

**Town of Amherst
Zoning Board of Adjustment
Tuesday August 15, 2017**

ATTENDEES: D. Kirkwood- Chair, C. Vars, K. Shea- Vice Chair, J. Ramsay, R. Panasiti (Alt), Staff G. Leedy

The Chair called the meeting to order at 7:12pm, explained the ZBA process and introduced the board members. He stated that R. Panasiti will be voting for R. Rowe tonight.

NEW BUSINESS:

CASE #: PZ8768-061917 – Variance 114 NH 101A SPE, LLC (Owner) & Wrist Pin Realty, LLC (Applicant), 114 NH Route 101A, PIN #: 002-042-002 – Request for a Variance to Article IV, Section 4.7, Paragraph A to use a portion of the premises for manufacturing, motorcycle repair, and office use which are not permitted uses. Zoned Commercial. Tabled from July 18, 2017.

K. Shea moved to re-open the case. J. Ramsay seconded. All in favor

Attorney Morgan Hollis is representing the owner and the applicant who are both here.

This is the former site of the spa and kayak center which had a fire and burned. It is .96 acres. They are asking for four variances. One is a use variance. He will address the use variance first, and then add additional information regarding the other three variances.

J. Ramsay read the other three cases into the record at this time.

CASE #: PZ8781-062117 – Variance 114 NH 101A SPE, LLC (Owner) & Wrist Pin Realty, LLC (Applicant), 114 NH Route 101A, PIN #: 002-042-002 – Request for a Variance to Article IV, Section 4.7, Paragraph C.1 to construct a new building within 88 feet of the ROW of Route 101A when a 100 foot setback is required. Zoned Commercial. Tabled from July 18, 2017.

CASE #: PZ8782-062117 – Variance 114 NH 101A SPE, LLC (Owner) & Wrist Pin Realty, LLC (Applicant), 114 NH Route 101A, PIN #: 002-042-002 – Request for a Variance to Article IV, Section 4.7, Paragraph C.4 to construct parking areas within 35 feet of the edge of the ROW when a 50 foot setback is required. Zoned Commercial. Tabled from July 18, 2017.

CASE #: PZ8890-072117 – Variance 114 NH 101A SPE, LLC (Owner) & Wrist Pin Realty, LLC (Applicant), 114 NH Route 101A, PIN #: 002-042-002 – Request for a Variance to Article IV, Section 4.7, Paragraph C.9 to have a building to land floor ratio of 31% where 25% is the maximum allowed. Zoned Commercial.

K. Shea moved to un-table these three cases. R. Panasiti seconded. All in favor

Attorney Hollis continued his presentation.

Since the original lot was subdivided, it has become smaller- less than the minimum lot size. It is grandfathered in, but when they widened the road, the lot size was decreased. A lot of changes have occurred on that road in that area since the road was widened. There are mostly larger retail and commercial uses except for the neighboring property which is Hendrix.

They are proposing a new building in almost the same location that the old building was in. The difference is it will be slightly larger. They are proposing a mixed use building. The applicant debated

doing a full retail business, but it's not feasible to compete with online sales. Mixed use makes more sense.

The applicant currently owns a business in Nashua. Images of the current business were handed out and described. They need manufacturing space due to a new type of bike they will build that has three wheels and is made for handicapped use. The back wheels tilt to move like a motorcycle rather than a tricycle. They will continue to need some retail and repair space to continue the rest of the business.

Attorney Hollis addressed the tests.

Public interest:

The proposed use will not alter the character of the surrounding properties or immediate district. The new building will look like the designs shown. There will be retail uses on the first floor in the front. Light assembly of manufacturing and repairs in the rear and offices upstairs.

The building will appear like the neighboring Hendrix building. Manufacturing and repair shop will also be included along with some sales.

It will not threaten public health, safety or welfare. There will be no outside storage of motorcycles. The Planning Board will review the plan as well and give feedback.

With regard to the spirit of the ordinance, the building will maintain the character of this neighborhood by looking like a retail store. There are minor encroachment issues that deal with the size of the building which he will discuss later. Not proposing uses that will adversely affect the character and use of other adjacent properties.

Substantial justice will be done if you grant the ordinance. This will allow for the rebuilding of the demolished structure in almost the same footprint and in the character of the neighborhood. It will be a reasonable use for the property. If you grant the variance there will be no harm to the public, but if denied, there will be substantial harm to the property owner.

There will be no diminution of value to surrounding properties. An independent appraisal was done and the report was handed out. No abutters will notice a difference due to sightlines and landscaping.

Attorney Hollis read from the appraiser's letter as follows:

No abutters will notice any difference, as natural buffers offer both horizontal and vertical protection on the same side of the street, and visibility from across the street is limited. Abutter Hendrix Wire to the east is set further back from the road, with a warehouse in the rear of its site. There will be some visibility between Subject and Hendrix; but Hendrix is set back further from the road and the eastern border between the two lots is professionally landscaped with bark mulch and evergreen plantings. Abutting on the west side is an antique store which is set closer to the road than the Subject's prior building footprint. There is no visibility between the antique shop and the Subject, as there is a tree barrier separating the lots, and there is no visibility from the abutting property to the north as the rear of the Subject has trees, grass, and dense woods. Across NH Route 101A, set farthest away from the road is a big box store (i.e. Sports Authority), with a smaller gray building (i.e. Anytime Fitness) in front of it on the west side of the parking lot. This latter building, while closer to the road with visibility to the Subject, has an entrance facing east and not facing the Subject.

Subject site is big enough to accommodate proposed building plans. Resulting building and parking setbacks would be almost even with the antique shop next door and floor area ratio is only slightly greater than permitted leaving sufficient area for driveways, parking and office space. Subject plans call for retail fronting the roadway, which is consistent with other uses in the neighborhood. In my opinion, granting the variance requested to allow building and parking setbacks, as well as mixed used

development, including some manufacturing, motorcycle repair and offices, will NOT have a negative effect on the real estate values of the abutters or the neighborhood in general.

Hardship: This is a unique parcel- one of the smallest lots in the area. There's been a fire and demolition of the building. New construction is needed rather than being able to use a preexisting structure- which will cost more. There is no fair and substantial relationship to require that this site should be limited to commercial use as long as the mixed use is reasonable. We believe the mixed use is reasonable and they should not have to be limited to retail.

He addressed the other three variances.

Building setback/ 100 feet from the road: They are asking for 88 feet from the road. The road was widened so there isn't a lot of flexibility on that site.

Parking: should be 50' from the road. We don't have that. We want to put it where the existing lot was.

Ratio 25% floor area to lot size: They are over that by about 7000 sq. ft. or 6%. The applicant looked at reducing the building size, but it's not financially feasible because the lot is so small. They are looking for a small increase of ratio.

Attorney Hollis touched on the tests as follows for the remaining variances:

None of these are contrary to public interest. The roadway and visibility will be the same as the old building. There is no threat to the public.

The spirit of the ordinance will be maintained. They are keeping the building where the old one was.

This won't alter the neighborhood or public health, safety or welfare.

Substantial justice will be done. You will allow a building lot to be rebuilt and reused in the same footprint. There is no harm to the public as proposed. If the application is denied and the owner has to replicate the old building, it will harm the applicant.

It will not adversely affect property values. The letter from Chet Rodgers addressed property values.

Hardship: the uniqueness is the size and that the building was lost to a fire. There's no fair and substantial relationship between those ordinances and the enforcement on this property given the building needs to be replaced on that site.

Ken Clinton from Meridian created the plan and is here to answer questions as is the applicant.

K. Shea asked how much of the business is manufacturing verses assembly.

Steve Young, owner, answered. 20 percent of the building is manufacturing. It is modification of parts because they do restoration. It is also for the development of the three-wheeled bike. Eventually the manufacturing will outgrow this space and it will become retail only with manufacturing elsewhere.

K. Shea asked about trucks coming in and out. There will be very little. UPS comes in and out for deliveries.

R. Panasiti asked if they perform dyno tuning? He was concerned about noise pollution.

They don't do that.

J. Ramsay asked if their parking needs are increasing from their current location.

The front of the store will be retail which they will rent out. The motorcycle customers rarely come in and not in the winter. There are 45 spaces on the plan. They have two employees now. But there will be rented retail space.

D. Kirkwood asked if there will be machine oil waste. They recycle the metal. They use water soluble products. The water evaporates and the oil stays in the machine. The excess oil gets picked up and taken off-site. Gordon previously suggested putting a membrane in which will be discussed in the planning stages. They don't do much with oil and do not paint.

C. Vars said the plan says the open space will be open to the roof. There will be one lift. That square footage is not counted in the total. If you did count the 15 or 20 feet that was taken by the road, if it was still there, what percent would be buildable? He is unsure of increased percentage of floor area ratio as a hardship, so he is trying to gather information about that.

Attorney Hollis said the applicant weighed the option of asking for the variance or reducing the building size and that would mean taking away the second floor which won't give a profitable return on investment.

C. Vars discussed the old property and mentioned there were other levels in portions of the building.

Ken Clinton said he was unaware there were additional floors to the original building. This plan may actually be more conforming than the previous building.

D. Kirkwood asked Attorney Hollis to addressed hardship again.

He said, for use: it's a unique property because it's smaller than most in the area. Also there was a fire. Normally under the code, you can replace buildings as designed, but it's not economical to replace it as it was. You need a new building and if you meet the codes, it will be too small and being set back won't generate the traffic to be economical.

He addressed the second part of hardship. Does enforcement of the ordinance bear fair and substantial relationship to the purpose of the use? What is the purpose of the use? You want to have retail/commercial. You want similar uses in the area. You don't have to apply a restricted use as long as there is a reasonable substitute use. It doesn't have to be commercial because it's in a commercial zone if another use is reasonable.

D. Kirkwood asked what the old square footage was. They did not know precisely, but Ken crunched some numbers and estimated the old building with storage and the second floor was about 15,840 sq. ft.

The new plan with one floor and a ½ floor is 11,880 sq. ft. It's a net reduction. He estimated the storage was 1/3 and the second floor was 1/3 so it is probably about the same size. Charlie agreed it's probably about the same if not slightly smaller.

No public comment

CASE #: PZ8889-072117 – Variance Arboleda Realty LLC (Applicant), 345 Route 101, PIN #: 008-057-000 – Request for a Variance to Article III, Section 3.2, Paragraph A & B and Article IV, Section 4.3, Paragraph A to expand a non-conforming use as a distillery and function hall/event center on approximately 13 acres to be acquired from a neighbor (part of Map 8, Lot 57) and consolidated with Applicant's Lot 57.

191
192 Attorney Morgan Hollis is representing the applicant and the owners.
193 The property is two parcels of land. Lot 8-57 currently includes parking and the winery and lot 8-58 is
194 Camp Young Judea.
195 The proposal is for the winery to acquire a small piece of the camp land and consolidate it creating a
196 new lot 8-57. On that land, the winery would expand its business. They will add pavement for parking
197 and new buildings including a smaller event center for up to 150 people and a distillery with a tasting
198 room. There will be open space as well. They need permission for expansion of the non-conforming use
199 and a use that is not permitted in the zone which is rural residential.
200 They have an agreement with the camp and the railroad to try to acquire this land. There is a railroad
201 right-of-way on this portion of land so the camp can never use it. There is also has a brook on this land.
202 Attorney Hollis described the lots and the plan on the maps.
203
204 The original proposal the board heard for the plan across the street was for a 24- room inn, an office,
205 distillery, event center and some retail. Those approvals of variances are in appeals and that case hasn't
206 been heard yet. If the applicant is able to move forward with this new proposal, the plan across the
207 street will be reduced.
208
209 The applicant is seeking a variance for expanding the non-conforming use. The proposed event center is
210 smaller than the one they currently have and will be used for functions that don't need the larger space.
211 In this proposal, all events will be on one side of the road with one entrance off Rt. 101. NHDOT is in
212 charge of that road.
213
214 Attorney Hollis addressed the tests.
215 The use will not be contrary. The character of the neighborhood is rural and residential. The winery was
216 granted by variance. The growing fields are part of that. The neighborhood is the sledding field, the
217 camp and the kennel facility which has many activities on the weekends.
218
219 Ken Clinton from Meridian spoke about the distances from the proposed building. From the Bedford
220 Town line, it's in excess of 850ft. From lot 008-126, the closest abutter, there's 1,340ft.
221 Meridian has looked at this site for building, parking, septic and drainage and have pre-designed it to be
222 a working plan. He described the upland and possible gazebo site. He explained the activities of the
223 camp are almost exclusively to the south of these lots.
224
225 D. Kirkwood confirmed with Ken there are two leach fields, and they are more than 100 feet north of the
226 brook. The site could support more gallons per day. They will probably use 2/3 of the capacity.
227
228 C. Vars asked if these are 2-foot contours? Yes. And this land looks more level than some that's already
229 been developed there.
230
231 D. Kirkwood asked if they've talked to DOT about their plans for widening the road.
232 Only when they discussed the project proposed for the other side of the street. They didn't have issues
233 with the previous plan and this would be a reduction/ dispersion of that same traffic.
234
235 Attorney Hollis continued. Use will not be contrary to the public interest. It won't alter the character of
236 the zone. The zone is rural residential. This will allow for open space use and nearly identical use for the
237 winery under this plan. It will allow for reasonable expansion of the use which the ZBA found was
238 reasonable for that area. The proposal is not contrary to the public interest because it keeps those uses

on one side of the road under one ownership control. It does not threaten health, safety or welfare. DOT will review any road issues. Additional parking lots will make certain there is no parking on Rte. 101.

Water impact: He asked the consultant Stone Hill Environmental to look at this site and update his previous assessment made for the other location. When doing his first analysis, he noted the best water source is by that brook near the new location. He submitted a letter with his opinions and Attorney Hollis distributed to the board. The page five highlighted areas were read into the record as follows:

Due to the reduced size of the proposed development and the new location at the bottom of the local drainage area adjacent to Baboosic Brook, the possibility of the development impacting any vicinity water supply wells is even more remote than the previously proposed development to the north across NH Route 101.

Based upon the location of the Site downgradient within the watershed and near Baboosic Brook, the withdrawal of an average 3,100 gpd of groundwater from a new on-site water supply well is unlikely to result in a reduction of groundwater availability in the bedrock at the properties surrounding the Site. Furthermore, based upon daily water use records maintained at the existing LaBelle facility, it is likely that the average daily water use at the proposed facility will be significantly below the 3,100 gpd water usage derived from NHDES septic system design flow tables.

The water quality in the overburden and bedrock underlying the Site is unlikely to be measurably impacted by the development due to incidental contaminants potentially found in runoff or inadvertently discharged to septic systems associated with light commercial operations such as the proposed LaBelle facility.

In conclusion, based upon the information obtained by and provided to StoneHill, it is our professional opinion the development of the proposed reduced facility on the 13 acre Parcel A will not result in harm to public health, safety or welfare.

The spirit of the ordinance is observed.

The proposal will not alter the character of the neighborhood in a material way. A great deal of open space will remain and improvements will be immediately adjacent to other existing improvements. Health, safety and welfare will not be jeopardized. This was found to be true of the winery some time ago and this is an expansion of that. It's a use you've seen reports on- it's just a different location than discussed before.

Values: look at surrounding properties, distances and buffers. An independent appraiser looked at this proposal and submitted a report. He read a portion of the report into the record as follows:

In my opinion, there would be no diminution of value to any abutting properties by the development of the proposed mixed-use development.

Some of the direct abutting uses to the subject are commercially or recreationally oriented. All abutting single family residences have substantial vacant land buffering this proposed development on the 13 acre parcel to the purchased. The only direct abutters to the 13-acre parcel to be developed would be additional land owned by the camp that is mostly undeveloped, Camp Young Judaea itself (across Camp Road) and the town sledding hill. None of these parcels would be impacted by this development with substantial buffering also provided.

The use that is proposed would be compatible with abutting uses and, in my opinion, would not diminish the values of any surrounding properties and any increased traffic generated by the property would be located along the already busy Route 101.

Attorney Hollis handed out an aerial map that shows the topography.

Substantial justice will be done. Granting the variance will allow fair and reasonable use of this detached portion of the camp. Old Baboosic Brook way still remains on the property. Because of the brook and the railroad right-of-way there is even larger separation between the camp and the winery. If not granted, there would be substantial harm to the camp since they will continue to have property with limited, if any access. No harm to the public. This will be isolated by distance and buffers.

Hardship: special conditions:

Baboosic brook separates this area from the rest of the camp. The railroad goes right through it. Is there access off camp road? There is a water way which would be tough to pass. This part of the camp property is unique. It is separated by a legal fee claim and by natural boundaries.

Requiring rural residential on a small piece of land that has to be accessed through a commercial lot is not reasonable. There is no fair and substantial relationship between the purpose of the ordinance in maintaining rural residential and its enforcement on this parcel.

Is the proposed use reasonable? Yes. Not proposing any additional access point. It stops at a naturally defined line.

D. Kirkwood asked about the size of the wetlands there.

Ken Clinton said there are wetlands associated with Baboosic Brook. He described the wetlands on the map. The edge of the wetlands mirrors the proposed edge of the added acreage. They will map further as part of the planning process. We will be able to comply with all setbacks and buffers. Ballpark guess is about 20 acres out of the remaining 53 acres of that camp lot are wet.

D. Kirkwood asked what if the appeal at Superior Court goes through and you have two plans?

Attorney Hollis said there is an agreement with the neighbors in the Winterberry area, that the applicant will move forward with this new plan primarily and continue the appeal at court until this one is approved or denied by the ZBA and Planning Board. There is no written agreement at this point, but the understanding is whatever part of the plan is approved on this side of the road will be removed from the other side of the road.

Public comment:

1.Tania Berk- 27 Twin Brook Ln Bedford/ President of the Mill Pond home owner's association

She mentioned that she was the only one in her neighborhood that was notified of the meeting and that many of her neighbors are out of town on vacation and couldn't be here tonight to express their concerns about the proposed project. She read a prepared statement as follows:

We are kindly requesting a delay of vote today so that those of us just notified or on vacation have time to fully research and discuss the variance with our attorney.

LaBelle is asking for a variance because one was already granted to them, and they want to expand the *commercial* side of the winery which does not fall in line with Amherst's quaint and rural setting. The Winery can already hold 230 guests. They want to build a new banquet space and parking to hold significantly more people. 101 will be impacted by this growth.

They claim the hardship of the land is what makes the variance required, but it is buildable. It could also be sold to conservation. I am completely unaware of any efforts to offer the land for sale to be used for its current ordinance. I believe that they have not proven the hardship without trying to first offer the land up for its rightful use first. The camp has many dwellings on the land and if those 13 acres are buildable for LaBelle then I would think someone else could build on it to.

They claim there is no negative impact to our home values but Twin Brook lane and all of its residences were not listed in the ZBA report. It was noted there was an appraisal report submitted as an addendum, but a copy was not sent to me with the other paperwork I requested from the Town of

335 Amherst. We request that addendum and time to speak to local Realtors and Real Estate attorneys to do
 336 a full discovery of the impact.

337 They claim no harm or adverse impact to the public. We have not been given ample time to research
 338 this, but we do believe that there is enough cause to be concerned with the quantity of deadly,
 339 flammable chemicals, the potential for drunk drivers, the sound impact to our Association late at night
 340 and very early morning, the potential smells from the distillery and cooking, and the potential for
 341 contamination of our water supply.

342 Twin Brook Lane has been used many times for extra parking for events (even being directed to use it by
 343 Amherst police on duty) which means our quiet cul-de-sac street our kids walk and ride bikes on is now
 344 impacted by strangers both driving and walking in our neighborhood (possibly drunk or tipsy at the
 345 time). This is NOT okay with us.

346 There is also abundant wildlife in the area including bears, owls, bobcats, wolves, deer, and turkey who's
 347 habitat could be impacted and drive them closer to the residents that reside around the park-like land.
 348

349 **If the variance is granted this evening our Association would like to request the following:**

350 We would like a restrictive covenant put on the land between LaBelle Winery and all the surrounding
 351 homes that states none of the trees that are currently a barrier between the winery and our homes are
 352 to be cut.

353 We request that there be a limit to the amount of spirits that can be manufactured. We are not okay
 354 with being told it is a tiny operation for in house use only and then them doubling production every
 355 year. We would like to see the planned manufacturing schedule and have a limit put on the production.
 356 They currently offer fireworks with their wedding packages. We ask that since the current winery hours
 357 are until 9PM or before, that all events held at the banquet facility are kept within the current listed and
 358 approved operating hours.

359 Twin Brook Lane can no longer be used for overflow parking for any events. It is not safe for us or
 360 pedestrians walking along 101.
 361

362 She also added that she has concerns about the noise and wonders how that will be controlled.
 363

364 D. Kirkwood stated these are all good points she made and will be addressed by the Planning Board if
 365 the application is approved by the Zoning Board
 366

367 2. Dawn Doucet- 37 Proctor Rd Bedford

368 She said she loves her neighborhood, but it has already been affected by the winery.

369 She is concerned that if the land where they might put the gazebo is changed to commercial zoning, that
 370 the applicant will drop their case at the courts and put the proposed hotel etc. on that 13- acre parcel
 371 being discussed tonight. That spot is only 400 ft. from their neighborhood. They can now hear traffic
 372 noise due to a section of trees being cut down on the camp property. She countered that the land is
 373 used by the camp. Kids camp there in tents and have fires.

374 She asked for the hours of operations for the distillery, what the trucking hours will be, if the winery will
 375 have its own fire pond and if there will be blasting.
 376

377 3. Robin Davis- 3 Twin Brook Ln Bedford

378 She stated the Amherst police direct traffic off Rt. 101, but they go onto Twin Brook Ln which is a
 379 residential cul-de-sac to park. She said the residents of that neighborhood own and maintain two fire
 380 ponds. She doesn't want people parking in front of them and she doesn't want the fire ponds
 381 compromised. She wondered what the new building would use for a fire pond. Regarding conservation,

382 Twin Brook is the highest ranked wetland in Bedford. She also hears the trash dumpster pick up in the
383 mornings and the bottles going into the dumpsters.
384

385 D. Kirkwood stated that in the Planning Board stage of the project, the Fire Department will need to
386 approve the plans.
387

388 4. Vinny Silvestri - 41 Proctor Rd Amherst
389 He is concerned about the distance from his house to the proposed edge of the new lot. The 'wedding
390 nook' is about 400 feet from his house. How are they getting there- has to be over the brook or from
391 Camp Rd.
392 He is concerned about noise. They already hear 101 and now there will be more clearing between. Camp
393 Young Judea has already cleared 100 feet around the edge of their property. This is supposed to be
394 residential- not commercial.
395 Concerned about fire due to dead brush, fireworks and smokers. How will they put the fires out if there
396 is no access for a fire truck?
397 Turning this land to commercial land is impacting the area.
398

399 Tania Berk- 27 Twin Brook Ln Bedford reiterated that she is asking for another 30 days delay for more
400 research and for other neighbors to be able to be in attendance.
401

402 Attorney Hollis gave some rebuttal statements.
403 He again explained many of these valid concerns mentioned will be addressed by the Planning Board.
404

405 Statement: 101 will be affected by this growth.
406 A study was done on this for the previous proposal. The analysis revealed there is more than adequate
407 capacity for this project.
408 The driveway safety will be addressed at the Planning Board stage and by the NHDOT. 101 will be
409 impacted as every house/building does. Will it be adversely impacted? That's determined by the five
410 tests.
411

412 Could this land be built on by others? He previously tried to make it clear why this portion of land is
413 unique- you can't get there straight off Camp Rd. You can't put homes there because you'd have to get
414 there through LaBelle's property.
415 Odors and noise were addressed in the last variance request. Reports were submitted attesting there
416 would be no impact. A noise study was done to a neighborhood approximately the same distance as this
417 neighborhood with concerns and the noise didn't rise to the level of noise annoyance decibel.
418 If there is a fireworks issue, it needs to be taken up at the Planning Board stage and concerns can be
419 addressed to the applicant/owner directly in the meantime.
420

421 A hotel will not go in that added area. There is no plan for any commercial use in that section of land
422 over the brook.
423

424 Parking: applicant was not aware of the parking issues on the side streets. The sledding hill is an issue for
425 parking for LaBelle as well. The new parking area should handle that. Parking should be discussed at the
426 Planning Board. LaBelle is willing to meet with their engineer and neighborhood representatives to go
427 over the proposal.
428

429 Fire: there are cisterns on the property and it will be addressed at the Planning Board level.

430
 431 Public comment continued
 432 5. Cathy Silvestri- 41 Proctor Rd Amherst
 433 She asked why they want to buy the land on the other side of the brook. She is concerned about what
 434 will go there.
 435
 436 Amy LaBelle- Owner of LaBelle Winery-109 Mack Hill Rd
 437 She wants to buy that land because it's pretty land and she wants to keep it in the natural state. Possibly
 438 use it as a wedding site.
 439
 440 Dawn Doucet- 37 Proctor Rd Bedford
 441 She does not agree that that portion of land is pretty.
 442
 443 J. Ramsay asked Gordon if all the abutters were notified. Yes
 444
 445 The Public Hearing was closed.
 446
 447 **K. Shea moved and J. Ramsay seconded to enter deliberations. All in favor**
 448 **K. Shea moved and J. Ramsay seconded no regional impact. All in favor**
 449 Discussion
 450 R. Panasiti mentioned the square footage of the lot. C. Vars wondered if it is fair to a new owner to hold
 451 them to the square footage the lot had before the lot was reduced by the road expansion.
 452 D. Kirkwood said the other part of that is if the square footage of the new building is very close to the
 453 old building, then you have a good argument for an extension of a preexisting non- conforming use. You
 454 can go by the restrictions from when that property was developed. We're dealing with a change of use-
 455 which is different. Because of the change of use, the grandfathering is gone.
 456 The road has forced an encroachment on the setback. But they can't take that into account because it is
 457 a new building.
 458
 459 **CASE #: PZ8768-061917 - Variance - Use**
 460 1. The Variance will not be contrary to the public interest.
 461 K. Shea yes these are permitted uses. There's no threat to health, safety or welfare with the way they've
 462 designated uses. Mostly retail.
 463 R. Panasiti yes agree building is similar to other buildings in the area
 464 C. Vars yes there's manufacturing next door and office across the street. Legitimate to ask for office
 465 space within the use. Not threatening any public health, safety or welfare
 466 J. Ramsay agree
 467 D. Kirkwood true
 468 5 True
 469
 470 2. The Variance is consistent with the spirit and intent of the Ordinance.
 471 R. Panasiti yes slightly larger percentage but it maintains the same character as the original and there's
 472 ample parking
 473 C. Vars agree and not changing character of neighborhood
 474 J. Ramsay agree
 475 K. Shea agree won't change character of neighborhood and similar to other uses
 476 D. Kirkwood true
 477 5 True

478
 479 3. Substantial justice is done.
 480 C. Vars yes similar to what was there other than the product. There are uses that surround it that are
 481 similar
 482 J. Ramsay agree- proposed use is similar to what surrounds it. Small manufacturing, but there's others in
 483 the area. Mainly retail with small fabrication
 484 K. Shea yes opportunity to rebuild the site to similar use
 485 R. Panasiti yes
 486 D. Kirkwood true
 487 5 True
 488
 489 4. The values of the surrounding properties will not be diminished.
 490 J. Ramsay yes not causing negative impact on surrounding properties
 491 K. Shea yes building design does not show the use any different than what's permitted
 492 R. Panasiti yes
 493 C. Vars similar to surrounding properties and further back from the road
 494 D. Kirkwood true
 495 5 True
 496
 497 5. Literal enforcement of the provisions of the Ordinance would result an unnecessary hardship.
 498 K. Shea site is small. They want to rebuild which is a help to the town
 499 R. Panasiti true due to lot size
 500 C. Vars unique property true
 501 J. Ramsay agree non-conforming- almost unique for that area
 502 D. Kirkwood having issue with hardship. The use is a reasonable one. Economic conditions of that area-
 503 it's not a clear-cut hardship. Use is low volume and not much noise pollution. Portion of the building will
 504 be devoted to restoration and assembly that takes up space. They will have to start the engines at some
 505 point, but inside. If we make them do what was there before, that's not going to work. The use is a
 506 reasonable one so true
 507 5 True
 508 The chair stated that after having passed the tests, the variance is granted.
 509
 510 **CASE #: PZ8782-062117 – Variance-Parking**
 511 1. The Variance will not be contrary to the public interest.
 512 J. Ramsay yes comfortable with the argument
 513 C. Vars yes and basically where parking already was. Doesn't threaten public health, safety or welfare
 514 R. Panasiti small amount of space and there's landscaping there
 515 K. Shea true
 516 D. Kirkwood true
 517 5 True
 518
 519 2. The Variance is consistent with the spirit and intent of the Ordinance.
 520 C. Vars yes encroachment still leaves the site basically the way it was before
 521 R. Panasiti true- won't be noticeable
 522 K. Shea agree similar to neighbors
 523 J. Ramsay agree no adverse impact to abutters
 524 D. Kirkwood will be hard to tell a difference true
 525 5 True

526 3. Substantial justice is done.
 527 R. Panasiti not a big impact. Justice will be done
 528 K. Shea parking and driving with no issues
 529 J. Ramsay no adverse impact
 530 C. Vars yes
 531 D. Kirkwood true
 532 5 True
 533
 534 4. The values of the surrounding properties will not be diminished.
 535 K. Shea yes surrounding properties are similar. Reduction in parking would have adverse effect to
 536 neighborhood by parking in undesired areas
 537 J. Ramsay true
 538 C. Vars true
 539 R. Panasiti true
 540 D. Kirkwood true
 541 5 True
 542
 543 5. Literal enforcement of the provisions of the Ordinance would result an unnecessary hardship.
 544 J. Ramsay comfortable with the hardship argument. To comply with setback for parking it would require
 545 a reduction to what is there now for parking
 546 C. Vars agree
 547 R. Panasiti agree
 548 K. Shea agree
 549 D. Kirkwood change in width of state road was involuntary reduction to that space
 550 5 True
 551
 552 The chair stated that after having passed the tests, the variance is granted.
 553
 554 **CASE #: PZ8781-062117 – Variance-new building**
 555 1. The Variance will not be contrary to the public interest.
 556 R. Panasiti yes staying with the original foot print as much as possible. Not contrary
 557 C. Vars agree if it hadn't been for the taking by the state, it would have been 103 feet. No conflict with
 558 the ordinance
 559 J. Ramsay agree proposal will not be substantially different than what was there other than a new
 560 building. Surrounding sites will be mostly unchanged
 561 K. Shea no threat to public health, safety or welfare
 562 D. Kirkwood true
 563 5 True
 564
 565 2. The Variance is consistent with the spirit and intent of the Ordinance.
 566 C. Vars yes for same reason as before. In fact some of the old greenhouses were closer
 567 J. Ramsay agree
 568 K. Shea agree
 569 R. Panasiti agree and there's landscaping
 570 D. Kirkwood true
 571 5 True
 572
 573

574 3. Substantial justice is done.
 575 J. Ramsay yes allows development of this property with no issues
 576 K. Shea yes opportunity to rebuild the site. Substantial justice is done. Minor deviations to the original
 577 R. Panasiti yes
 578 D. Kirkwood true
 579 5 True
 580
 581 4. The values of the surrounding properties will not be diminished.
 582 K. Shea yes various properties in the area are closer to the setback
 583 R. Panasiti agree
 584 C. Vars agree other than the design; it's in the same place as the old building- won't affect values
 585 J. Ramsay agree
 586 D. Kirkwood true
 587 5 True
 588
 589 5. Literal enforcement of the provisions of the Ordinance would result an unnecessary hardship.
 590 R. Panasiti yes
 591 C. Vars agree infeasible and substantial reduction in value for someone to have a smaller site
 592 J. Ramsay being built approximately where the old building was. Hardship on this property for every
 593 owner moving forward
 594 K. Shea you have to significantly reduce the size of the building to conform
 595 D. Kirkwood true
 596 5 True
 597
 598 The chair stated that after having passed the tests, the variance is granted.
 599
 600 **CASE #: PZ8890-072117 – Variance-ratio**
 601 1. The Variance will not be contrary to the public interest.
 602 C. Vars yes property is small not sure there is a size difference between the proposed building and the
 603 previous building
 604 R. Panasiti not contrary to public interest based on the information received
 605 K. Shea agree
 606 J. Ramsay comfortable that there isn't a significant difference between the two building sizes
 607 D. Kirkwood true when looking at the estimate of what the old square footage was
 608 5 True
 609
 610 2. The Variance is consistent with the spirit and intent of the Ordinance.
 611 J. Ramsay yes the proposal does not impact surrounding properties. Spirit is observed
 612 K. Shea true
 613 R. Panasiti small increase isn't out of character
 614 C. Vars only difference is this is square building where there were jogs
 615 D. Kirkwood true
 616 5 True
 617
 618 3. Substantial justice is done.
 619 K. Shea yes opportunity to rebuild. Not too far off from what was there
 620 R. Panasiti agree
 621 C. Vars agree no adverse impact to the public

622 J. Ramsay this is a reasonable use
 623 D. Kirkwood true
 624 5 True
 625
 626 4. The values of the surrounding properties will not be diminished.
 627 R. Panasiti true no new impact
 628 C. Vars the building will look different – that’s all
 629 J. Ramsay agree
 630 K. Shea 6% increase won’t be noticeable
 631 D. Kirkwood the new building will be more compatible with surrounding area
 632 5 True
 633
 634 5. Literal enforcement of the provisions of the Ordinance would result an unnecessary hardship.
 635 C. Vars applicant’s counsel has distinguished it from surrounding areas that it’s not feasible to keep it
 636 the way it was.
 637 J. Ramsay agree the proposed use is reasonable. The issue was the widening of 101A. If this lot hadn’t
 638 been taken, this wouldn’t have been an issue. This hardship will never go away
 639 K. Shea yes the property was average or large, but now it’s a small lot in a big box world which is the
 640 hardship
 641 R. Panasiti agree this hardship will never go away
 642 D. Kirkwood true unknown floor area of the old building – it might have been similar to the proposal
 643 5 True
 644
 645 The chair stated that after having passed the tests, the variance is granted.
 646
 647 **CASE #: PZ8889-072117 – Variance**
 648 R. Panasiti moved no regional impact. K. Shea seconded.
 649 Discussion
 650 D. Kirkwood said this project is close to the Bedford town line. There were comments that the operation
 651 has caused issues there. We could vote regional impact and let Bedford know and rehear the case with a
 652 Bedford representative here.
 653 K. Shea said a lot of the comments were enforcement issues such as the parking issue and blocking fire
 654 access. Complaints need to be made and the Bedford police need to enforce that.
 655 R. Panasiti is concerned about the brook and its flow from Amherst into Bedford.
 656 J. Ramsay said it is an enforcement issue. There could be an implied regional impact. Environmental
 657 impact will be a Planning Board issue. We don’t have a ZBA issue.
 658 K. Shea the property as it sits now has Bedford abutters. The parcel the applicant wants to acquire does
 659 not abut Bedford.
 660 R. Panasiti asked if we find it does have regional impact, does that affect these proceedings? D.
 661 Kirkwood said yes, we stop the hearing and a member of Bedford needs to be part of the hearings.
 662 There would be a new hearing.
 663 K. Shea believes the valid concerns were all planning board concerns- not zoning issues.
 664 **Vote: Four in favor with R. Panasiti against**
 665
 666 Discussion
 667 D. Kirkwood this seems like a better proposal than what was proposed across the street. K. Shea agreed
 668 the long term plan for Rt. 101A does include a median which will make access issues across the street.

669 K. Shea said we already approved the change of use in that area. There's always going to be abutter
670 concerns and issues. There is 400 feet from the new lot line, but still 1300 feet from the abutter to the
671 structure. And that is a considerable distance.

672 K. Shea liked the original plan, but after looking at this plan it makes sense to have some additional
673 buildings on this side of the street.

674

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

676 C. Vars yes it's a reasonable expansion and better than the other side of the road. Abutter arguments
677 need to be addressed by the planning board. Overall no adverse effect

678 J. Ramsay agree no impact to health, safety or welfare to general public.

679 D. Kirkwood true

680 K. Shea there will be contention in some areas, but that doesn't mean it's against public interest. Some
681 of the issues that were there with across the street plans have been solved with this plan. He thinks
682 about what effects everyone in that area and what they would want to see, but there is a significant
683 distance.

684 R. Panasiti understands the concerns of the neighborhood, but looking at the variance, it's a reasonable
685 expansion to the property and better option than across the street

686 5 True

687

688 2. The Variance is consistent with the spirit and intent of the Ordinance.

689 J. Ramsay if this expanded use is granted on this property, does that eliminate the proposal of a
690 duplicate use by this owner. K. Shea said by testimony, they will withdraw those aspects of the project if
691 and when this project is confirmed. They stated this is their preferable proposal. If this one doesn't
692 make it through, they will go back to the one in court.

693 K. Shea said this is the northern transitional zone. Scenery was an argument before. It is more in line
694 than the proposal across the street

695 R. Panasiti agree still maintains the character

696 C. Vars agree

697 D. Kirkwood true

698 5 True

699

700 3. Substantial justice is done.

701 K. Shea yes allowing an expanded use of existing Amherst business with folks that work and live in town.
702 It solves a lot of the concerns that were brought up last year.

703 R. Panasiti agree it complements the existing structures

704 C. Vars visual impact will be minimal because it's behind the current buildings

705 J. Ramsay agree

706 D. Kirkwood true

707 5 True

708

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

710 R. Panasiti yes surrounding properties wouldn't be impacted- the homes are not close enough. There
711 won't be impact to the camp or the sledding hill

712 C. Vars agree surrounding properties will retain their value. The closest house is 1300 feet away

713 J. Ramsay agree tree removal, earth moving etc. can be done by abutters without neighbor permission.

714 There is significant distance between

715 D. Kirkwood true

716 5 True

717
718 5. Literal enforcement of the provisions of the Ordinance would result an unnecessary hardship.
719 C. Vars it's a reasonable use. Not a detriment to other properties in the area. The abutters concerns will
720 be addressed with the planning board. There is significant distance between
721 J. Ramsay hardship has already been decided in the granting of the construction of the winery.
722 K. Shea hardship- location/ access/ topography- the brook, the railroad access. Those special conditions
723 of the property create the hardship. They desire to expand, but the property abuts the state highway.
724 Trying to figure out the best way to do that
725 R. Panasiti agree the hardships to the land with difficulty accessing it make it unique
726 D. Kirkwood disagrees with K. Shea about the hardships. The land hardship is valid. The other is a self-
727 imposed hardship. The only access is currently through the commercial area. To access by Camp Rd you
728 have to cross the brook. Not feasible to build a house there due to the wetlands and access. The
729 hardship is the limited use to those 13 acres. It works for LaBelle because they have the operation and
730 access through the other side.
731 5 True
732
733 The chair stated that after having passed the tests, the variance is granted.
734
735 D. Kirkwood would like to have communication from Town of Amherst to Town of Bedford.
736 G. Leedy said they can reach out to them about what's going on with the case.
737
738 **C. Vars moved and K. Shea seconded to exit deliberations. All in favor**
739
740 OTHER BUSINESS:
741 **Minutes: June 20, 2017**
742 **K. Shea moved and J. Ramsay seconded to approve the minutes of June 20, 2017 as submitted.**
743 **All in favor with C. Vars and R. Panasiti abstaining.**
744
745 **K. Shea moved and C. Vars seconded to approve the minutes of July 18, 2017 as submitted.**
746 **All in favor with D. Kirkwood abstaining**
747
748 **C. Vars moved to adjourn at 11:31pm. K. Shea seconded. All in favor**
749
750 Respectfully submitted,
751 Jessica Marchant