

1 **AMHERST ZONING BOARD OF ADJUSTMENT**

2 **Tuesday October 20, 2015**

3 **Attendees:** R. Panasiti (Alt.), W. Sullivan (Alt.), R. Rowe, D. Kirkwood-Chair, J. Ramsay, K. Shea, C. Vars

4
5 D. Kirkwood called the meeting to order at 7:04pm, explained the ZBA process and introduced the
6 members of the board.

7
8 **New Business:**

9 **1. Case # PZ6508—Appeal of Historic District Commission Decision Amily Moore & Bill**
10 **Dunlap (Applicants) —Appeal of the Historic District Commission Approval of Case # PZ6180. April**
11 **and David Savino (Property Owners), 5 Foundry Street, PIN# 017-040-000, Zoned Rural**
12 **Residential and Historic District.**

13
14 J. Ramsay recused himself from the case.

15 W. Sullivan will vote for J. Ramsay for this case.

16 D. Kirkwood explained to the applicants that this case will be heard from the beginning- from scratch. It
17 was determined that the Savinos should present their plans for the addition first, and then the
18 applicants will present their case against the HDC decision.

19
20 D. and A. Savino recapped the process they have gone through on this project. They hired experts and
21 submitted plans. They enlisted Tony Hall- he has worked on historic district homes. They listed the
22 meetings they attended and the hours spent in those meetings.

23
24 The result of these hearings was that the HDC voted 7-2 in favor of the project which was to add 420 sq.
25 ft. to the home on the back side of the ell. This will change that portion of the house from a single story
26 to a two story. There were two site walks in the house with the HDC. The applicants built a structure on
27 the house and a model size version so the HDC could see what the addition would look like. They
28 described the materials they plan to use including all wood windows (6 over 6) and all clapboard siding.
29 All of the details are listed in the application packet.

30
31 K. Shea asked if the property is currently listed for sale and under contract. He wondered if this process
32 might be moot if the owners are moving. The board discussed the relevance of the question.

33
34 R. Rowe asked the Savinos to describe the addition in more detail. The Savinos walked through the plans
35 for the addition.

36
37 R. Panasiti clarified that the pyramid hip roof is the major factor that makes this home so unique.

38
39 D. Savino further discussed how this home has changed dramatically over the years and how families
40 change homes throughout the years to make them livable to current standards.

41
42 D. Kirkwood asked about the removed windows and the bay window. The Savinos replied that there are
43 two windows on the back of the house that would be removed for the addition and the bay window that
44 doesn't fit with the age of the home would be removed.

45
46 They further explained that an additional 18'x8' area of white clapboard is what you will see from the
47 west side. The addition would not cut into the roof- it would just sit on top of it.

K. Shea asked about the mature tree near the home. The addition will have no direct impact to that tree. Some maintenance to the tree is required as it is growing into the roof, but there are no plans to remove it. C. Mailloux clarified that the HDC regulations do include language about mature trees, but the HDC is not actively enforcing tree regulations anymore. There are liability issues with preventing home owners from trimming trees near their homes.

Larry McCoy Old Milford Rd and member of HDC

L. McCoy stated that these plans are not from an architect, they are from a software program. If the house transferred to a new owner, do the plans go with the house?

C. Mailloux replied that if an approved plan exists, it goes with the property, but architectural drawings would be needed in the permitting process. Those plans would have to match all of the details of the approved plan.

Doug Chabinsky came forward as HDC representative to summarize the process the HDC went through with this case and answer ZBA questions.

He said this was not an easy decision. The HDC looked at guidelines from the Department of the Interior. The 'Rehabilitation' section allows for external additions if the current structure can no longer support its use. He read from the guidelines.

General preservation techniques say not to change anything on the building. Rehabilitation might allow updating for current use to encourage people to come to the village and allow families to live in the houses in current times. In the HDC findings you see the HDC believed the addition did not radically alter the significance of the roof or destroy the original structure. That was the rationale. Is it appropriate for this structure? This structure was not originally a home, but it is now and it should be livable for a family.

R. Rowe stated the building was a courthouse and then a boarding house. He asked if the HDC believes, with this addition, it preserves the distinctive character and integrity of the district. D. Chabinsky said they felt it does. It was a split vote. The challenge is to maintain the character and history while making the properties desirable for families to live in and maintain. The HDC was allowing well thought out growth to the building while meeting the needs of the 21st century while maintaining the integrity of our history.

D. Kirkwood asked how the HDC defines the characteristics that constitute the significance to the historic district. How do you judge how changes can be made without damaging the historical significance?

Sue Clark -HDC member brought some information to the ZBA table. The documents they use are:

Rules of procedure

Definition of styles

Resource under the Department of the Interior

History and definition of each house on the list of contributing homes

That house is the only pyramid roof home in the district. It is a unique characteristic.

W. Sullivan asked about the phrase 'weighing the benefit' - is that in the ordinance? D. Chabinsky replied no, it's not. It is the struggle the HDC deals with.

C. Mailloux stated the regulations direct the HDC to the guidelines of the Department of the Interior's standards to apply them in their process.

W. Sullivan read from the ordinance where it suggests unique structures should only be altered more closely toward the original. R. Rowe stated those are a section of the HDC regulations and the HDC can alter those. W. Sullivan said he has seen the HDC stop a project over a few feet on a porch, but then this project gets approved. It doesn't make sense.

D. Chabinsky explained that there are guidelines that talk about the unique properties and they also point to the Department of Interior standards which go into more detail. The HDC looked at preserving the architectural features and providing the home owners with the lifestyle they wish to maintain. That is the balancing act.

D. Kirkwood asked if D. Chabinsky could represent the minority view of the HDC. The minority view was to focus on preservation. Nothing should touch that roofline- they should not alter the building. They looked at it as preservation rather than rehabilitation.

K. Shea confirmed the roof is the unique part of the building. He asked if HDC is more concerned with the perception of the roof changing, or that the roof is changing. Which is the issue? After driving around the building, he believes the addition won't be very noticeable as long as the proper materials are used.

D. Chabinsky said that's correct. The applicants did a great job with the project and it looks proper. They are not altering/ damaging the historic building. Yes, the overall building would be altered, but the original structure would still be there.

D. Kirkwood asked, so if the ell as it exists and the proposed second story were removed, the original courthouse would still be in existence? Yes, but the original square structure would still be there-roof included.

L. McCoy, alternate for the HDC, was concerned that the HDC wasn't using all of the available regulations and standards that they should have been. D. Chabinsky explained his view that when the HDC regulations were formed, they were generated from Department of Interior guidelines. Mr. McCoy didn't believe those Department of Interior guidelines were used at all during the deliberations for this case.

The board discussed the guidelines, the ordinance and the regulations.

C. Hall, alternate for the HDC, stated there was much misinformation presented during the case. He explained that the HDC spent hours deliberating every aspect of the case that seemed against the HDC regulations. The HDC has to interpret the spirit of how the regulations were written.

D. Chabinsky stated that in the HDC minutes of July 30th, there were four points of concern that HDC members had. They expressed those concerns and then took the vote. (Pg. 12 of 13 starting with line 481.)

145 The applicants A. Moore and B. Dunlap presented their case at this time.

146 B. Dunlap explained that he has lived in the historic district for 25 years and is the head of the NH
147 Historical Society in Concord which is an organization dedicated to saving NH history. He said that he
148 respects the HDC, but mistakes can be made and he believes a mistake was made in this case. There are
149 two reasons why he is a party to this appeal. 1) He is related to an abutter and believes the proposed
150 alteration to the property is not appropriate. 2) He is concerned about the integrity of the historic
151 district's regulations and thinks that this decision will set a potentially harmful precedent.

152
153 He does believe some changes are appropriate and understands that the normal response to property
154 owners who want to make changes is to find a way to let them do it. Property owners have rights, but so
155 do neighbors, abutters and the community. For its protection, the historic district is governed by the
156 HDC rules. In this case, those explicit regulations were ignored. He wondered how the historic district
157 might be lost. Not by losing one property, but gradually one by one if this precedence is set changes will
158 keep coming until it is lost.

159
160 The burden is on the applicant to document how proposed alterations will not bring the structure
161 further away from its original appearance. The Department of Interior standards were not referenced in
162 the HDC hearings on this case. The HDC regulations are what are used to make HDC decisions.
163 Therefore, using the Department of Interior standards to support the decision isn't right.

164
165 He referenced two specific ordinances in the HDC regulations and read from them. (1F and 6G)
166 Regarding the roof alteration and whether it will be cut into or not, he said the HDC is concerned with
167 appearances. It doesn't matter if the addition is cut into the roof or just laid on top- even the
168 appearance of the alteration is against the regulations.

169
170 D. Kirkwood asked B. Dunlap about the ell and which part of the project he is against. He said the
171 original structure was just the box. They are not being asked to take it back to the box, but putting a
172 second story on the ell is taking it even further away from the original rather than closer to it.

173
174 R. Panasiti asked if the architectural roof line will remain. There were several opinions in the room about
175 this. Some people said yes, some said no. L. McCoy said the pyramid will be destroyed. Once something
176 is on top of it- it's no longer a pyramid. D. Chabinsky explained the four corners of the roof will still be
177 visible and the roof will not be cut into. B. Dunlap said the pyramid will not be maintained. There will be
178 a three-sided pyramid and one side with an appendage.

179
180 D. Kirkwood clarified this addition will be laid on top of the roof. The original roof will not be cut. He
181 asked B. Dunlap is it the appearance that is the issue for you? Yes, the HDC governs appearance-not
182 construction techniques. It's what the end product looks like from the ground.

183 A. Moore agreed that the HDC governs appearance. She has sat in HDC meetings when they pick apart
184 windows. You can't see the difference from stepping back, but they still regulate which ones are ok to
185 use. They govern what you see when you look at the property and this change completely alters what
186 you see on this property.

187
188 C. Hall said the HDC was asked specifically about article 3B-the structure shall not be destroyed. Mr.
189 Dunlap listed all of his concerns and HDC looked at that as part of the guidelines. They couldn't have
190 voted in favor if they thought the roof would be destroyed by this work.

192 L. McCoy read from a document from an old friend who does this work as a hobby regarding pyramid
193 hip roofs and how this work would destroy it.
194

195 K. Shea asked if he was to build that addition 200 years ago, is that the way he would have done it, or is
196 that technique unique to this current time period. D. Savino stated there are other historic homes
197 whose second stories look just like that one. The owners had brought in Tony Hall, historian, to the HDC
198 with photos of other historic homes with this same roofline.
199

200 R. Rowe asked B. Dunlap if the addition went straight up and didn't touch the roof, it would be ugly, but
201 would it be architecturally acceptable because it wouldn't block the roof line? B. Dunlap said it wouldn't
202 go against this particular regulation, but it might go against other regulations.
203 Regarding altering the building to make it closer to the original, R. Rowe further asked B. Dunlap what
204 the original structure is: 1970 when the HDC regulations began, or 1780 when the building was built.
205 The spirit of the regulation probably means the original build date, but either date would work for him,
206 because they are both closer to the original than what the proposed addition would be.
207

208 D. Kirkwood said original to him means day one. They had paintings, drawings, and sketches to
209 document back then. Has the evolution of that building since the original structure already changed the
210 value of what the original appearance was? And if so, at what point today do you say they've already
211 started the process? Is the second level being added sufficiently onerous that the original structure
212 (which had no ell) has lost its significance?
213 B. Dunlap replied the single most distinctive feature of that property- the roof structure- has survived
214 even though the building has evolved. This change would do significant damage to that distinctive
215 feature.
216

217 D. Savino gave thanks to many people.
218

219 Public comment
220 Terry Mayo 93 Boston Post Rd
221 In the 1970s a second bay was added to the garage. The ell was not added at that time. It was already
222 there. He is the only abutter for 44 years. In his opinion the regulations were not followed in this
223 application. He referenced article 2; paragraph F- that you should go back and not forward to preserve
224 significant structures. He had no other objections. The building as proposed looks fine.
225

226 J. Ramsay rejoined the board at this time.
227 D. Kirkwood explained to the public that they will now hear the other cases. He expects that the decision
228 on this first case may not be made tonight. R. Rowe reminded the ZBA members not to discuss the case
229 with each other or the public or staff between now and the time of deliberations. The board discussed
230 the options of the schedule for the rest of the meeting. The chair asked the remaining case
231 representatives if their cases were time sensitive. Case two was deemed time sensitive, but cases three
232 and four were not. It was decided that the board would hear case two, and then go into deliberations.
233
234
235
236
237
238

2.Case # PZ6539 –Variance Robert Grasset (Owner)–Request for approval of a variance to construct an attached garage set back 17 feet from the property line where 25 feet is required. 347 Boston Post Road, PIN# 004-098-000, Zoned Rural Residential.

Mr. Grasset presented his case. He is looking for a variance to build a garage. When he built the house 50+ years ago, he had a permit to build the garage, but didn't build it at that time. He has 17' to his lot line. All five abutters have written letters and none of them have objections. The only one who will see the garage wrote the strongest letter. Mr. Grasset addressed the tests by reading the following from his application:

1. The requested variance will not be contrary to the public interest.

This request does not conflict with nor pose any threat to public health, safety or welfare, nor does it infringe on the neighbor's use of their property. Granting the 16 ft setback requested allows the me to use the property in accordance with the use permitted by the zoning articles..

I feel confident that the garage in no way diminish the public or abutter's safety or welfare.

2. The requested variance is consistent with the spirit and intent of the ordinance.

The proposed garage would be over 100 ft from my abutting neighbor Cheryl Chaffin's house with at least 60 ft of tree's between the garage and her house. She does not have a problem with this. Again at the time of the original permit the set back was 15 ft.

3. Substantial justice will be maintained such that benefit to the applicant is not outweighed by harm to the general public or other individuals.

Cheryl Chaffin is the only abutter that is impacted by the request for this variance. The garage will be over 100 ft from her house with a better then 60 ft tree line between us. She has no objection to this garage.

4. The value of the of the surrounding properties will not be diminish.

Approval of the 16 ft setback will not diminish the visual or economic value of the surroundings properties. The garage will raise the value of my property and increase the value of the surrounding properties in the area.

Building the garage will be in keeping use of the property and will not adversely affect the surrounding values nor diminish property values.

5. Literal enforcement of the provisions of the ordinance would result in unnecessary hardship.

The only two hardships I can see are.

1. It is the only place to put the garage on the lot to look right with the house.

2. That I will still have to get out and clean my car's off every snow storm and I am getting too old for that.

Mr. Grasset presented pictures of the original permit, the original subdivision and existing house and lot line. He showed the measurements and distances from his lot lines.

D. Kirkwood asked what the hardship would be if he doesn't get his variance. It would improve his property and the property around him if he could add the garage. This completed Mr. Grassett's presentation.

3. Case # PZ6636 – Variance Salas Realty, LLC (Owner), Jelany Salas (Applicant) – Request for approval of a variance to construct an addition consisting of a 438 square foot vehicle wash bay and a 220 square foot storage area within the side yard setback. 78 Route 101A, PIN# 002-069-000, Zoned Commercial.
This case was not heard.

4. Case # PZ6637 – Variance Energy North Group (Owner), Blackdog Builders (Applicant) – Request for approval of a variance to allow a second free standing sign where only one is permitted. 75 Route 101A, PIN# 002-066-002, Zoned Commercial.
This case was not heard.

DELIBERATIONS:

R. Rowe moved and W. Sullivan seconded to enter into deliberations. Vote Unanimous

R. Rowe moved and J. Ramsay seconded to table cases # PZ6636 and # PZ6637 to the November 17th meeting. Vote Unanimous

The board decided to deliberate on case two before case one.

Case # PZ6539 – Variance

R. Rowe moved and C. Vars seconded no regional impact. Vote Unanimous

K. Shea moved to approve the variance

Discussion

C. Vars stated that at the time the permit was pulled in the 1960s, the setback regulations were for 15'. He sees that as a hardship and would be inclined to vote favorably for that reason.

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

R. Rowe There was a 15' setback at the time of the permit. The Supreme Court has stated that a garage in today's society is an absolute need and is not contrary to the public interest

C. Vars agree for same reasons

K. Shea agree for same reasons

J. Ramsay agree

D. Kirkwood agree

5 True

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

C. Vars true. Looking at the subdivision plan there is a 5 acre lot next door. It would be a major hardship to get within certain feet from the neighbor. He has shown it is consistent with the spirit of the ordinance. It's not going to change the appearance of it.

K. Shea agree for same reasons

J. Ramsay agree

R. Rowe true

D. Kirkwood true

5 True

D. Kirkwood stated he had conversations with Town Counsel last week about appearing in court. When there is factual evidence to back up decisions the board makes the court automatically views those facts as being established. Therefore the board has to be sure there is a reason for our decisions and to state the reasons for the minutes.

3. Substantial justice is done.

K. Shea yes, substantial justice is done if they get their garage for vehicle storage. It is not outweighed by harm to the general public because there is a significant natural tree line (60ft.) and the structure is 100ft. from the neighbors.

J. Ramsay true for substantial justice. The applicant can enjoy their property to the fullest without impacting the neighborhood negatively.

R. Rowe true

C. Vars true there were five letters from all the abutters in favor of the project

D. Kirkwood true

5 True

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

J. Ramsay yes it positively affects the value of surrounding properties

R. Rowe yes neighbors don't believe it would negatively affect their values because they approve of it

C. Vars agree

K. Shea agree a properly built and designed garage always raises the value of the property

D. Kirkwood true

5 True

5. Literal enforcement of the provisions of the Ordinance would result an unnecessary hardship.

R. Rowe the building permit was for a house and a garage when the setback was 15'. With the abutter being 100 ft. away and the distance being 17' it would be unfair and cause hardship to deny.

C. Vars agree

K. Shea agree

J. Ramsay agree a permit was issued before the setback was changed. The intent is still the same.

D. Kirkwood true

5 True

D. Kirkwood stated that having passed all of the tests, the request for variance is granted.

J. Ramsay recused himself from the board for the next deliberation.

Case # PZ6508–Appeal

R. Rowe moved, seconded by K. Shea, that there is no regional impact. Vote all in favor

D. Kirkwood stated the options are either to approve the addition, disapprove the addition or approve it with conditions.

Discussion

W. Sullivan’s concern is that the regulations seem to say two different things. The zoning ordinance references the federal guidelines and you have to weigh that against the HDC regulations. He read from article 1. The primary focus is the roof. There are specific regulations about the roof. He read from those.

K. Shea asked if historical character is just the appearance, or is it the construction. If the construction is being made with the same methods and materials as 200 years ago, does that maintain the character?

D. Kirkwood said if they were able to build a pyramid roof that they would also be able to add something to the face of the roof. The methods they used are not being used today.

K. Shea asked if visually it would be different.

R. Rowe said the second courthouse had 3 roof sides visible from the common. The trees weren’t there. The building has had changes. It became a rooming house. It was run down. The addition was put on. The distinctive character of the roof is mainly seen from the front and two sides. With the addition attached to the roof it still maintains the distinctive character.

K. Shea agrees. He drove around the house to look at it from all sides. The visual impact of the roof is to the front and sides of the house.

R. Panasiti referenced article 6 paragraph 12 of the HDC regulations and read from them. The shape of the roof is not going to be changed. He doesn’t see how this will change the roof line.

K. Shea stated the addition jogs in to maintain the roofline.

D. Kirkwood reminded the board that there was testimony given saying the roof is affected by the addition- the bottom roof line.

R. Rowe said we can’t violate federal law, RSA or ordinances. The town can amend our guidelines, standards and rules that we’ve adopted. The HDC came to a reasonable decision based on their rules.

W. Sullivan stated to him it does change the shape of the roof.

R. Panasiti countered that the roof will not be cut into.

R. Rowe said it’s reasonable to have the new roof touch the original roof halfway down. If the addition was set 6” apart from the original roof and not touch technically it would not alter the roof, but the overall appearance wouldn’t be ideal.

The board reviewed various map views of the home using Google maps.

D. Kirkwood determined you won’t see the addition unless you were flying over it or from the back- though there are trees.

R. Rowe wondered what the definition of original is in this context. Is it pre- 1970? (When the HDC was formed) Or is it as -built in the 1700s?

D. Kirkwood wondered if the addition further exacerbates the issue, or is it relatively insignificant.

K. Shea shared some points. Preservation of original use: it was a courthouse not a residence. Is the historical character preserved? He believes so based on the materials and plans. Article 6G is covered. Visibility of changes from the ground is minimal. The historical character from the ground is preserved. The ZBA had looked at it through Google maps to confirm this.

C. Vars said if this proposal was anywhere else in town he would look at it as a great asset to the house. The addition makes it look better than it does now. If the proposed addition had a flat roof it wouldn't affect the pyramid roof, but it would not maintain the character of the district.

W. Sullivan thinks it's reasonable but it doesn't meet the regulations.

R. Panasiti said in current times, it is a reasonable thing to request changes to increase value and comfortability to the family while keeping the integrity of the house. He doesn't see anywhere else an addition could go. If we keep restricting, we lose people living in these homes. We have to balance history with modern convenience.

K. Shea agreed that for this price range of house, master areas are expected. If we want to have willing buyers, the homes have to keep up with the times to some extent.

D. Kirkwood pointed out that people do live in historic houses with rigid criteria. Historic Williamsburg is an historic replica. There, the family has to fit the house, not the house to the family.

R. Rowe moved the application as presented in exhibit A (plan) be approved. K. Shea seconded.

Discussion

R. Rowe said the addition as presented on the second story to the ell is reasonable and in keeping with the historic nature of the original courthouse with minor, if any, disturbance of the rear lot line. The addition will be in keeping of the preservation of the distinctive character and integrity of the district. It is reasonable based on the modern use of the property as a residence.

C. Vars clarified the whole packet will be labeled as exhibit A. He further stated he agrees with R. Rowe and is in favor of the motion.

K. Shea is in favor as well. He agrees and believes the proposed plan is in compliance with the HDC regulations of bringing the building closer to its original. The style of the addition is in compliance with the character. The historical character will be preserved and changes will not be visible from the majority of the ground-the public interest sides.

R. Rowe is in favor based on his earlier comments.

W. Sullivan will vote to deny the application. It is a structure that is being altered in contradiction to article 2 section F and article 6 section G. He thinks it's reasonable and good looking- it just doesn't comply with the regulations.

D. Kirkwood stated he understands the arguments about the literal application of this. If the roof went any higher, he'd have a problem. The other lines seem to be preserved. It's not clear that this takes it any further away from its original view from when it was first built and some of the other additions were made before it was in front of the town boards. Regarding the arguments about retaining the historical character and still being able to provide a comfortable living space now and for future residents: this accommodates that. His vote is in favor.

446 D. Kirkwood stated the advice from Town Counsel is to proceed as if it were an appeal of an
447 administrative decision.
448 **The vote is 4 in favor and 1 opposed.**
449
450 R. Rowe asked what the lifespan of the decision is.
451 C. Mailloux clarified the permit needs to be pulled within one year and construction complete in two
452 years.
453 K. Shea clarified that the vote is in favor of the project, and the appeal is denied.
454
455 **C. Vars moved and K. Shea seconded to come out of deliberations. Vote: all in favor**
456
457 **Other Business:**
458 **5. Discussion of Potential 2016 Zoning Amendments**
459 C. Mailloux asked if any board members have any recommendations for the planning board regarding
460 zoning ordinances and potential amendments for them to consider let her know as soon as possible.
461 R. Rowe mentioned the issue he has with density- floor area ratio calculation.
462
463 D. Kirkwood suggested that the ZBA have a meeting with the planning board.
464 C. Mailloux mentioned November 18th could be joint meeting as it's a planning board work session.
465
466 R. Panasiti and W. Sullivan left the meeting at this time.
467
468 **6. Minutes: June 16, 2015; July 21, 2015**
469 **K. Shea moved and C. Vars seconded to approve the minutes of June 16th as submitted.**
470 **Vote: 4 in favor with J. Ramsay abstaining.**
471
472 **C. Vars moved and K. Shea seconded to approve the minutes of July 21st as submitted.**
473 **Vote: 4 in favor with D. Kirkwood abstaining.**
474
475 **R. Rowe moved to accept C. Vars as a permanent member of the board filling the vacancy of J. Quinn**
476 **(who resigned) until the next election in the spring. J. Ramsay seconded.**
477 **Vote: 4 in favor with C. Vars abstaining.**
478
479 **K. Shea moved and C. Vars seconded to adjourn at 10:26pm. Vote Unanimous**
480
481 Respectfully submitted,
482 Jessica Marchant
483