

**Town of Amherst  
Zoning Board of Adjustment  
Tuesday July 19, 2016**

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

D. Kirkwood called the meeting to order at 7:05pm, explained the ZBA process and introduced the board members

New Business:

**CASE #: PZ7580-061616 - Joseph Goodridge, 1 Walnut Hill Road; PIN #: 006-073-000 in the Residential/Rural Zone. Application for a variance from Article IV, Section 4.3, D. 1 to construct a porch that would extend into the front setback area**

Joseph Goodridge presented the case. He bought the property 12 years ago and has been fixing it up. When he applied for a building permit for farmer's porch he found that the road is not the property line. The road used to be closer to the house before it was moved further away so he needs the variance because the setbacks are closer than he thought. He had a plot plan created. The proposed porch will be six feet wide.

J. Goodridge went through the tests as follows:

1. There are no close neighbors. The nearest one is 100 yards away through the woods.
2. The setback requirements are in place for safety and for not infringing on others' land or disrupting anything to the town. He has been taking care of the property. He didn't know the land area closest to the road wasn't his. The setback was established previously when Manchester street used to be closer to the property and now has been moved farther away from the home allowing for the setback from the roadway but not the property line.
3. The property value will increase. The homeowner will be able to use his lands efficiently allowing for the enjoyment of a reasonable financial return. It will not change the spirit of the neighborhood nor infringe on a neighboring property owner's rights, use or enjoyment.

The applicant clarified with D. Kirkwood where the property is. It used to be Whitey Farm.

4. The porch will be an improvement. He is improving the house up from being the worst on the street.
5. Literal enforcement of the provision will provide hardship in that the setback requirements are no longer an issue with the roadway having been moved although the property lines have not. The hardship would not allow for the benefit of adding a porch which would not allow for full potential of the property and would infringe on the owner's right to use and enjoy the use of his land. The property does not have direct abutters and the variance would allow for reasonable use of the property.

Board questions

D. Kirkwood asked for some road clarification. When the road was reconfigured, they moved the road 20 or more feet further away from the house.

Public Comment

None

49 **C. Vars moved and R. Rowe seconded to go into deliberations. Vote unanimous**

50 **J. Ramsay moved and C. Vars seconded no regional impact. Vote unanimous**

51 Discussion

52 R. Rowe said it's been the ZBA's practice that when owners of non-conforming properties want an  
53 addition, they generally allow it if it does not further intrude on the furthest part of the property. The  
54 corner of the house is 27' from the property line. He sees a minor intrusion of a triangle shape towards  
55 the road, but the proposed porch isn't more intrusive than that. It is only about five feet closer. He  
56 thinks it is a reasonable request. Plus, there are trees there between the house and the road.

57

58 D. Kirkwood said it will be a maximum intrusion of five feet. The rest doesn't extend beyond that. The  
59 intrusion is so minimal that there isn't a safety hazard. It seems reasonable.

60

61 K. Shea said it's a farmer's porch creating six feet of growth. There isn't an issue.

62

63 **CASE # PZ7580-061616 – Variance**

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

65 R. Rowe yes true the small extra growth is rather unnoticeable

66 C. Vars yes conflicted thoughts on the application, but no problem with six-foot farmer's porch. The road  
67 really doesn't matter- the line could move back closer at some point.

68 K. Shea yes not contrary to public interest

69 J. Ramsay yes

70 D. Kirkwood true but the argument given in the paperwork of the value of the home increasing is  
71 evidence for test four- not test one

72 5 True

73

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

75 C. Vars yes not doing anything to obstruct view or diminish health or safety. Spirit is observed

76 K. Shea agree within the spirit of the ordinance

77 J. Ramsay agree doesn't violate public safety in any way

78 R. Rowe yes

79 D. Kirkwood yes

80 5 True

81

82 3. Substantial justice is done.

83 K. Shea yes they want a farmer's porch so justice is done by granting the variance

84 J. Ramsay true

85 R. Rowe true

86 C. Vars yes

87 D. Kirkwood true

88 5 True

89

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

91 J. Ramsay said he didn't speak to it specifically but yes, if it's in keeping with the character, the  
92 neighborhood will be enhanced

93 R. Rowe yes the neighbors are so far away, they probably can't see it

94 C. Vars no homes close to it. Doesn't diminish value as long as it's properly done. Will add curb appeal

95 K. Shea agree

96 D. Kirkwood applicant answered this question in the first test answer

97 5 True  
 98  
 99 5. Literal enforcement of the provisions of the Ordinance would result an unnecessary hardship.  
 100 R. Rowe yes reasonable and considering how it's isolated from other properties, it is unique in that  
 101 regard  
 102 J. Ramsay yes preexisting nonconforming house been there over 100 years. Infringing about five feet  
 103 only  
 104 K. Shea yes same reasons. Where the lot is gives it special consideration  
 105 C. Vars true all same reasons.  
 106 D. Kirkwood true  
 107 5 True  
 108  
 109 D. Kirkwood stated that having passed all of the tests, the request for variance is granted.  
 110  
 111 **K. Shea moved to come out of deliberations. J. Ramsay seconded. Vote unanimous**  
 112  
 113 Old Business:  
 114 **Request for Rehearing: CASE #: PZ7330-041216; Migrela Realty Trust II (Owner); 153, 155 & 169 Hollis**  
 115 **Street; PIN #s: 001-008-002, 001-008-000, 002-007-000**  
 116  
 117 Discussion  
 118 The board discussed how last time they heard the case they thought the applicant should have gone  
 119 before the Planning Board before the ZBA.  
 120 K. Shea reviewed the timeline as follows: Colleen sent a letter to the applicant after the town vote to  
 121 inform them that unit density had been decreased. Then the applicant appealed her interpretation and  
 122 the ZBA upheld Colleen's interpretation. He asked the board if they can recall the letter and have the  
 123 applicant start over and start with the Planning Board. That didn't seem possible since the case was  
 124 already heard.  
 125  
 126 R. Rowe stated the plan was not complete when they reviewed it. There is also ambiguity in the zoning  
 127 ordinance. He would hate to have the applicant go to superior court just to be told the plan is  
 128 inadequate. He also doesn't want to rehear the same plan again. The applicant should go before the  
 129 Planning Board. He wondered what could be done to allow for that to occur.  
 130  
 131 D. Kirkwood said the ZBA has to act on the request in front of them. It has to be approved or denied. If  
 132 we deny it, we can make strong recommendations with it.  
 133 R. Rowe pointed out that if they deny the request, the applicant only has 30 days to go to superior court  
 134 or they will lose their opportunity. Then they may lose their opportunity to come before the ZBA for a  
 135 year. He asked if they can they table the request to give the applicant and Attorney Prunier time to talk  
 136 to Town Counsel as well as time to complete the plan.  
 137 C. Vars said they may not be able to talk to Town Counsel, but can talk to Carol in the office.  
 138  
 139 R. Rowe said they need to look into completing the plan and then go before the Planning Board or talk  
 140 to Town Counsel.  
 141  
 142 K. Shea said the letter wasn't wrong, but the order of operations was wrong. He asked the board if there  
 143 are any negative impacts to tabling the request- are there costs to the applicant. None were offered.  
 144

145 C. Vars stated most of Attorney Prunier's argument in the documentation is a discussion of how many  
 146 units of elderly housing are allowed as it relates to how many units they can have per acre.  
 147

148 R. Rowe said they could grant a rehearing, establish what our view is procedurally, and the applicant can  
 149 decide if they want to proceed next month or ask to have it continued.  
 150

151 D. Kirkwood said the ZBA can table the request and revisit it in a month. In the meantime, he can  
 152 communicate to the applicant through the zoning administrator the concerns the ZBA has. The applicant  
 153 can decide if they are ready next month or if they want to go before the Planning Board first and then  
 154 the ZBA.  
 155

156 J. Ramsay asked C. Vars if he thinks they have a credible case that ordinance 4.20 supersedes 3.18.  
 157 C. Vars said there is not just ambiguity but a direct conflict between those ordinances. They clarified the  
 158 ordinances as elderly housing and integrated innovative housing.  
 159

160 **R. Rowe moved to table the request for a rehearing to the next ZBA meeting. C. Vars seconded.**  
 161 D. Kirkwood said the board would table it in order to obtain additional information it needs to make a  
 162 reasonable determination. In this case: where the wetlands are.  
 163 D. Kirkwood said the Planning Board needs to clarify how they meant these ordinances to be applied.  
 164 C. Vars said the elimination of a portion of the ordinance is what causes the current confusion. We're  
 165 being asked to give a definitive decision on number of units per acre that doesn't include any wetlands  
 166 that may be taken out other than what we saw on the plan.  
 167 **Vote: unanimous**  
 168

169 D. Kirkwood clarified the board's reasons for tabling the request:  
 170     • For the applicant to complete the plan  
 171     • To find out the existence of wetlands  
 172     • To clarify the ordinance and follow the correct process  
 173

174 Other Business:  
 175 **Minutes: June 21, 2016**  
 176 **J. Ramsay moved to approve the minutes of June 21<sup>st</sup> as submitted after fixing the spelling of**  
 177 **Giarrusso. C. Vars seconded. Vote unanimous**  
 178

179 D. Kirkwood stated LaBelle has a few applications coming up. There is already interest from the  
 180 community. He asked the office to get the information that has been submitted in the applications to  
 181 the ZBA members asap so they are informed.  
 182

183 **R. Panasiti moved and S. Giarrusso seconded to adjourn at 8:16pm. Vote unanimous**  
 184

185 Respectfully submitted,  
 186 Jessica Marchant  
 187