbo Lane parcels that
77 exist are either commercial only or residential only properties. Small former residential
78 buildings are no longer viable for multi-tenant/small office uses. He stated that his request for
79 relief from the restrictions of the Zoning Ordinance is a reasonable consideration in that the
80 property shall revert to its original use from 1952. This will allow him enjoyment of his
81 property and substantial justice shall be done.

82

83 *4) How will the value of surrounding properties not be diminished? Please explain.*

TOWN OF AMHERST
Zoning Board of Adjustment

November 21, 2023

APPROVED

84 Jamie Ramsay stated that he proposes no physical alterations of the property. The nature of
85 what will be changed on the property will be imperceptible. The property shall continue to
86 exist in its current form and thus there will not be any change in value.

87

88 *5) Literal enforcement of the provisions of the ordinance would result in unnecessary*
89 *hardship because:*

90 *(A) For the purpose of this sub paragraph, “unnecessary hardship” means that owing to*
91 *special conditions of the property that distinguish it from other properties in the area:*

92 *(i) No fair and substantial relationship exists between the general public purposes of the*
93 *ordinance provision and the specific application of that provision to the property,*
94 *and*

95 *(ii) The proposed use is a reasonable one.:*

96 *(B) Explain how, if the criteria in subparagraph A above are not established, an*
97 *unnecessary hardship will be deemed to exist if, and only if, owing to special conditions*
98 *of the property that distinguish it from other properties in the area, the property cannot*
99 *be reasonably used in strict conformance with the ordinance, and a variance is therefore*
100 *necessary to enable a reasonable use of it:*

101

102 Jamie Ramsay stated that the hardship of literal enforcement would be restriction of enjoyment
103 of his property. There is not a current demand for rental of small office spaces in mixed-use
104 buildings in this area. The use of the building as it exists is suitable for residential occupancy.

105

106 Charlie Vars stated that he was one of the original authors in the mid-80s of the General Office
107 Zoning District and, at that time, the intention was to be able to allow either residential or
108 commercial uses in the Limbo Lane area. At the time, the Route 101 bypass/Limbo Lane was
109 100’ wide and the State eventually reverted this area back to the Town. The Town chose to retain
110 50’, as it does for all main roads, with 25’ on either side of Limbo Lane being reverted to the
111 then property owners. He owned the piece of property next to Jamie Ramsay’s that the Church is
112 currently located on. Charlie Vars believed there was a unanimous vote to create the General
113 Office Zone and other properties in this area have been used for residential/office use. In 1990,
114 all references to residential uses were removed from this Zone, but he is unclear as to why this
115 happened, as it was not the original intention.

116

117 Danielle Pray asked about the other properties along Limbo Lane. Jamie Ramsay stated that
118 there is one property beyond his that is 100% residential use. He believes that was built in the
119 1940s. There is also the Limbo Lane Medical Center. To the south, there are two corner
120 properties which are commercial but not easily identifiable as such. There are no mixed-use
121 properties along Limbo Lane. It is unclear why this area became mixed use only and with a
122 restriction of 25% of the area of the house.

123

124 Tony Ortiz asked Jamie Ramsay if he has any current commercial tenants. Jamie Ramsay stated
125 that he does not and has not for quite some time. The finished basement was used as office space.
126 The residence at the Limbo Lane level is 40’x26’, and will contain a living area, bedroom, and
127 kitchen.

November 21, 2023

APPROVED

128

129 Tracy McGinnis asked if the property was currently occupied. Jamie Ramsay replied that he was
130 the occupant.

131

132 Doug Kirkwood asked for public comment at this time. There was none.

133

134 **2. CASE #: PZ18136-110223 – VARIANCE**

135 **Divest LLC (Owner & Applicant); County Road & Thornton Ferry Road II; PIN #:**

136 **004- 142, 142-10, 142-12, 142-13** – Request for relief from Article III, Section 3.9,

137 Paragraphs B, C & D to maintain three existing reduced frontage lots as previously

138 approved, and from Article IV, Section 4.3, Paragraph C.2. to maintain an existing corner

139 lot as previously approved. *Zoned Residential Rural.*

140

141 *Jamie Ramsay retook his seat.*

142

143 Jamie Ramsay read and opened the case.

144

145 Brad Westgate, Esq., Winer & Bennett, LLP, representing the applicant, explained that the

146 applicant is seeking relief from recent changes to the Zoning Ordinance relative to reduced

147 frontage lots and corner lots. Divest, LLC is the owner of 14 lots in a subdivision approved by

148 the Amherst Planning Board in 2005. These include frontage lots along County Road. Thornton

149 Ferry Road II provides frontage for two other lots. These properties are located in a generally

150 developed residential area, with homes around them to the west, south, and east. These properties

151 contain just over 30 acres all together. In 2005, the developer asked the Planning Board to

152 consider either an approach with mainly frontage lots, or one with an 18 lot Planned Residential

153 Development (PRD). It was clear at that time that the Planning Board preferred the frontage lot

154 design, as this would include buffering to other properties, and fewer curb cuts for driveways.

155

156 Attorney Westgate explained that the applicant moved forward from the Planning Board

157 approval to create a plan with a 100' wide protective buffer, which is consistent with the setback

158 requirements to a scenic road, as County Road is designated as such. The plan also included a

159 common driveway to service five lots - three reduced frontage lots and the two adjacent lots. The

160 applicant also granted the Town an easement for pedestrian use along this area to a Town-owned,

161 previously landlocked parcel. The applicant created governing documents for the site, including

162 stormwater management, and a Homeowner's Association to ensure that property owners follow

163 the requirements of the stormwater management. This property has good sandy soils, is relatively

164 flat, and contains no wetlands. The applicant recorded easements, covenants, and the plan with

165 the Registry of Deeds. All of this was completed, but the lots were never built. Divest, LLC,

166 came to the decision that it wanted to try to develop the properties and build out single family

167 homes. In 2022, the owners reached out to Nic Strong, Community Development Director, to

168 move this idea forward. She pointed out to them that there was a corner lot provision amended in

169 2022 that now requires that corner lots have 200' of frontage overall. She also pointed out that

170 the stormwater management regulations in the Town had changed from 2005 to now.

171

TOWN OF AMHERST
Zoning Board of Adjustment

November 21, 2023

APPROVED

172 Attorney Westgate explained that the applicant completed a significant analysis of the
173 stormwater management plans approved in 2005 against the current regulations. It was
174 determined that the stormwater management approved in 2005 still met current regulations. Peer
175 review was undertaken by Steve Keach, the Town's consulting engineer, and he agreed with this
176 assessment. During that time, in late 2022/early 2023, there was a proposal in Town to amend
177 requirements for reduced lot frontage, which was then adopted by voters in March 2023. These
178 changes mandate different dimensional elements than what existed when this was approved in
179 2005, including a five-acre minimum lot requirement for reduced frontage lots. These lots range
180 in size from approximately 2.2 acres to 2.8 acres. The changes also required that reduced
181 frontage lots have 50' of frontage, instead of 35' of frontage for each lot. In addition, only two
182 reduced frontage lots were allowed to touch each other with the common driveway servicing
183 them and there are three proposed through this project. Another change is that there must be a
184 driveway separation to intersections, with a reduced frontage lot's driveway being 500' from
185 another intersection. These parcels are approximately 450' from Conifer Drive.

186
187 Attorney Westgate stated that the applicant thought there may be a vesting argument to be made
188 for this project, as it was an already approved subdivision, did not require any new road
189 construction, and all the conditions of approval that were worked out with the Planning
190 Department would have been satisfied. The request is to allow the project to proceed under the
191 old Zoning Ordinance requirements which were in place when the project was originally
192 approved. In speaking with Nic Strong, she stated she did not believe this was possible, and thus
193 the applicant submitted the variance request. If Divest, LLC, came to the Planning Board last
194 September with a raw piece of land, 30+ acres, and filed a design review application, before the
195 changes went into place, it would not have to comply with the new reduced frontage lot
196 requirements of five acres, 50' of frontage, etc. Thus, if Divest, LLC, had never subdivided this
197 property and instead had submitted the exact application to the Planning Board last
198 September/October, it would have been approved as designed. The fact that the approval is 18
199 years old generates a special circumstance. The application for variance would make no change
200 whatsoever to the subdivision and the plan that was approved in 2005. It would allow for the
201 100' buffer in the front, the 50' preservation buffer along the rest of the property, and the five
202 lots coming off the common driveway to minimize curb cuts, that the Planning Board found to
203 be important. If the variance is not granted, a redesign will have to occur. These changes would
204 likely not be found desirable by the Planning Board of 2005 or today.

205
206 Attorney Westgate addressed the variance criteria.

207
208 *1) How will granting the variance not be contrary to public interest?*

209 Attorney Westgate stated that allowing these 14 lots to proceed as approved in 2005 is not
210 contrary to the public interest because it accommodates all the Planning Board requests made
211 during that process. It significantly reduces the curb cuts, creates the preservation buffer, and
212 maintains the design and approach the Planning Board found to be sensible at that time. The
213 passage of time has not changed the nature of the public interest concept. Relative to the
214 corner lot regulation, it now states that corner lots have to have 200' of frontage on each

November 21, 2023

APPROVED

215 street. These parcels have approximately 500' of frontage collectively on the corner lot. It
216 also allows for a driveway off County Road with more than adequate frontage to
217 accommodate the arrangement. The overall frontage certainly is greater than the 200'
218 frontages that would otherwise be required. All of the proposed lots still meet the two-acre
219 minimum requirement of the Residential Rural District.

220

221 2) *How will granting of the variance ensure the spirit of the ordinance will be observed?*
222 *Please explain.*

223 Attorney Westgate stated that the spirit of the ordinance includes concepts such as promoting
224 good land use and planning practices. These were demonstrated by the Planning Board's
225 approach to this back in 2005. The conditions of approval the Planning Board established
226 also ensured that the spirit of the ordinance be maintained. This is good land use planning.
227 The developable portions of the reduced frontage lots are to the rear of the property, set back
228 from County Road, which maintains the rural nature to some degree. If part of the reasoning
229 for the new ordinance change regarding reduced frontage lots is to give more space for
230 wildlife habitats, and corridor capability, this should not be of concern with this property.
231 The areas to be developed are within an already developed setting. There is not a material
232 benefit to be gained by the denial of the variance which would redesign the layout of this
233 subdivision. This would be to the detriment of the planning practices that the Planning Board
234 previously determined.

235

236 3) *How will substantial justice be done?*

237 Attorney Westgate stated that substantial justice is observed if the variance is granted
238 because it allows this development to occur as it was well thought out in 2005 by the
239 Planning Board. The applicant has updated the stormwater management analysis to make
240 certain that it complies with current regulations. The measure of substantial justice is that if
241 the public realizes no appreciable gain from denying the variance, but the applicant is
242 adversely affected in a material manner if the variance is denied, then substantial justice is
243 done. He stated that he does not believe the public realizes an appreciable benefit if the
244 variance is denied. This would preclude construction of the homes on this property.
245 However, the applicant would be harmed if the variance is denied.

246

247 4) *How will the value of surrounding properties not be diminished? Please explain.*

248 Attorney Westgate stated that development in residential areas for new construction typically
249 shows vitality in the area and often enhances nearby property values. These parcels would
250 contain relatively large lots, which are overall larger than the surrounding lots. The 100'
251 preservation buffer will do a good job maintaining the nature of County Road, as the
252 Planning Board noted. He handed out a letter from a real estate professional, Frank Destito,
253 Masiello Group, which gives a determination that Mr. Destito does not believe that property
254 values would be adversely affected by the granting of the variance.

255

November 21, 2023

APPROVED

256 5) *Literal enforcement of the provisions of the ordinance would result in unnecessary*
257 *hardship because:*

258 (A) *For the purpose of this sub paragraph, “unnecessary hardship” means that owing to*
259 *special conditions of the property that distinguish it from other properties in the area:*

260 (i) *No fair and substantial relationship exists between the general public purposes of the*
261 *ordinance provision and the specific application of that provision to the property,*
262 *and*

263 (ii) *The proposed use is a reasonable one.*

264 (B) *Explain how, if the criteria in subparagraph A above are not established, an*
265 *unnecessary hardship will be deemed to exist if, and only if, owing to special conditions*
266 *of the property that distinguish it from other properties in the area, the property cannot*
267 *be reasonably used in strict conformance with the ordinance, and a variance is therefore*
268 *necessary to enable a reasonable use of it:*

269
270 Attorney Westgate stated that these properties including the reduced frontage lots, the
271 corner lots, and the project overall have a number of special conditions. The overall
272 property is not that deep, but it is capable of accommodating the reduced frontage lots.
273 The site is very well designed and laid out to accommodate frontage lots. This project has
274 undergone great scrutiny and went through the process to be approved in 2005, which is
275 in and of itself, a unique characteristic. There is no fair and substantial relationship
276 between the purpose of the ordinance and the specific application. The changes requiring
277 an increase to five acres for the reduced frontage lots would result in likely only one
278 being viable. This would likely lead to only two or one of these lots being viable.

279 Additional curb cuts would have to occur, even if a lot is lost. The reduced frontage lots
280 are not adjacent to conservation/open space land. Relative to the corner lot item, there is
281 more than adequate frontage on County Road to accommodate a driveway appropriately.
282 Currently, this land can accommodate three reduced frontage lots of 35’ frontage each.
283 The one driveway proposed can accommodate five lots. Under the new regulations, each
284 frontage lot would be required to have 50’ of frontage. Currently, the plan allows for the
285 reduced frontage lots to be situated such that the developable areas are well off County
286 Road. Typically, owners will want a buffer between their properties and the next. The
287 proposed reduced frontage lots allow for some internal buffering. If fewer and larger
288 reduced frontage lots are required, there will be less incentive for that internal buffering.

289
290 Attorney Westgate stated that the test asks if the use is reasonable. The applicant would
291 submit that the use has not changed. The proposal is still for a subdivision for single-
292 family homes, as permitted in the Zone. This is certainly a reasonable use.

293
294 Tony Ortiz asked the exact distance from the proposed common driveway to the intersection of
295 County and Conifer which he estimated to be slightly under 443’. Attorney Westgate noted that
296 this was not measured in the field, but agreed with Tony Ortiz that it may be closer to
297 approximately 400’.

298

TOWN OF AMHERST
Zoning Board of Adjustment

November 21, 2023

APPROVED

299 Danielle Pray asked about the frontage of the corner lot, 4-142-10. Attorney Westgate stated that
300 there is approximately 350' of frontage on County Road, with a collective frontage of
301 approximately 500'. Map 4 Lot 142-11, as currently configured has at least 200' along Thornton
302 Ferry II which was required at the time of subdivision.

303

304 Tracy McInnis asked about the lot size of abutting properties. Attorney Westgate stated that
305 these are typically around one acre in size.

306

307 Charlie Vars asked if the owners have paid taxes as single-family lots. Attorney Westgate stated
308 that these lots have been separately taxed as single family lots since day one, but they are in
309 current use.

310

311 Charlie Vars noted that there are five driveways off the private Barrington Way drive, leading to
312 four less than proposed if these were all frontage lots. Attorney Westgate agreed and noted that
313 Barrington Way will always be a private way, per the covenants. Charlie Vars asked if the
314 applicant would consider a condition that the entrance driveway on Lot 142-10 would be no
315 more than 125' from the lot corner of Lot 142-9. He also asked about a driveway of 75' from the
316 current Map 4 Lot 58-1. If the applicant went no further than 50'-75' from the lot corner with the
317 driveway entrance, this would free up the entire corner of concern for entrance into Lot 142-10
318 that has been expressed.

319

320 Attorney Westgate stated that the applicant is agreeable to the first condition that the driveway
321 for Map 4 Lot 142-10, the corner lot, be no more than 125' to the southeast with its common
322 corner with Map 4 Lot 142-9 along County Road.

323

324 Attorney Westgate stated that the applicant is also agreeable to the condition that, for Lot 142-
325 11, the driveway be no more than 50' up the road heading northeast on County Road toward the
326 four-way corner. He noted a caveat that driveway permits will need to be sought from DPW, and
327 that this will be up to them.

328

329 Charlie Vars stated that there is a tremendous benefit to the 100' setback. The proposal has the
330 best configuration to allow for the 100' setback. Visually this will be better than a 50' setback on
331 all sides.

332

333 Doug Kirkwood asked for public comment.

334

335 Jeffrey Towne, 48 Thornton Ferry Road II, stated that the approved plan may have been great 18
336 years ago, but there are now new ordinances and regulations in place that may demand a change
337 to the site plan. The proposal seeks to place a driveway almost on his lawn, and he has been
338 living at this property since 2014. The existing Thornton Ferry II/County Road intersection is a
339 drag way. Additional outlets close to the intersection will be a nightmare. The applicant's game
340 plan is to cram as many houses in this area as possible to make a profit. It is no longer 2005 and
341 a new site plan is needed.

342

TOWN OF AMHERST
Zoning Board of Adjustment

November 21, 2023

APPROVED

343 Gerry Pelletier, 1 Newbury Drive, stated that he has lived at this address since 1992 and moved
344 there due to the location and setting. He enjoys the privacy of the backyard, which may disappear
345 from this project. He aired his concerns in 2005 and is just as concerned today. The wildlife in
346 this area is amazing and all of this will disappear due to the proposed tree removal for the lots.
347 His house is the closest lot, approximately 50' away, from any of the proposed lots. There are
348 different rules that apply today that would not allow two of the reduced frontage lots proposed.
349 The spirit of the ordinance changes is to prevent exactly what this plan is proposing. The
350 applicant must meet several criteria for this variance. Regarding that granting this request would
351 not be contrary to the public interest, the purpose of the Ordinance, among other things, is to
352 prevent overcrowding of the land. The three house lots proposed are oddly shaped and reducing
353 them would meet the purpose of not overcrowding the land. Regarding granting of the variance
354 will ensure the spirit of the ordinance, the new ordinance changes were passed in recognition of
355 the typically higher wildlife habitat value of undeveloped areas located away from road
356 frontages. Reduced frontage lots have more stringent lot size requirements in order to preserve
357 this open space, and wildlife. The three proposed lots are oddly shaped and, once set back from
358 the access road with driveways in his backyard, all of the existing woods will be gone. There will
359 be nothing left but houses and grass. The back of his house is literally 50' from that lot line, and
360 he will see 5-6 houses. Another criteria is that the benefit to the applicant must not outweigh the
361 harm to the general public or other individuals. The criteria also asks if the proposal will
362 diminish the values of surrounding properties. He noted that the audience was not allowed to
363 review the letter from the real estate professional handed to the Board and so cannot comment on
364 it. He stated that there is no way this property will not lower his property value. These houses
365 will mean more trees removed, exposing homes, impacting privacy, and replacing wildlife and
366 serenity with noise. All other developments in this area have one thing in common; they all have
367 woods surrounding the properties to maintain a rural setting as much as reasonably possible. It is
368 clear, as no improvements or work have been done whatsoever to the property within the
369 required five-year vesting period, that the ordinance changes must be met. This project is not
370 grandfathered in and should adhere to today's ordinance. He stated that the Board should not put
371 much weight on the 2005 plan defense. There has been a lot of emphasis placed on the fact that
372 these properties are reduced frontage lots and the houses will be set back from County Road
373 where they cannot be seen. However, these houses will be seen very clearly from Newbury
374 Drive. The rural setting will be gone. The applicant makes the argument that the lots back up
375 against existing developed, residential properties, as opposed to undeveloped rural land.
376 However, since this was rural land, the applicant should maintain some of that rural land. The
377 applicant argued that reconfiguring the plan would result in lots significantly less uniform in
378 shape. However, the proposed lots are very unusual in shape already, as the developer is trying to
379 put as many houses in the area as possible. For example, Lot 4-142-12 has seven abutters. He
380 challenged the Board to find another property in this area that has seven abutters to one piece of
381 property. There is an opportunity for the Board to allow for the preservation of woodlands and
382 wildlife by adhering to the spirit of the Town ordinance. He asked the Board to rule in favor of
383 the intent of the ordinance and for those who have supported the Town and its community.

384

385 Jennifer Lohnes stated that much of the paperwork was not received until Saturday, and the
386 meeting being in Thanksgiving week made it potentially difficult for some to attend this meeting.

TOWN OF AMHERST
Zoning Board of Adjustment

November 21, 2023

APPROVED

387 Doug Kirkwood asked Nic Strong to respond to this. Nic Strong stated that notice letters are sent
388 out according to State statute, ten days prior to the meeting. The materials presented online are
389 not a requirement, but a courtesy. Since the Building Inspector left the Town, another person in
390 the office has taken over posting those items and had trouble getting them onto the website. The
391 notice letters to the abutters state that the materials will be available on Friday in case there are
392 similar issues, and the employee came into the office on Saturday to figure that out.

393

394 Randie Meyer, 3 Mayhew Drive, stated that she purchased her home in 1993. She expressed
395 concern regarding loss of wildlife from the proposed development, along with the impact on the
396 water table. She asked the Board to decline this request, as no work has been completed on the
397 site in the last 17 years. The applicant should have to start anew.

398

399 Jamie Ramsay asked about the lapse between when this plan was approved and this request to
400 seek a variance to preserve the plan. Attorney Westgate explained that Divest, LLC, is the
401 company that owns this property. This company is owned by the Slattery family, who are also
402 the owners of Etchstone Properties and, simply put, the company worked on other projects.

403

404 A member of the public submitted photos as evidence as to how close the proposed houses
405 would be to her back yard.

406

407 Attorney Westgate asked to respond to some of the comments made. Doug Kirkwood
408 agreed. Attorney Westgate stated that the initial meeting with the Planning Board in 2005
409 included a conversation as to whether the Planning Board would rather see a PRD or frontage
410 lots along County Road. A PRD design would have allowed for 18 lots, not accounting for bonus
411 density. The applicant agreed to 14 lots, rather than 18. The goal was never maximizing the
412 number of lots. The regulations never changed in a material way until the corner lot change
413 occurred in 2022. Throughout those years, this proposal would have been approved as designed
414 with the same Planning Board scrutiny. This is not a case of staleness of the regulations. The
415 stormwater management regulations did change, and the Community Development Department
416 mandated that the applicant prove that what was designed matches what is required now and that
417 was proven out. A 50' buffer along the other side of the parcels is not going to be any different
418 than if the property is developed in another way. Land is not static, and this property will be
419 developed in some way. The only way it becomes static is if a conservation group or the Town
420 purchases the land. It is not incumbent upon a landowner who was provided that benefit for
421 many years to provide it for eternity. The applicant has to develop something that matches the
422 regulations. The applicant respectfully submits that the recent changes to regulations are not of a
423 material benefit to cause a redesign of this property. Regarding the notion of overcrowding, 18
424 lots could have been contemplated in a PRD approach, only 14 are now. This area will be
425 developed in some way. County Road is a scenic road but none of the other roads around are.
426 The rural character focus of the ordinance is to implement the purpose of the scenic road and the
427 reduced frontage lot provisions push the development off County Road. The applicant is
428 requesting the ability to proceed with a plan that matches the regulations that existed for all this
429 time until 2022. This is not raw land that has never been reviewed by any Town boards before
430 and simply trying to get by the new variance requirements.

November 21, 2023

APPROVED

431
432 Gerry Pelletier stated that the applicant must meet the criteria for granting a variance, such as
433 that the plan would not conflict with the implicit and explicit purpose of the ordinance, which is
434 in recognition of the typically higher wildlife habitat which currently exists. Of undeveloped
435 areas located away from both frontages, reduced frontage lots have more stringent lot sizes
436 requirements to preserve open space, wildlife habitat, and wildlife corridors. The applicant is
437 ignoring the impact this has on the abutters on the south side. The variance does not comply with
438 the spirit of the ordinance in that way.

439
440 Susan Sarraf, 11 Danbury Circle, echoed comments regarding the woods and wildlife in this
441 area.

442
443 There were no additional public comments at this time.

444
445 **Charlie Vars moved to enter deliberations. Danielle Pray seconded.**
446 **Voting: 5-0-0; motion carried unanimously.**

447
448 **CASE #: PZ18134-110223 -VARIANCE**

449 **Thistle Real Estate Holdings, LLC (Owner) & James Ramsay (Applicant); 5 Limbo**
450 **Lane, PIN #: 006-060-000 – Request for relief from Article IV, Section 4.6, Paragraph 3**
451 **to occupy an existing building for residential use only. *Zoned General Office.***

452
453 *Jamie Ramsay recused himself. Tony Ortiz sat for Jamie Ramsay.*

454
455 **Danielle Pray moved no regional impact. Charlie Vars seconded.**
456 **Voting: 5-0-0; motion carried unanimously.**

457
458 The Board reviewed the criteria tests:

459 **1. The Variance will not be contrary to the public interest.**

- 460 • D. Pray – true, the requested variance will not change the character of the
461 neighborhood, as there are other residential properties in the area. This has
462 historically been a residential property. The request also does not violate or go against
463 the general public health and welfare.
- 464 • T. Ortiz – true, this proposal will not change the essential character of the
465 neighborhood; what it does do is increase uniformity in the neighborhood, bringing a
466 permitted use in line with that of abutting properties along Limbo Lane and 23
467 Manchester Road.
- 468 • T. McInnis – true, for the reasons previously stated and that the applicant will not be
469 changing the property at all.
- 470 • C. Vars – true, the initial reason for creating the General Office Zone was to allow
471 residential uses to continue. This was somehow removed over a period of time.
- 472 • D. Kirkwood – true, for the reasons previously stated.

473 **5 True**
474

November 21, 2023

APPROVED

- 475 **2. The Variance will ensure that the spirit of the ordinance will be observed.**
476 • T. McInnis – true, the applicant is not changing or altering the property in any way
477 and there were several references that there are similar uses surrounding the property.
478 • T. Ortiz – true, the spirit of the ordinance is to protect the public health, safety, and
479 welfare and the proposed use does not violate that spirit.
480 • C. Vars – true, there is no physical alteration of the existing building. The owner has
481 put some new siding on the front of it, enhancing the neighborhood.
482 • D. Pray – true, the proposed residential use does not violate the public health, safety,
483 and welfare purposes of the ordinance.
484 • D. Kirkwood – true, for the reasons already iterated.
485 **5 True**
- 486 **3. Substantial justice is done.**
487 • C. Vars – true, there were neither physical nor aesthetic alterations made to the
488 property. The building is the same as it was in 1952. It is a single-family home,
489 adjacent to a single-family home. It is substantial justice to approve this.
490 • D. Pray – true, the historical use of this property is residential, and this will allow that
491 historical use.
492 • T. Ortiz - the applicant has demonstrated this proposal is a reasonable one and there is
493 nothing to suggest that this would cause harm to the public. The public would have
494 nothing to gain by denying this request.
495 • T. McInnis – true, this was built as a residential home back in 1952 and granting the
496 variance will allow the owner to enjoy the property.
497 • D. Kirkwood – true, for the reasons previously iterated.
498 **5 True**
- 499 **4. The values of the surrounding properties will not be diminished.**
500 • D. Pray - true, there are no physical changes to the property and no evidence was
501 presented that surrounding property values would be diminished.
502 • T. McInnis – true, the owner has no intention of changing the property and there was
503 no evidence provided to show property values would diminish.
504 • T. Ortiz – true, there is no evidence that surrounding property values would be
505 diminished.
506 • C. Vars – true, there was no evidence provided to this.
507 • D. Kirkwood – true, for the reasons already stated.
508 **5 True**
- 509 **5. Literal enforcement of the provisions of the ordinance would result in an
510 unnecessary hardship**
511 • C. Vars – true, there is definitely a hardship if the Board turns down this variance.
512 The Board has discussed all the reasons why this meets the criteria. The visual of this
513 area will not change at all. Taxes will not change. The occupancy will still be for a
514 single-family home.
515

November 21, 2023

APPROVED

- 516 • T. McInnis – true, denial would result in an unnecessary hardship for the owner
517 because this property seems to be the only one in the area that is mixed use.
518 • T. Ortiz – true, this is a reasonable request and is the best use of the property, which
519 is consistent with other properties in the neighborhood. Denying this request would
520 prohibit the applicant from occupying the property as his primary residence.
521 • D. Pray - the special conditions of this property include that it is the only one that is
522 zoned the way it is. This has historically been a residential property. The general
523 purposes of the ordinance are to protect the general health, safety, and welfare of the
524 public, and granting the variance has no negative effect on these purposes. It would
525 create a hardship for the applicant to deny the variance. The request is a reasonable
526 one, as the house was built as a residence, looks like a residence, and is surrounded
527 by other residences.
528 • D. Kirkwood – true, for the reasons already iterated.
529 **5 True**

530 Doug Kirkwood stated that the application, having passed all of the tests is, granted.
531

532 **Charlie Vars moved to exit deliberations. Danielle Pray seconded.**
533 **Voting: 5-0-0; motion carried unanimously.**
534

535 *Jamie Ramsay retook his seat.*
536

537 **Charlie Vars moved to enter deliberations. Danielle Pray seconded.**
538 **Voting: 5-0-0; motion carried unanimously.**
539

540 **CASE #: PZ18136-110223 – VARIANCE**

541 **Divest LLC (Owner & Applicant); County Road & Thornton Ferry Road II; PIN #: 004-**
542 **142, 142-10, 142-12, 142-13** – Request for relief from Article III, Section 3.9, Paragraphs B, C
543 & D to maintain three existing reduced frontage lots as previously approved, and from Article
544 IV, Section 4.3, Paragraph C.2. to maintain an existing corner lot as previously approved. *Zoned*
545 *Residential Rural.*
546

547 **Danielle Pray moved no regional impact. Charlie Vars seconded.**
548 **Voting: 5-0-0; motion carried unanimously.**
549

550 Doug Kirkwood asked if there were any general comments. Tracy McInnis stated that the three
551 lots in the back seem to be of concern, as they do not conform, and it affects the abutters in that
552 area more so than others along County Road. She asked if something could be done to help this
553 issue. Doug Kirkwood stated that if those conditions existed when others tried to build in Town,
554 they would not have been able to. It is difficult for some people to accept, but this item was
555 approved in 2005.
556

November 21, 2023

APPROVED

557 Jamie Ramsay stated that, regardless of how the lots are configured, the applicant will be able to
558 build with an approved plan. The 50' buffer is a minimum and will not go away. This will not
559 buffer the abutters from the development any more than the existing plan does.

560

561 Charlie Vars suggested that the houses on the three lots proposed closest to Mayhew and
562 Danbury be placed tightly to the front setback as opposed to half-way back or at the rear of the
563 lot. Unfortunately, some of the abutters are very close to these lot lines, but he has heard these
564 arguments many times before. If the proposed houses are set back in the area of the existing cart
565 path, there could be almost 300' between the houses and the abutters. This would be to the
566 developer's advantage. There is a high density of trees on this site and there is a decent water
567 table. He does not believe there is an issue with topography.

568

569 Danielle Pray asked Charlie Vars to describe his suggestion for the driveway for the corner lot.

570 Charlie Vars stated that the proposal was for a maximum of 125' from the property corner
571 between Lots 142-9 and 142-10. It was noted that driveways require 200' to an intersection.

572 Charlie Vars explained that his proposal would still work because the frontage of 142-10 is
573 roughly 150' and there would then be another 100', leading to approximately 250' from the
574 corner of Thornton Ferry Road II and County Road.

575

576 Jamie Ramsay asked if Charlie Vars was also suggesting placing the houses on Lots 142-11,
577 142-12 and 142-13 closer to County Road and away from abutters. Charlie Vars stated that this
578 was his proposal. The required setback at the time of approval was likely 20'-25'. He is trying to
579 allay abutter concerns. The developer could redesign the plan, but it will likely look similar to
580 this. Jamie Ramsay noted that the 50' setback leaves the applicant within their right to develop
581 within it. Charlie Vars noted that there are no driveways on the opposite side of the road from
582 these lots, as it is bordered by the golf course.

583

584 In response to a question from Tracy McInnis, Charlie Vars explained that his proposal regarding
585 the driveways would lead to only one driveway on Thornton Ferry Road II from this project.

586

587 Charlie Vars stated that the deer will come whether there are new houses built or not. New
588 building does not deter wildlife in the area and this argument does not carry any real weight with
589 him in this case.

590

591 The Board reviewed the criteria tests:

592

1. The Variance will not be contrary to the public interest.

593

- D. Pray – false, the explicit purpose of the reduced frontage ordinance states that in recognition of typically higher wildlife habitat value, the undeveloped area is located away from road frontages and reduced frontage lots have more stringent lot size requirements to allow for open space, wildlife habitat, and wildlife corridors. She stated that granting a variance would directly be in violation of that purpose.

594

595

596

597

598

599

- T. McInnis – false, the ordinance was changed for a reason regarding reduced frontage lots and granting this would be contrary to the public interest.

November 21, 2023

APPROVED

- 600 • C. Vars – true, this will not have any more impact on the public interest than if the
601 plan was redesigned. He already commented about the lack of wildlife impact.
602 • J. Ramsay – true, granting the variance would not be contrary to the public interest.
603 He understands the concerns of abutters but the 50’ buffer will remain.
604 • D. Kirkwood – true, he has property in the southern end of Town and has a lot of
605 wildlife there even though there has been construction in the area.

606 **3 True, 2 False**

607
608 **2. The Variance will ensure that the spirit of the ordinance will be observed.**

- 609 • J. Ramsay – true, he was not aware this subdivision existed over the years. He is
610 amazed that each lot is two acres, and this is hard to find nowadays. The zoning
611 ordinance deals with the general health, safety, and welfare of the public and he sees
612 nothing that would run contrary to that.
613 • D. Pray – false, the specific purpose of the reduced frontage lot ordinance, per
614 Section, 3.9 states that there are more stringent lot size requirements for reduced
615 frontage lots, meaning that the back lots would be five acres. The ordinance deals
616 with preserving open space, wildlife habitat, and wildlife corridors, and this proposal
617 is in direct violation of the spirit of the ordinance.
618 • T. McInnis – false, granting the variance will not observe the spirit of the ordinance
619 as the spirit states that it would require five acre lots and preservation of wildlife
620 corridors, which could not happen with development of the three back lots.
621 • C. Vars – true, if the plan was redeveloped, there would be no way to take five of the
622 driveways off County Road. If this was laid out as a PRD, many of the units could be
623 right up against the 50’ buffer, which would be even closer to abutters. The deer and
624 antelope will still play here anyway.
625 • D. Kirkwood – true, for the reasons already iterated.

626 **3 True, 2 False**

627 **3. Substantial justice is done.**

- 628 • T. McInnis – false, substantial injustice would be created through granting the
629 variance as it would violate the ordinance.
630 • C. Vars – true, substantial justice would be done for many of the reasons stated
631 previously. This plan helps the public health, safety, and welfare. The subdivision
632 could be laid out differently but will look mostly similar.
633 • J. Ramsay – true, the lot size being expanded to five acres is not germane to the
634 objections. The objections are to the constraint that a 50’ setback has on abutters. He
635 hears this all the time, and it is what it is. This subdivision is the definition of
636 enjoyment of property and that deals with using the property to its full purpose,
637 within the zoning ordinance.
638 • D. Pray – false, this test is a balancing test between the public and the applicant. The
639 applicant mentioned that curb cuts would increase, and a couple of other minor things
640 might change if this variance is not granted. She does not believe those items
641 outweigh the public interest. The voters voted for the zoning ordinance changes in

November 21, 2023

APPROVED

642 2022, with the intent to preserve open space, wildlife habitat, and rural character.
643 Without this variance, the applicant still has many options to develop this property.
644 The public interest outweighs reducing the number of units by one through adherence
645 to the ordinance.

- 646 • D. Kirkwood – true, for reasons previously stated.

647 **3 True, 2 False**

648

649 **4. The values of the surrounding properties will not be diminished.**

- 650 • C. Vars – true, if anything, with the cost of construction at the current time, this
651 proposal would not diminish the value of surrounding properties, but instead increase
652 it.

- 653 • J. Ramsay – true, the proposal will not negatively impact surrounding properties.

654 There is currently a high demand for housing in southern New Hampshire and new
655 homes will make the abutting and surrounding properties more valuable.

- 656 • D. Pray – true, if this variance was denied, it would only reduce the number of houses
657 by one. A real estate broker provided his opinion that the values would not be
658 diminished. The Board did hear testimony from a member of the public who had
659 some differing views, but she believes this item is true.

- 660 • T. McInnis – false, granting this variance will reduce the values of the homes that are
661 surrounding it, due to the ambience and wide-open spaces that will be cut down to
662 build the houses.

- 663 • D. Kirkwood – true, for the reasons already stated.

664 **4 True, 1 False**

665 **5. Literal enforcement of the provisions of the ordinance would result in an**
666 **unnecessary hardship**

- 667 • J. Ramsay – true, denial of the variance would lead to a hardship. There are probably
668 ways to re-engineer and redesign a subdivision on these properties that will possibly
669 net one or two less lots, but it is not the Board’s job to decide this. This plan was
670 originally approved in 2005 and, though there is a sunset on this and though there
671 have been major zoning changes since that time, the items are not so substantial that
672 they would have precluded this design. The proposal is a good design and changing it
673 may lead to a different type of hardship such as an additional impact on this area. The
674 applicant’s request for a variance is reasonable.

- 675 • C. Vars – true, the applicant proved that there is a hardship. There are special
676 conditions. If the houses had been built in that period of time they would all be there.
677 The stormwater requirements all still meet the regulations. If this were to come back
678 as a PRD, the Planning Board would hear it, instead of this Board. The variance
679 allows this Board to place certain conditions, such as the ones he suggested.

- 680 • T. McInnis – true, there is a potential hardship to the applicant to have to draw up
681 new plans. For the lot that has seven abutters, it will be difficult to find another place
682 on the property for the house.

November 21, 2023

APPROVED

683 • D. Pray – false, the suggested hardship will be reconfiguring a design that is
684 approximately 16-17 years old. Zoning changes occur over time. The special
685 conditions identified by the applicant are that these properties are on a scenic road
686 and are wide but not deep. None of that precludes the applicant from building on this
687 property and, as testified to tonight, will still allow the applicant 13 of the 14 lots.
688 Loss of one or two lots is not a hardship. The general public purposes are in the
689 ordinance, and these take precedence over the developer being able to continue with a
690 plan that is old.

691 • D. Kirkwood – true, for reasons already stated.

692 **4 True, 1 False**

693 Doug Kirkwood stated that the application, having passed all of the tests is granted, with the
694 conditions that the driveway for Lot 4-142-10 be no more than 125' from the property corner
695 between Lot 4-142-10 and 4-142-9; also, that the driveway entrance for Lot 4-142-11 be no more
696 than 75' from the lot corner between Lot 4-142-11 and Lot 4-58-1; and that the houses built on
697 Lots 142-11, 142-12 and 142-13 be as close to the 25' front setback from Barrington Way as
698 possible, and as far away from the 50' buffer zone at the rear of these lots as possible.

699

700 **Charlie Vars moved to exit deliberations. Jamie Ramsay seconded.**

701 **Voting: 5-0-0; motion carried unanimously.**

702

703 Attorney Westgate asked for clarification regarding the last condition. Charlie Vars stated that
704 these three houses should be located as close as possible to the 25' setback from Barrington
705 Way. Jamie Ramsay stated that the intention is that the houses will be situated as far away from
706 the 50' buffer between the buyers who are contesting this and the applicant. Attorney Westgate
707 stated that, due to the triangular nature of the building envelopes, the houses will not be able to
708 be right up to the 25' setback. He asked if the normal dimensions for a house that can fit within
709 the building envelope but still be close to this setback is acceptable. Charlie Vars stated that he
710 recognizes this and that is why his condition asked for the houses to be as close as possible.

711

712 **REQUEST FOR REHEARING:**

713

714 **3. Request for rehearing,**

715 **CASE #: PZ17719-081123 – APPEAL OF ADMINISTRATIVE**

716 **DECISION - Sten Larson (Applicant); 14 Buckridge Drive, PIN #: 007-017-012** – Request
717 for relief from Article IV, Section 4.11 to appeal an administrative decision of the Office of
718 Community Development regarding their issuance of a building permit that may violate the
719 Zoning Ordinance. *Zoned Residential Rural.*

720 **AND**

721 **CASE #: PZ17765-082523 – APPEAL OF ADMINISTRATIVE DECISION - Hal Amadon**

722 **(Applicant); 33 Buckridge Drive, PIN #: 007-017-033** – Request for relief from Article IV,
723 Section 4.11 to appeal an administrative decision of the Office of Community Development
724 regarding their issuance of a building permit that may violate the Zoning Ordinance. *Zoned*
725 *Residential Rural.*

November 21, 2023

APPROVED

726

727 Jamie Ramsay read and opened the cases. Jamie Ramsay noted that the time is 10:30pm. He
728 asked if this can be adjudicated quickly or not. Doug Kirkwood stated that the Board only has to
729 vote on whether to grant a rehearing for these cases. If the Board does not want to decide this
730 now, it will need to hold a special meeting. Charlie Vars noted that he has not yet had time to
731 adequately review the information in the packet for these items, however, the Board has yet to
732 deny a rehearing in his number of years on the Board. Doug Kirkwood stated that he believes
733 one or two may have been denied. Jamie Ramsay stated that one of these was a request for
734 rehearing that the applicant did not show up to.

735

736 Danielle Pray explained that the Board has to vote on a rehearing based on if the request meets
737 the criteria. The criteria are if the Board originally made an error in its ruling, or if there was new
738 information that was not reasonably available at the time of the original ruling. The Board should
739 determine if a good reason was presented for this rehearing, and she does not believe there was
740 in this case.

741

742 Doug Kirkwood stated that the criteria do not ask if the Board made a mistake, or if the
743 Community Development Office made a mistake.

744

745 Danielle Pray stated that she will vote no on this.

746

747 Doug Kirkwood stated that there was a motion and a second that these items be reheard. Danielle
748 Pray asked who made the motion and Doug Kirkwood stated that she did. Danielle Pray denied
749 this.

750

751 **Danielle Pray moved to not grant these rehearings.**

752 **Jamie Ramsay asked what grounds the motion was made on. Danielle Pray stated**
753 **that it is made on the grounds that the Board did not make an error in decision, and**
754 **there was no information presented that was not reasonably available at the time of**
755 **the hearing.**

756

757 **Charlie Vars seconded.**

758

759 **Doug Kirkwood asked who seconded the motion. Jamie Ramsay stated that Charlie**
760 **Vars did. Doug Kirkwood again asked who seconded the motion. Charlie Vars**
761 **stated that he was not yet ready to second the motion.**

762

763 **Doug Kirkwood stated that the motion failed.**

764

765 Charlie Vars stated that he does not look forward to a rehearing on this item, but he also knows
766 full well that if the Board chooses not to do so, it will probably not be looked at well with the
767 court or the Land Use Board, if the applicants choose to move forward in that fashion, which he
768 suspects they will do.

769

TOWN OF AMHERST
Zoning Board of Adjustment

November 21, 2023

APPROVED

770 Danielle Pray stated that this is not the standard by which the Board should decide to grant a
771 rehearing or not. The standard is if the Board made a mistake with its previous decision or if new
772 information was presented that was not reasonably available originally.

773

774 Charlie Vars stated that he is trying to protect the Town to a certain extent. Danielle Pray stated
775 that this is not the standard. The Board only needs to look at the standard that is required for the
776 vote. Charlie Vars stated that he understood this, but also knew how the courts and Land Use
777 Board tend to rule.

778

779 Doug Kirkwood stated that the vote to deny based on these requirements failed.

780

781 Jamie Ramsay stated that he was confused. He asked who the applicant is. Danielle Pray
782 explained that the builder for these lots is requesting a rehearing, and the Board must vote based
783 on the items outlined in the Staff Report. Doug Kirkwood stated that this is also a case for the
784 applicant. There are two cases before the Board. Jamie Ramsay stated that these deal with two
785 lots for the same builder.

786

787 Jamie Ramsay stated that he does not have any recollection of discussing building permits at the
788 last meeting on these items. The current verbiage deals with the issuance of building permits that
789 may violate the zoning ordinance. There was no discussion of building permits during the last
790 meeting. At that meeting, the Board was discussing setbacks to wetlands. He asked to table these
791 items.

792

793 Danielle Pray noted that Tracy McInnis was not present for the original deliberations for these
794 items.

795

796 Nic Strong stated that, when someone submits a rehearing, the request for the rehearing is what
797 was posted for the application that they want to be reheard. Thus, the notice for these items is the
798 exact same thing that was on the agenda for the last meeting. During the previous discussion and
799 deliberations, it was determined that these items did not have to do with the building permit, but
800 this is still what was on the notice. The request for rehearing is copied from the original
801 statement because that is what the applicant is requesting a rehearing from. The Board must
802 decide to rehear the cases to bring these items to another meeting.

803

804 Jamie Ramsay stated that, on those grounds, he would vote to grant a rehearing. Danielle Pray
805 asked on what basis. Charlie Vars stated that the decision was made on the type of material in the
806 buffer, not as it relates to building permits. This will be an argument for the court at some point.
807 Danielle Pray stated that the Board did not decide on a building permit. The notice posted for
808 these requests does not deal with the standards that need to be met to grant a rehearing.

809

810 Jamie Ramsay stated that a rehearing would mean that the Board would hear the same two
811 applications, verbatim, as last month, and he is willing to do that. Danielle Pray asked on what
812 basis. She asked if the Board previously made an error in decision or if new information came to
813 light that was unavailable at the last meeting.

TOWN OF AMHERST
Zoning Board of Adjustment

November 21, 2023

APPROVED

814

815 Doug Kirkwood stated that other Board members are saying that the administrative decision of
816 the Office of Community Development regarding their issuance of a building permit may have
817 violated the zoning ordinance.

818

819 Tracy McInnis noted that she was not present for the original hearing for these items, but that
820 Tony Ortiz was. She asked to step down and let Tony Ortiz sit in her place. Tony Ortiz asked
821 how this would be reflected in the record. Doug Kirkwood stated that Tracy McInnis would be
822 listed as an abstention. Nic Strong noted that one abstains from a vote. Charlie Vars stated that
823 Tracy McInnis should not vote for these items.

824

825 *Tracy McInnis recused herself from these items. Tony Ortiz sat for Tracy McInnis.*

826

827 Tony Ortiz noted that he was not previously allowed to speak on these items and was not
828 allowed to have a vote on the motion. Nic Strong noted that the motion did not have a second.
829 Danielle Pray noted that, procedurally, she, or any other Board member, can bring a motion
830 again. Doug Kirkwood stated that any motion made must be accepted by the Chair.

831

832 Charlie Vars stated that he believes Scott Tenney, Building Inspector at the time, followed due
833 process in operating within his jurisdiction for these items. Danielle Pray stated that this is not
834 being discussed this evening. The Board only needs to vote on a rehearing based on a very
835 narrow focus.

836

837 **Danielle Pray moved to deny the rehearings for both cases for the same reason as**
838 **the first motion. Tony Ortiz seconded.**

839

840 **Discussion:**

841

842 **Jamie Ramsay voted to rehear the cases. Doug Kirkwood stated that the cases would**
843 **be reheard at the next meeting. Danielle Pray asked for a count of the vote and for**
844 **those against to explain why a rehearing should occur based on the standard.**

845

846 **Nic Strong asked what an abstention counts as, since there was a tie. Danielle Pray**
847 **stated that she believes the motion failed.**

848

849 **Voting: 2-2-1; motion failed [C. Vars abstaining.]**

850

851 Danielle Pray suggested checking with legal counsel regarding a tie vote with an abstention vote.
852 Nic Strong stated that the Board needed another motion, as the previous one failed.

853

854 **Jamie Ramsay moved to rehear the two cases. There was no second. Motion died on**
855 **the floor.**

856

TOWN OF AMHERST
Zoning Board of Adjustment

November 21, 2023

APPROVED

857 Danielle Pray suggested another meeting to discuss these items before its next scheduled
858 meeting, as it should be done within 30 days. Jamie Ramsay agreed.

859

860 In response to a question from Doug Kirkwood, Nic Strong stated that the 30-day window will
861 expire on December 15, 2023. The Board discussed a date for an extra meeting.

862

863 Charlie Vars asked what the discussion will be at the special meeting and how it will be different
864 from what just occurred. Danielle Pray suggested asking legal counsel for an opinion on these
865 items.

866

867 **Danielle Pray moved that the Board table CASE #: PZ17719-081123 and CASE #:**
868 **PZ17765-082523 to November 30, 2023, at 5pm, at Town Hall. Jamie Ramsay**
869 **seconded.**

870

871 **Discussion:**

872 **Charlie Vars asked if another meeting would change the deadlock vote. Danielle**
873 **Pray stated that it might not, but the Board needs to work out this item. Jamie**
874 **Ramsay stated that this allows him time to find one word to help this make sense.**
875 **Danielle Pray stated that the Board should not discuss other things that happened**
876 **during other meetings, but only the standards for rehearing. Nic Strong stated that**
877 **this will give the Board time to read the information sent to them by email the**
878 **previous Friday which was quite a big packet. Doug Kirkwood asked if this**
879 **required notification. Nic Strong stated that a request for rehearing did not require**
880 **notice.**

881

882 **Voting: 4-0-1; motion carried [C. Vars abstaining]**

883

884 **OTHER BUSINESS:**

885

886 **1. Minutes: September 19, 2023; and October 17, 2023**

887

888 The Board agreed to table discussion of the minutes to a future meeting.

889

890 **2. Any other business that may come before the Board**

891

892 **Danielle Pray moved to adjourn the meeting at 10:45pm. Charlie Vars seconded.**

893

894 **Voting: 5-0-0; motion carried unanimously.**

895 Respectfully submitted,

896 Kristan Patenaude