

**Town of Amherst  
Zoning Board of Adjustment  
Tuesday June 21, 2016**

ATTENDEES: R. Rowe, C. Vars, S. Giarrusso (Alt), J. Ramsay and D. Kirkwood- Chair  
D. Kirkwood called the meeting to order at 7:04pm, explained the ZBA process and introduced the board members

New Business:

**CASE #: PZ7474-052016 – VARIANCE IGIM, LLC c/o John Dunn (Owner) – Request for a variance from Article IV, Section 4.3, D (4) of the Zoning Ordinance to construct a new dwelling with a total floor area that exceeds the maximum square footage allowed. The property is located at 110 Amherst Street in the Residential/Rural District, PIN #: 005-050-000.**

D. Kirkwood explained to the applicant representative that this is S. Giarrusso's first meeting as an alternate member of the ZBA and that he may choose to observe or to vote. If there are only four voting members and there is a 2-2 tie, the application would be denied. S. Giarrusso stated he has prepared for tonight's case and was planning on being a full participant.

D. Kirkwood stated S. Garrusso will be voting for K. Shea.

Michael Klass, Attorney presented the case.

The applicant requests a variance from Section 4.3 (D)(4) of the Town of Amherst Zoning Ordinance governing maximum floor area ratio, to allow for the construction of a new dwelling with a floor area ratio of approximately 16.3%, where the Ordinance allows a maximum floor area ratio of 15%. More specifically, the Applicant seeks a variance to allow a new dwelling on the property with a total floor area of 2,608 square feet on a lot containing 16,059 square feet, resulting in a floor area ratio of approximately 16.3%.

The property is currently unimproved and located on Amherst Street in the Historic District and subject to the requirements of the Rural Residential District. Because the property was a lot of record prior to the effective date of Section 4.2 of the Ordinance, it is not subject to the two-acre minimum lot area requirement of the Ordinance.

Given that the property consists of 16,059 square feet, as a matter of right, the applicant may construct a dwelling with a floor area of 2,408.85 square feet. However, the residence proposed by the applicant contains 2,608 square feet, including the first and second floor living areas and the garage. The house would be served by an on-site septic system that has been approved for three bedrooms and town water supply.

The property's neighborhood is residential in nature with parcels of varied sizes and shapes, such that the property and the proposed dwelling are consistent with the surrounding neighborhood. Moreover, as the property is located in the Historic District, approval from the Historic District Commission will further ensure the appropriateness of the dwelling's specific design details.

This plan was presented to the HDC at their meeting last week and they prefer a more traditional style home than what was presented in the application. The square footage is the issue before the ZBA. The HDC will monitor the character of the home- whatever that future plan may be- possibly something more colonial.

C. Vars asked about the lot. The lot lines on the surveyor's map are different from the town map. M. Klass said he is using the stamped surveyors map for reference as assessor's maps are not always updated.

49 R. Rowe pointed out that if the ZBA approves the 16.3% ratio and then the home design changes while  
50 dealing with the HDC and the percent ends up at 16.4%, the applicant will have to come back to the ZBA  
51 for another variance. It is a bit out of order. The applicant understood this.

52  
53 M. Klass addressed the tests as follows:

54 1. Granting the variance will not be contrary to the public interest.

55 As the courts have said, to be contrary to the public interest, the variance must unduly and in a marked  
56 degree conflict with the Ordinance such it violates the Ordinance's basic zoning objectives. See Grey v.  
57 Seidel, 143 NH 327 (1999).

58 While the Ordinance does not contain an explicit purpose for its Floor Area Ratio (FAR) requirements, its  
59 implicit purpose is to link the potential total developable floor area to the area of the lot on which the  
60 building stands. Ultimately, the purpose of a Floor Area Ratio is to prevent buildings that are too large  
61 for a particular lot. Here, the applicant seeks a modest variance from the Ordinance's maximum floor  
62 area ratio (proposing a FAR of 16.3% where 15% is permitted), which will not conflict with the purpose  
63 of Section 4.3(D)(4) of the Ordinance.

64 The applicant's proposed single-family dwelling has a total floor area of 2,608 square feet. This area  
65 includes first and second floor living areas (2,080 square feet) in addition to the proposed attached  
66 garage (399 square feet). As the supplemental materials reflect, the proposed dwelling is not a massive  
67 structure by any means. In fact, it is relatively modest when compared to many newly constructed  
68 houses.

69 Further evidence that this structure is appropriate for the property is the fact that the lot is large enough  
70 and contains adequate uplands to support a proposed on-site septic system. Also, it is notable that the  
71 only variance necessary to construct the new house is from Section 4.3(D)(4)'s FAR requirements. The  
72 proposed house will comply with all other applicable dimensional requirements.

73 Additionally, the proposed dwelling is also consistent with the Ordinance's Preamble and general  
74 purpose which is to promote the public health, safety, and general welfare of the Town. See Ordinance,  
75 1.1. The proposed home is comparable to those in the surrounding home and will not alter the character  
76 of the neighborhood. Likewise, it will not negatively impact the Town's public health, safety, or general  
77 welfare.

78 As this request does not conflict with the Ordinance's zoning objectives or alter the essential character  
79 of the Town, the proposed variance is not contrary to the public's interest.

80  
81 2. The spirit of the ordinance is observed.

82 This discussion mirrors the above analysis in that a variance request must not violate the spirit and  
83 intent of the Ordinance. Again, the rationale for the Ordinance's FAR requirement is to prohibit  
84 unreasonable development that is disproportionately large for a particular piece of land.

85 Here, the applicant proposes an attractive and very reasonably sized single-family home to be built on  
86 the property, consisting of 2,080 square feet of livable area and a garage with approximately 400 square  
87 feet. Although the property is smaller than what is currently required for a new lot, its area is more than  
88 adequate to support the proposed single-family home and related infrastructure from both an  
89 engineering standpoint and aesthetic perspective.

90 As such, the spirit of the ordinance, which ultimately seeks to ensure reasonable and safe development,  
91 is observed in the requested variance.

92  
93 3. Granting the variance would do substantial justice.

94 Substantial justice is done when the loss of denying a variance exceeds the gain to the public in strictly  
95 enforcing the ordinance.

Denying the requested variances will not result in an appreciable gain to the public given the de minimus nature of the variance request and that the proposed home is designed to be appropriate for the property and consistent with the neighborhood. As noted previously, the proposed house will not threaten public health, safety, or welfare.

On the other hand, denying this application will result in a substantial loss to the applicant by preventing the safe and reasonable use of property. To demand the strict enforcement of Section 4.3(D)(4)'s FAR requirement—which is a modern planning tool—on a historic smaller lot of record, does not further justice as it excessively impacts the property. Moreover, strict enforcement would result in form over substance.

In light of the above, the loss of denying the variance greatly exceeds any public gain and warrants granting the application, and substantial justice weighs in favor of this application.

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

The requested variance will not diminish the character of the neighborhood, which includes existing single-family lots of varied sizes and shapes. The proposed home will be used in a manner consistent with these neighboring lots and, thus, should not produce different or significant traffic, noise, or odors or other detrimental impacts to the surrounding area. Thus, granting the variance will not diminish the value of surrounding properties.

5. Literal Enforcement of the Ordinance Would Result in Unnecessary Hardship.

A. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:

1) no fair or substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property because:

The property is special and unique in that it was created before Section 4.2 of the Ordinance was enacted. As such, it is a legal lot despite the fact that it does not contain at least two acres, which is currently required by the Ordinance in the RR zone. Likewise, the property was created before the Ordinance's FAR requirement was enacted. The property is further unique in that, while it is smaller than what is currently required by the Ordinance, its size, rectangular shape, relative flat topography, and proximity away from wetlands will allow for the construction of a new dwelling on site without variances from any other dimensional regulations.

Given the property's special conditions, the Ordinance's provision at issue (regarding maximum FAR), which aims to tether the size of a house to the size of a lot, has no fair or substantial relationship between its policies and the property.

As such, requiring strict compliance with the variance would result in unnecessary hardship because it would not advance the purposes of the ordinance provision in any fair and substantial way. Moreover, in this case, the property is large enough to safely and reasonably support the proposed dwelling, and in a manner consistent with the surrounding neighborhood.

Stated differently, the practical purpose of the Ordinance is to ensure appropriate development on any particular lot. However, because of the specific history of the property, including its size and preexisting status, a FAR variance is reasonable and the denial of which would result in an unnecessary hardship.

Given these facts, there is no substantial relationship between the general public purpose of the ordinance of a minimum frontage requirement and its application to the property at issue.

And 2) The proposed use is reasonable because:

It contemplates a use that is permitted under the Ordinance-single family residential- which does not alter the essential character of the neighborhood.

144 D. Kirkwood asked how the design would be altered if the variance was not granted.  
 145 M. Klass said a lot of this is market driven. He stated if the house doesn't have 2000 sq. ft. or a garage, it  
 146 will turn off a lot of buyers. Amherst buyers require a certain size and certain amenities in a home.  
 147  
 148 Public comment  
 149 None  
 150  
 151 **J. Ramsay moved and C. Vars seconded to go into deliberations. Vote unanimous**  
 152 **R. Rowe moved and J. Ramsay seconded no regional impact. Vote: 4 in favor with S. Garrusso**  
 153 **abstaining**  
 154  
 155 **CASE # PZ7474-052016 – Variance**  
 156 Discussion  
 157 C. Vars discussed the methodology of coming to the ZBA before finalizing the design.  
 158  
 159 R. Rowe said they could build without a garage and meet the zoning requirements, but he thinks it's  
 160 better to put cars in the garage rather than having them sit out.  
 161  
 162 The board addressed the tests.  
 163 1. The Variance will not be contrary to the public interest.  
 164 C. Vars yes-not negative to the neighborhood  
 165 J. Ramsay not contrary to public interest. A thoughtful proposal. Comfortable with the square footage  
 166 R. Rowe agree  
 167 S. Giarrusso agree  
 168 D. Kirkwood true  
 169 5 True  
 170  
 171 2. The Variance is consistent with the spirit and intent of the Ordinance.  
 172 J. Ramsay yes- no issue with public safety  
 173 R. Rowe yes  
 174 S. Giarrusso yes  
 175 C. Vars yes nothing to deteriorate from public interest  
 176 D. Kirkwood development of the lot and landscape will improve the neighborhood  
 177 5 True  
 178  
 179 3. Substantial justice is done.  
 180 R. Rowe yes this is a unique type of lot. Amherst doesn't have that many bare lots that are buildable.  
 181 This is a very attractive design and a size that does not overpower the lot or the neighborhood.  
 182 Substantial justice is done.  
 183 S. Giarrusso agree  
 184 C. Vars agree plenty of room for septic  
 185 J. Ramsay yes enjoyment of property for owner with no negative impact to others  
 186 D. Kirkwood true  
 187 5 True  
 188  
 189 4. The values of the surrounding properties will not be diminished.  
 190 S. Giarrusso yes probably is an asset to the neighborhood  
 191 C. Vars agree

192 J. Ramsay agree  
 193 R. Rowe yes  
 194 D. Kirkwood yes  
 195 5 True  
 196  
 197 5. Literal enforcement of the provisions of the Ordinance would result an unnecessary hardship.  
 198 C. Vars yes property is unique. Predated zoning ordinance and with only 200 extra sq. ft. it's reasonable.  
 199 Denial could result in unnecessary hardship  
 200 J. Ramsay yes denial would result in unnecessary hardship.  
 201 R. Rowe agree  
 202 S. Giarrusso agree  
 203 D. Kirkwood posed the question: if the increase of only 200 sq. ft. is that insignificant an impact, then  
 204 why would not having it create a hardship? He also said he heard compelling testimony about how the  
 205 market conditions change the sale possibility. If structure is less than 2000 sq. ft. and/ or without a  
 206 garage; that would place it sub-par in the market. If that didn't exist, the hardship isn't as compelling.  
 207 Therefore, true  
 208 5 True  
 209  
 210 D. Kirkwood stated that having passed all of the tests, the request for variance is granted.  
 211  
 212 **C. Vars moved and J. Ramsay seconded to come out of deliberations at 7:46pm. Vote unanimous**  
 213  
 214 Other Business:  
 215 **Minutes: March 15, 2016; May 17, 2016**  
 216 March  
 217 **C. Vars moved to approve the minutes of March 15<sup>th</sup> as submitted. R. Rowe seconded. Vote all in favor**  
 218 **with S. Giarrusso abstaining**  
 219 May  
 220 **R. Rowe moved to approve the minutes of May 17<sup>th</sup> as submitted. J. Ramsay seconded. Vote all in**  
 221 **favor with S. Giarrusso abstaining**  
 222  
 223 D. Kirkwood said the ZBA was notified of a case that is appealing to the Superior court and reminded the  
 224 board not to discuss this case with anyone.  
 225  
 226 R. Rowe asked for a Community Development Director position update. D. Kirkwood believes the  
 227 position is still open and applications are still being accepted. There were two final applicants, but he  
 228 believes communication has broken down with both of them.  
 229  
 230 **J. Ramsay moved and C. Vars seconded to adjourn at 8pm. Vote unanimous**  
 231  
 232 Respectfully submitted,  
 233 Jessica Marchant  
 234