Town of Amherst
Zoning Board of Adjustment
Tuesday January 17, 2017

ATTENDEES: D. Kirkwood- Chair, R. Rowe- Vice-Chair, C. Vars, K. Shea, J. Ramsay, S. Giarrusso (Alt), R. Panasiti (Alt)

The Chair called the meeting to order at 7:05pm.

OLD BUSINESS:
CASE #: PZ8007-101416 – Variance Keith & Barbara Allen, 8 Milford Street, PIN #: 025-073-000 – Request for approval to construct a dwelling on the lot notwithstanding that the front, rear and side setbacks required by the ordinance cannot be met and that the building will exceed the floor area ratio. Zoned Residential Rural. Continued from December 20, 2016
Attorney Tom Quinn was present with the owner, Keith Allen, to present the case.
He explained how the old plan has been revised and pointed out the changes that have been made to the plan. Basically, it's been downsized. They had the property surveyed and the measurements were very close to what they thought they were.
Last time they discussed having a 20 ft. setback in the front to allow for snow storage. The new plan has a 25 ft. front setback. Now both parking spaces will be over the septic system. The septic design is not yet approved, but the designer doesn't anticipate any problems getting it approved. There will be no parking over the leach field.

In the new plan, they have narrowed the house and enlarged the setbacks as follows:

	Old plan	New plan
House size:	28x40	26x30
Front setback:	16 feet	25 feet
Side 1:	7 feet	8 feet
Side 2:	8 feet	9.5 feet
Square feet:	1760	1560
Floor ratio:	62%	55%

Attorney Quinn said that since this is a continuation of a hearing and not a new hearing, he may not go through his entire presentation again. The board discussed who was at the previous hearing to hear Attorney Quinn's statements and decided R. Panasiti would vote for K. Shea as he was not at the meeting when this case was first heard.

Attorney Quinn reviewed his previous statements from November 22nd describing the property. At the time, test pits had been done and since then, septic plans have been designed-though not approved yet. There are no issues with it being approved. The homes are all very close together.
The two regulations that the proposal can't meet are setbacks and floor area ratio.
Because of the zoning requirements that affect this area, it's impossible to build a home on this lot that meets the requirements.

Attorney Quinn briefly summarized his arguments for the tests.
1. Public interest and 2. Spirit and intent
Does it violate the ordinances?
Does it alter the character or threaten public health, safety and welfare?

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The purpose of the zoning ordinance is to promote the public health, safety and welfare. One way the ordinance does that is to group similar uses in common neighborhoods. They also impose size regulations. In the rural, residential zone, the requirement is 200 ft. of frontage, 2 acres and 25 and 50 ft. setbacks. Those aren't unreasonable for new residential subdivisions, but this is an existing subdivision adopted over 100 years ago. Many lots in this area can't meet those requirements. They are looking for relief, but aren't going to change the character of the neighborhood.
He gave examples of other lots in the area that don't meet the requirements.
Granting the variance will not threaten the health, safety or welfare of the public. The septic design will have to be approved and all regulations will be met.

3. Justice
Denying the variance will leave the property unbuildable leaving the property useless and significantly lowering its value. The harm to the applicant is not outweighed by any significant benefit to the public. The proposed use is completely consistent with the neighborhood as developed.

4. Value
The proposal is consistent with the neighborhood, will be built to code and will be new and attractive. It won't significantly add to the traffic. Property values will not suffer with the addition of this house.

5. Hardship
This is a unique area of town. There are tight lots and close dwellings. The requirements of the ordinance cannot be met. It's been non-conforming for a long time. In order to use the property, the variance is necessary, not just desired.
The ordinance groups similar uses together. They are proposing a use similar to others in the area. It is consistent with the goal of the ordinance of grouping similar properties together.
Special conditions – strict regulations would prevent any building on that property. Other permissible uses (farming/food stands) aren't feasible.

Questions from the board
R. Panasiti remembered that there was a neighbor concerned about the well distance and wanted to hear more about that issue.
Attorney Quinn said the wells are close together. DES determined a 75' well distance from the septic is not possible at this location and they understand this neighborhood already exists. In his experience, because one neighbor has a well, it does not mean another neighbor can't put in a well on their own property.

C. Vars said the septic is consistent with what he anticipated. He asked who owns the ice house drawn on the plan. The property owner.
The footprint is consistent with neighborhood. The septic at #74 is within 30 feet. On the old plan, the well was further away. That doesn't concern the ZBA, but DES may have an issue with it.
The owner said he is ok with flipping the locations to what they were if needed.

Public comment
None

C. Vars moved and R. Rowe seconded to un-table case PZ8007-101416
K. Shea moved and R. Rowe seconded to enter deliberations. All in favor
R. Rowe moved and J. Ramsay seconded no regional impact. All in favor

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Discussion
R. Rowe wanted to comment about the neighborhood. There are two neighborhoods in Amherst that are unique. Baboosic Lake is one of them. It was developed in the 19th century as a summer resort area and has turned into year-round housing. The lots are roughly 40 ft. x 60 ft. in size and none of the properties meet the setback and density standards. This use is not out of character with the size, setbacks and density of other homes in the neighborhood.

J. Ramsay agreed with that comment.
The owner has done his homework on this and the plan has come a long way.

CASE # PZ8007-101416 – Variance
1. The Variance will not be contrary to the public interest.
C. Vars yes footprint is consistent with other properties around it. Parking is adequate. Nothing contrary to public interest
J. Ramsay agree nothing that would be against the rights of the abutters
R. Rowe yes
R. Panasiti agree with C. Vars unique in character and consistent with neighborhood
D. Kirkwood floor area ratio is high, but probably not much different than surrounding properties
5 True

2. The Variance is consistent with the spirit and intent of the Ordinance.
R. Panasiti the spirit will be observed. Not unlike other properties there. Nothing else could go in there other than what is in that area. Granting the variance is in the spirit of the ordinance
C. Vars parking is consistent with being off the road and leaves a place to plow snow spirit is observed
J. Ramsay agree surprised the setback moved quite a bit- more than the minimum
R. Rowe yes
D. Kirkwood True
5 True

3. Substantial justice is done.
J. Ramsay yes the owner will be able to enjoy the property without infringing on the rights of abutters and no health, safety or welfare issues for the public
R. Rowe yes house needs variances, but consistent with most of the other properties in the area. Unjust not to allow it
R. Panasiti to deny it would make the lot unbuildable
C. Vars granting the variance is a benefit to the applicant and does nothing to threaten the health, safety and welfare of the public. Substantial justice is done.
D. Kirkwood True
5 True

4. The values of the surrounding properties will not be diminished.
R. Rowe this is a new house and will be a higher quality house than others in the area. Won't diminish- will probably enhance values
R. Panasiti agree new septic system too which is better than others in the area
C. Vars doesn't diminish surrounding property values. Consistent size- wise and with septic.
J. Ramsay agree will set a higher bar for the entire neighborhood
D. Kirkwood True
5 True

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5. Literal enforcement of the provisions of the Ordinance would result an unnecessary hardship.
R. Panasiti unless they approve a dome stadium on that property, whatever goes in there will be the same sized house as proposed. It is a reasonable use
C. Vars there is hardship to the owner if denied. There are size and slope constraints on the lot. Denying it wouldn't allow other uses.
J. Ramsay agree
R. Rowe agree
D. Kirkwood fundamental purpose of the zoning ordinance is to group similar uses in particular areas and granting the variance keeps that consistent here.
5 True

The chair stated that after having passed the tests, the variance is granted.

R. Panasiti moved and R. Rowe seconded to exit deliberations. All in favor

OTHER BUSINESS:
Minutes: December 20, 2016
Line 84: 'facing away from the house'
S. Giarrusso moved and J. Ramsay seconded to approve the minutes of December 20th as amended. All in favor with J. Ramsay abstaining

R. Panasiti mentioned there are zoning changes on the warrant article about the IIHO regarding density to clarify that all parts fall under the regulations.
K. Shea asked if the planning board is addressing the Northern Transition Zone this year.
Language was drafted, but the topic is not being dealt with until next year.

D. Kirkwood talked to Town Counsel and he's working on his response to the filing of the LaBelle appeal.

J. Ramsay mentioned some ZBA members are up for renewal.
J. Ramsay will run for reelection. C. Vars will probably run for reelection.

C. Vars moved to adjourn at 8:00pm. R. Rowe seconded. All in favor

Respectfully submitted,
Jessica Marchant

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