

**Town of Amherst
Zoning Board of Adjustment
Tuesday, August 19, 2014**

ATTENDEES: Joe Taggart- Vice Chair, Jamie Ramsay, Jim Quinn, Rob Rowe, Wil Sullivan (Alt), Charlie Vars (Alt) Alex Buchanan (Alt), and Colleen Mailloux- Community Development Director

J. Taggart called the meeting to order at 7:03pm, explained the ZBA process and introduced the board members.

The first case was read by J. Ramsay.

1. Continuation of Case #PZ4938-042114 -- Variance

William & Dorothy Larson, 37 Broadway, PIN# 025-061-000 – requests relief from §III, 3.2,E of the Zoning Ordinance to demolish and rebuild family home in the Residential/Rural Zone

The Larsons were present along with their attorney, Andrew Prolman and Tom Carr from Meridian. Mr. Prolman preferred to address all three cases at the same time as they are all closely related. J. Ramsay read the next two cases.

2. Continuation of Case #PZ4939-042114 -- Variance

William & Dorothy Larson, 37 Broadway, PIN# 025-061-000 – requests relief from §IV, 4.3, D1&2 of the Zoning Ordinance to allow encroachments to the setbacks in the Residential/Rural Zone.

3. Continuation of Case #PZ4940-042114 -- Variance

William & Dorothy Larson, 37 Broadway, PIN# 025-061-000 – requests relief from §IV, 4.3, D1&2 of the Zoning Ordinance to demolish and rebuild family home in the Residential/Rural Zone.

Mr. Prolman began:

The Larsons have had this property since 1978. This is their retirement home. They wish to take down the current structure and build a new home. They live in CT and want to move back to town. They want to build their home to accommodate future handicap needs. Regarding the variance, it is a small lot and the house is not able to be renovated, which will be explained later.

The proposal is to change the home from a four bedroom to a three bedroom dwelling. The property has its own well and is tied to a community septic system. The house is subject to setbacks from Baboosic Lake. The portion of the home that is facing the lake will remain where it is. The expansion will move toward the road.

Two DES permits have been obtained. An impact permit due to the lake was obtained in 2014. The wetlands permit was obtained in 2014. Meridian presented a plan to conservation and the commission gave suggestions. The new plan has more plant buffer and better retention walls. This new plan is the plan that the DEA approved. Mr. Prolman continued to explain to the board the documents that he provided to them including a letter of support from an abutter, one from a real estate broker and a letter from the designer. Mr. Prolman read the letter from the designer into the record since it was received recently and the board did not receive an earlier copy.

To answer your question whether or not the existing structure at 37 Broadway could be upgraded instead of building new, I decided to visit the site again to investigate the existing conditions. What I found only reinforces my position that it is neither wise nor prudent to save the existing structure and attempt to upgrade it.

The existing foundation is composed of a rubble stone wall with many attempts to fix areas over the years of deterioration. In some areas, concrete blocks were stacked on top of the stone wall to support

the structure while in other locations, it appears to have been removed and replaced with a poured concrete wall for a section that had failed. It is my recommendation to demo the existing structure and place a new concrete foundation wall with footings below the "frost line" for the new structure. This will insure structural integrity for many years into the future.

During my investigation, I also noted that the existing walls are framed using a method of construction called "balloon framing" which is no longer practiced due to the extreme fire hazard that it causes. In this framing method, the studs extend right up the walls past the floor framing above and terminate at the upper walls "top plate". This leaves a gap between floors where a fire can move rather quickly between floors potentially trapping the residents before they have a chance to escape out a window. These walls also are only 2x4, which makes it difficult to insulate them to current standard guidelines set up by the state and local agencies.

The last major item that I noticed is the existing roof framing. It appears to be constructed with 2x4 rafters at 30 to 32" on center which probably exceeds the allowable loading for this roof by a sizeable margin. Although I have investigated many older houses and barns over the years, I am always amazed that some of these structures have endured so many freeze thaw cycles in New England and have not fallen down yet. I jokingly say they are held together by "habit" more than anything else.

Nevertheless, for these reasons (and probably some "less major" issues that I missed), I recommend that this existing structure be "re-built" and not just "renovated".

As for the issue of expanding the footprint a modest amount to facilitate the need for handicap accessibility. To accomplish this, I have used the minimum standards and space requirements to access both the kitchen and bathroom on the main living level. It is also very important to provide the proper "minimum width" standards in all areas of this level for maneuverability of a wheelchair into all rooms and around all furniture. We have also included a small bedroom on the first floor to complete the requirements for handicap accessibility.

Mr. Prolman handed out pictures of the property to the board members and addressed the pictures in this way:

- 1.The trees will stay.
- 2.The house will expand four or five feet.
- 3.There is an issue with water on one side of the house.
- 4.The current breezeway of the neighbor is in the side setback. The new house will move towards them four to five feet.
- 5.The neighbor across the street won't have a change in view.
- 6.There is a slope currently in the back that runs straight into the lake. This issue will be addressed.
- 7.There are a number of homes that are on this street that are the same distance if not closer to the road than this home proposes to be.

J. Taggart asked about the retaining wall in the back and if the porch and deck will extend beyond it. No, but Tom Carr will answer that question directly.

W. Sullivan asked for clarification on the bearings for the picture of the homes on the road. This was addressed.

J. Ramsay asked for clarification on which direction the house is bumping out in a certain direction. This was addressed.

Tom Carr from Meridian addressed the plan:

Regarding water quality, there will be three major improvements to the property.

1. Currently, there is standard pavement that has been there many years. This will come out and be replaced with porous asphalt.

2. The proposed home will have roof gutters and drainage. The rain water won't go off the roof and into the lake as it currently does.

3. Currently, the lawn is very sparse. This will be taken out and replaced with plantings including Bar Harbor Juniper which was recommended by the conservation commission.

Moving forward, if the ZBA approves the variances, the next step is to obtain the final permit from the planning board.

J. Taggart asked for clarification on how many square feet of asphalt will be replaced. No number was confirmed at this time.

W. Sullivan asked, once this project is done, will there be less water running into the lake or more?

Absolutely less. In fact, Mr. Carr plans to ask for a waiver from the planning board from producing a run-off study because the improvements will be so vast it would be a waste of time and money to do it.

J. Ramsay asked since porous pavement requires maintenance, what's to prevent someone from blacktopping over it in the future? These owners will be there for a long time- the remainder of their lives along with their daughter after that. We don't know what will happen if future owners take over, but the intention is for this family to maintain the property.

Bill Larson spoke:

His wife's family has owned property since 1944. He purchased the subject property in 1978. He has been in the military and moved his family throughout the years. This is to be a family home. His proposal is to decrease the bedroom count, widen hallways for wheelchair access and stairways for assistance.

J. Ramsay asked when it was constructed. Around 1904.

Mr. Prolman addressed the tests as follows:

Case 1

1. How will granting the Variance not be contrary to the public interest?

The Ordinance allows for expansion of nonconforming uses at § 3.2A. The proposed footprint of the house allows the Larsons a small increase in the existing noncompliance without any impact to the character of the neighborhood. No additional traffic, water or sewer use, or other life safety concerns are present.

2. How will the granting of the variance ensure the spirit of the ordinance will be observed?

The Larson's home will maintain the character of the neighborhood without violating the basic zoning objectives, and without any impact to public health or safety. Neighboring sightlines to the lake will be maintained.

3. How will substantial justice be done?

The Larson's home was built circa 1900 as a seasonal cottage. The Larsons intend to demolish and reconstruct their home with current building standards, and anticipating their long term use of the property. Considering their Baboosic Lake neighborhood, there is no adverse impact to the general public in allowing this variance.

4. How will the value of the surrounding properties not be diminished?

The Larsons expect to invest \$300,000 into their home to reconstruct their home and yard. Landscaping will be significant and fully comply with DES regulations and Amherst's Ordinances. There will be no diminution of value of homes in the neighborhood.

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

In considering the history of this neighborhood, improvements made over the years to neighbors' homes, and the Larson's plans to invest in their home, there is no fair and substantial reason to prohibit the proposed slight increase in the size of their home; a residential use in a residential district is reasonable as a permitted use.

Case 2

This variance requests relief for two setbacks: 2.3' front setback where 50' is required; 16.8' side setback where 25' required. AZO Section 4.3, D, 1 & 2.

Regarding the 2.3', the house itself is five to six feet off the right away. A 2' roof overhang will extend beyond the house, and that's where the 2.3' comes from.

J. Taggart asked C. Mailloux about a drip edge extending 18" beyond the structure wouldn't normally be taken into account. At what point do we start measuring the edge vs the structure?

C. Mailloux replied that it can depend on the interpretation. Any edge can be used such as a bay window.

1. How will granting the Variance not be contrary to the public interest?

The front setback variance request of 2.3' is to allow a cantilevered canopy over the front door of the home. The house itself is proposed to be 5.2' setback from the Town's right of way. The proposed footprint of the house allows the Larsons a small increase in the size of their home from what is there today. Their home will be built in keeping with the design and character of the neighborhood. The front of the house is after the bend in Broadway, and will not affect traffic. Excessive water or sewer use, or other life safety concerns are not present.

2. How will the granting of the variance ensure the spirit of the ordinance will be observed?

The Larson's home will maintain the character of the neighborhood without violating the basic zoning objectives, and without any impact to public health or safety.

3. How will substantial justice be done?

The Larson's home was built circa 1900 as a seasonal cottage. The Larsons intend to demolish and reconstruct their home with current building standards, and anticipating their long term use of the property. Considering their Baboosic Lake neighborhood, there is no adverse impact to the general public in allowing this variance.

4. How will the value of the surrounding properties not be diminished?

The Larsons expect to invest \$300,000 into their home to reconstruct their home and yard. Landscaping will be significant and fully comply with DES regulations and Amherst's Ordinances. There will be no diminution of value of homes in the neighborhood.

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

In considering the history of this neighborhood, improvements made over the years to neighbors' homes, and the Larson's plans to invest in their home, there is no fair and substantial reason to prohibit the proposed slight increase in the size of their home. Further, given the small size of the lot and the setbacks from Baboosic Lake, the proposed house is in the only possible location. A residential use in a residential district is reasonable as a permitted use. Additionally, expansion is necessary for the reasonable, permissible use of this property.

Case 3

1. How will granting the Variance not be contrary to the public interest?

The proposed aggregate floor area is 45% of the lot; however the footprint of the home is only modestly increasing from the Larson's home today. The proposed footprint of the house allows the Larsons a small increase in the size of their home without any impact to the character of the neighborhood. No additional traffic, water or sewer use, or other life safety concerns are present. In most towns, expansion is not to exceed 15% of the footprint. If you were to compare the proposal to the current footprint, the

expansion would only be 17%. Because Amherst uses total square footage as the measure, the expansion will be 45%. The proposed second floor is bigger than the first.

2. How will the granting of the variance ensure the spirit of the ordinance will be observed?

The Larson's home will maintain the character of the neighborhood without violating the basic zoning objectives, and without any impact to public health or safety.

3. How will substantial justice be done?

The Larson's home was built circa 1900 as a seasonal cottage. The Larsons intend to demolish and reconstruct their home with current building standards, and anticipating their long term use of the property. Considering their Baboosic Lake neighborhood, there is no adverse impact to the general public in allowing this variance.

4. How will the value of the surrounding properties not be diminished?

The Larsons expect to invest \$300,000 into their home to reconstruct their home and yard. Landscaping will be significant and fully comply with DES regulations and Amherst's Ordinances. There will be no diminution of value of homes in the neighborhood.

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

The second floor of the home is slightly larger than the first floor at 946 square feet, which is 17% of the lot size. When considering the history of this neighborhood, improvements made over the years to neighbors' homes, and the Larson's plans to invest in their home, there is no fair and substantial reason to prohibit the proposed slight increase in the size of their home; a residential use in a residential district is reasonable as a permitted use.

J. Taggart- you stated the 2nd floor is bigger than the 1st. Is the proposed footprint of the 1st floor bigger than the current footprint of the 1st floor?

There is a 2' overhang of the 2nd floor for a portion of the front of the house.

J. Ramsay clarified regarding the footprint- the footprint on the map is the largest parts of the home.

Yes- the first floor is smaller than what is drawn.

J. Ramsay clarified that the home was on a private well, but is now tied in with community septic.

Yes, a few years ago. The old system is gone.

There were no further questions or comments from the board members or anyone in the audience.

That concluded the hearing of these cases.

At this point A. Buchanan and C. Vars took seats at the table with the ZBA.

J. Ramsay read the next case:

4. Case #PZ5185-071814 – Variance

Kyle & Amy Beatty, 5 Orchard View Drive, PIN# 008-089-005 – requests relief from

§IV, 4.3, D.3 of the Zoning Ordinance to replace a shed in disrepair with a new shed within the 20' accessory structure setback in the Residential/Rural Zone.

J. Ramsay asked the applicant if he is an abutter to Mr. Cruess. Yes. J. Ramsay recued himself.

Mr. Beatty spoke on his own behalf: The Beattys are new residents to Amherst and New England. They propose to remove the old dilapidated shed and install a new shed to improve the aesthetic and functionality of the home/ shed. They had planned to install the shed months ago- before they knew the town regulations. Once they learned of the proper procedure, they stopped the work and got permits and applied for the variance. They had a survey done to fully understand their property lines.

They now plan to install the new shed in September.

Mr. Beatty addressed the tests:

1. *Not contrary to public interest-* The proposed shed is a replacement of an existing shed that was in disrepair and previously located closer to the south property line, approximately 20' east of the proposed location. The new proposed Grand Victorian shed is an attractive, high quality design (<http://www.reedsferry.com/shed-styles>) that improves the aesthetic and functionality of the shed. The proposed site is 18' from the south property boundary on one corner and 13.1' on another corner (i.e., it is interested by the 20' buffer line). The installation of the concrete foundation, which was completed in June 2014, was done without our knowledge of the 20' buffer ordinance. In an effort to comply with any applicable building codes for the shed, the owners became aware of the ordinance through conversation staff at the Town Hall. We immediately postponed the installation of the purchased shed, in order to follow the necessary process. The upgrade of the shed is part of multiple home improvements that are planned for 2014 (such as repainting the primary structure). Our goal is to invest in improving the condition and aesthetic of the property overall, including the shed. The abutters to the south have been informed of the new shed design and site and do not object to the proposed upgrade.

The installation of the prior shed pre-dates our residence at the location. We are not certain of its original installation date, but the condition of the shed indicates that it is greater than 10 years old. The lot is characterized by a downslope grade from north-to-south and wooded areas to the west (along the road), with limited flat areas. The proposed location is the least visible, flat location that provides reasonable shed accessibility from the existing dwelling, with the exception of the southeast corner of the lot- the current location of a permitted firepit/patio and proximate to two abutters. We feel that the proposed location is practical and a reasonable use of property.

2. *Sprit of the ordinance-* The primary use of the existing and proposed future shed is to store residential lawn maintenance, off-season pool equipment and snow removal equipment, which does not pose a hazard to the public. There will be no utilities to the proposed shed- no electricity and no gas. The shed will be installed on a strong concrete foundation and concrete floor, providing for a site that is not as susceptible to dry rot and disrepair as the previous shed that was installed on aged railroad ties.

3. *How substantial justice is done -* The direct abutters to the south have confirmed that the proposed shed location does not harm them. As previously stated, there is no harm to the public from the installation of the proposed shed.

4. *Value of surroundings not diminished -* The proposed shed location is distanced from our abutters by several acres to the east and north and several acres away from Orchard View Dr. The proposed location is separated from our abutters to the south by a wooded area and is no closer to the property line than the previous shed that was in disrepair. For these reasons, in addition to the south abutter's statement of no harm, we feel that the value of the surroundings are not diminished by the proposed variance.

5. *Literal enforcement:*

(B) *Special conditions -* the proposed location for the shed is the most reasonable location that is feasible for use of the property. All other sites on the property either 1) result in proximity to multiple abutters (including the south}, 2) require a central lot location in obvious view from all directions, including the road, or 3) require substantial retaining wall construction (due to grade I run-off) and healthy/mature tree removal to move the shed placement north of its proposed location. The front property is characterized by mature apple trees that flower annually and are part of the character and beauty of the neighborhood. Siting the shed in other flat locations on the property would require the removal of one or

287 *more of these mature trees affecting the aesthetic of the property and resulting in the obvious view of*
 288 *the shed.*
 289
 290 W. Sullivan- how big was the shed that was taken down? A few feet smaller in width than the new one.
 291 J. Quinn asked about the slab and if it has already been poured. Yes, concrete has been poured already -
 292 prior to knowing the Amherst town procedures.
 293 What are the dimensions of the slab?
 294 Diagram states- 26x14
 295 Shed – 20x12n
 296 Reeds Ferry floor plan 7.
 297
 298 C. Vars confirmed that the property has a drop off on the right side and then wooded area. On the other
 299 side there is an upslope to the driveway. The proposed location is best in terms of visibility as well as
 300 topography.
 301
 302 E. Custer- 4 Orchard View Dr. (Abutter)
 303 The previous shed was old and dilapidated. The proposed location is the only place to put the shed. Mr.
 304 Custer is ok with the new shed and the location.
 305 Mr. Custer asked if the shed isn't allowed in that location, will the concrete have to be dug out. Yes.
 306
 307 There were no other comments or questions from the board members or the audience.
 308
 309 J. Ramsay read the next case:
 310 **Case #PZ5153-070914 – Variance**
 311 **Lydia Greene, 21 New Boston Road, PIN # 021-015-000** – requests relief from §V, 5.2 A(1)(1) to
 312 construct an accessory apartment on a non-conforming lot in the Residential/Rural Zone.
 313
 314 Dave Dubois, the designer, was present to represent Ms. Greene.
 315
 316 The board discussed the application and clarified the purpose of the variance is that's being sought.
 317
 318 Mr. Dubois explained that the proposal is to demolish and reconstruct a portion of the existing
 319 structure. The portion of the structure to be razed is a 24 x 32 section that includes the current garage.
 320 This will become the apartment in the same footprint of the current structure. The only difference is it
 321 will be 4.5 feet taller and the existing screened porch will become a family room.
 322 Mr. Dubois reviewed the architectural plans with the board.
 323 All special exception requirements will be met. The square footage requirement of 800' or less will be
 324 met. The accessibility requirements will be met for accessing the apartment.
 325 The proper approvals to add a bedroom have been done and requirements met.
 326
 327 Mr. Dubois addressed the tests:
 328
 329 *1. How granting the Variance will not be contrary to the public interest.*
 330 *Granting the Variance will not be contrary to the public interest.*
 331 *The proposed project consists of constructing a 768 square foot accessory apartment within the existing*
 332 *garage/workshop area for use by the current family members. A portion of the existing structure is to be*
 333 *demolished and reconstructed on the same footprint. In addition to the accessory apartment, there is to*
 334 *be a family room addition to the primary residence and a screened porch. The family room creates a*

direct connection to the accessory apartment as required, and allows for the apartment to be used as additional living area by the primary residence when the accessory use is no longer needed. The construction of an accessory apartment is normally subject to a Special Exception by the Zoning Board. The creation of this lot predates current zoning and does not meet the requirement for minimum lot area and is an existing non-conforming lot. All other requirements for a Special Exception will be met. There will be no impact on public health, safety and welfare as a result of granting this Variance.

2. How will the granting of the variance ensure the spirit of the ordinance will be observed? The project would be allowed by the provisions of a Special Exception if not for the lots area dimensions. The proposed additions do not increase the overall dimension of the existing structure. All other requirements for a Special Exception will be met.

3. How will substantial justice be done? Reasonable use of the property will be permitted with no adverse impact to abutters or the general public.

4. How will the value of the surrounding properties not be diminished? There should be no effect on the value of surrounding properties. The visual change to the exterior of the structure will be minimal and similar to the existing building.

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

(A) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because the construction would otherwise be allowed if not for the accessory use.

The proposed alterations and use are reasonable in the residential/rural district and will have no effect on abutter's property values, adverse visual impacts, safety, additional traffic, noise, fumes, objectionable lighting or the general welfare of the town.

(B) The property is an existing non-conforming lot. It is not possible to use the lot for an accessory apartment in strict conformance with the Ordinance. This reasonable use is suitable for the lot and the neighborhood and will not interfere with another's use of property.

Granting this Variance would allow reasonable use of the property within the spirit and intent of the Ordinance.

No further comments or questions from the board or audience.

J. Ramsay read the next case:

Case #PZ5186-071814 – Special Exception

Chris M. Gagnon, 18 Schoolhouse Road, PIN # 008-035-000 – requests a Special Exception from §IV.4.4, E.7 of the Zoning Ordinance to allow an accessory apartment in the Northern Transitional Zone.

Bob Demarius, a partner of Mr. Gagnon at AGI Development was present.

Mr. Demarius stated that the previous owner got approval to build an accessory apartment. He built the exterior structure and 1st floor according to the approved plan, but on the 2nd floor he put in two bedrooms. The apartment is 1250 sq. ft. The applicant wishes to move a wall and put one of the bedrooms back into the main house making the apartment legal.

382 C. Mailloux mentioned that the board's approval is needed. There is nothing on file that shows the
 383 previous accessory apartment was approved by the ZBA, but there were permits pulled. It is unknown
 384 whether the permits were incorrect, or if the proper plans weren't followed.
 385
 386 The board reviewed the plans with Mr. Demarius and clarified what the applicant is seeking.
 387
 388 J. Quinn asked the board; shouldn't we have firm architectural plans to look at?
 389 C. Vars stated that the measurements on the plan in front of them are interior measurements which
 390 won't be accurate to an 800 sq. ft. apartment. The measurements need to be exterior measurements.
 391 W. Sullivan suggested tabling the application to next month so the applicant can supply accurate plans.
 392
 393 The applicant requested to table the case to the next ZBA meeting.
 394 J. Ramsay moved to accept the applicant's request to table the application to September 16th 2014.
 395 J. Quinn seconded. Vote: All in favor
 396
 397 W. Sullivan moved to go into deliberations. J. Ramsay seconded. Vote: All in favor
 398
 399 **DELIBERATIONS:**
 400 **1. Case #PZ4938-042114 – Variance**
 401 W. Sullivan voted for D. Kirkwood
 402 J. Ramsay moved no regional impact. R. Rowe seconded. Vote: All in favor
 403 Discussion:
 404 W. Sullivan the issue of the structure being increased is small in comparison to the improvements that
 405 are planned for the property.
 406 J. Taggart there's approximately 400 sq. ft. of area that will improve from hard asphalt to permeable
 407 asphalt which is 20-30% more than the proposed increase to the footprint of the house.
 408 J. Quinn asked what porous asphalt is and why the owner desires to have it. J. Taggart's understanding
 409 is that the purpose is to help the water flow issue across the property.
 410 J. Taggart they will also be tearing up non-porous asphalt and replacing it with porous - so it's an
 411 improvement.
 412
 413 1. The Variance will not be contrary to the public interest.
 414 R. Rowe yes the applicant showed that would be the case. Baboosic lake area has gone through
 415 tremendous changes and improvements and it is comparable for this property to go from a cottage to a
 416 permanent home.
 417 J. Ramsay agree
 418 W. Sullivan agree
 419 J. Quinn agree
 420 J. Taggart agree
 421 5 True
 422
 423 2. The Variance is consistent with the spirit and intent of the Ordinance.
 424 W. Sullivan yes in this instance the square footage increase is offset by the improvements made.
 425 J. Quinn It will increase the character of the neighborhood.
 426 R. Rowe yes
 427 J. Ramsay yes even though it encroaches closer to Broadway, it will raise the neighborhood value.
 428 J. Taggart yes
 429 5 True

430 3. Substantial justice is done.
431 J. Ramsay yes the applicant is able to enjoy the property and offer something to the town and
432 neighborhood.
433 W. Sullivan yes- no harm
434 J. Quinn yes- reasonable use
435 R. Rowe yes
436 J. Taggart true
437 5 True
438
439 4. The values of the surrounding properties will not be diminished.
440 J. Ramsay yes comfortable with their proposal
441 R. Rowe true
442 J. Quinn true
443 W. Sullivan true
444 J. Taggart based on the current condition of the property, no question it will be absolutely an overall
445 improvement. And the applicant provided an opinion from a real estate agent.
446 5 True
447
448 5. Literal enforcement of the provisions of the Ordinance would result an unnecessary hardship.
449 R. Rowe yes this subdivision occurred at the turn of the century. These were summer properties that
450 were extremely small.
451 J. Ramsay agree. Baboosic Lake area is a unique situation
452 W. Sullivan yes
453 J. Quinn yes
454 J. Taggart true
455 5 True
456
457 J. Taggart stated that having passed all of the tests, the request for variance is granted.
458

459 **2. Case #PZ4939-042114 – Variance**

460 J. Ramsay moved no regional impact. R. Rowe seconded. Vote: All in favor
461 Discussion:
462 W. Sullivan stated that having setbacks in this area is tough.
463 J. Taggart reminded that in the application the 2.3 feet is to the overhang and not to the front façade.
464 The neighbor's garage is on the property line and possibly over it.
465 W. Sullivan some of the houses are practically on the street.
466 J. Ramsay pointed out that no abutters have been here to protest the plan.
467

468 1. The Variance will not be contrary to the public interest.
469 J. Ramsay yes not contrary to the public interest. No threat to safety and welfare
470 W. Sullivan agree
471 J. Quinn agree and no one was here to complain.
472 R. Rowe agree it's no closer than other homes
473 J. Taggart true
474 5 True
475
476

477 2. The Variance is consistent with the spirit and intent of the Ordinance.
478 W. Sullivan the relief asked for is minor
479 J. Quinn yes
480 R. Rowe yes
481 J. Ramsay yes
482 J. Taggart we often look at public safety and visual impact issues, but with Baboosic Lake, protection of
483 the lake and treatment of running water is important as well and the applicant certainly addressed that.
484 5 True
485
486 3. Substantial justice is done.
487 J. Quinn yes reasonable use
488 R. Rowe yes
489 J. Ramsay yes full enjoyment of their property and no safety issue
490 W. Sullivan true
491 J. Taggart true
492 5 True
493
494 4. The values of the surrounding properties will not be diminished.
495 J. Ramsay yes same reasoning as before. There will be substantial improvement to the property and
496 benefit to the general public and Baboosic Lake
497 W. Sullivan yes
498 J. Quinn true
499 R. Rowe true
500 J. Taggart true
501 5 True
502
503 5. Literal enforcement of the provisions of the Ordinance would result an unnecessary hardship.
504 J. Ramsay proposed use is certainly reasonable. Not changing the use- just improving it.
505 R. Rowe agree
506 J. Quinn agree
507 W. Sullivan yes
508 J. Taggart true
509 5 True
510
511 J. Taggart stated that having passed all of the tests, the request for variance is granted.
512

513 **3. Case #PZ4940-042114 – Variance**

514 J. Ramsay moved no regional impact. W. Sullivan seconded. Vote: All in favor
515 Discussion:
516 R. Rowe asked and the board discussed if the 45% counts the basement. He didn't recall using that
517 before.
518 J. Taggart stated that the proposal is not inconsistent with other properties in the area. Also, it was
519 mentioned that it's 17% of the area.
520
521
522
523

524 1. The Variance will not be contrary to the public interest.
525 J. Quinn yes no threat to public safety
526 W. Sullivan yes
527 J. Ramsay yes not substantially different than what's there now.
528 R. Rowe not substantially different from many properties in the area
529 J. Taggart true
530 5 True
531
532 2. The Variance is consistent with the spirit and intent of the Ordinance.
533 R. Rowe yes consistent with practices in that area
534 J. Ramsay agree and a benefit to the area
535 J. Quinn true
536 W. Sullivan true
537 J. Taggart true
538 5 True
539
540 3. Substantial justice is done.
541 J. Ramsay yes improves their property and benefits the public as well
542 R. Rowe yes
543 J. Taggart the test goes to: the benefit to the applicant is not outweighed by the loss to the public. There
544 is no loss to the public- there is improvement- true
545 W. Sullivan true
546 J. Quinn true
547 5 true
548
549 4. The values of the surrounding properties will not be diminished.
550 W. Sullivan yes properties will go up, not down
551 J. Quinn yes
552 J. Ramsay yes
553 R. Rowe yes
554 J. Taggart true
555 5 True
556
557
558 5. Literal enforcement of the provisions of the Ordinance would result an unnecessary hardship.
559 J. Ramsay the use is reasonable and no detriment to the public
560 R. Rowe yes
561 J. Quinn yes
562 W. Sullivan yes
563 J. Taggart true
564 5 True
565
566 J. Taggart stated that having passed all of the tests, the request for variance is granted.
567

568
569
570

571 **4. Case #PZ5185-071814 – Variance**
 572 A. Buchanan voted for D. Kirkwood
 573 C. Vars voted for J. Ramsay who recused himself.
 574 R. Rowe moved no regional impact. A. Buchanan seconded. Vote: All in favor
 575 Discussion:
 576 1. The Variance will not be contrary to the public interest.
 577 J. Quinn yes can't be seen from the road. Similar shed has been there. No threat to public safety
 578 R. Rowe true
 579 C. Vars true
 580 A. Buchanan true
 581 J. Taggart true
 582 5 True
 583
 584 2. The Variance is consistent with the spirit and intent of the Ordinance.
 585 A. Buchanan the setback is mainly to prevent density of buildings – this won't be a problem
 586 C. Vars agree
 587 R. Rowe agree
 588 J. Quinn true
 589 J. Taggart true
 590 5 True
 591
 592 3. Substantial justice is done.
 593 R. Rowe yes reasonable use: replacing the one that was there. And it's the only good location
 594 C. Vars agree
 595 A. Buchanan agree
 596 J. Quinn true
 597 J. Taggart true
 598 5 True
 599
 600 4. The values of the surrounding properties will not be diminished.
 601 C. Vars it will not deter from property values in that area
 602 A. Buchanan agree
 603 J. Quinn no abutters were here to refute
 604 R. Rowe true
 605 J. Taggart true
 606 5 True
 607
 608 5. Literal enforcement of the provisions of the Ordinance would result an unnecessary hardship.
 609 R. Rowe due to the topography on the lot, the use is reasonable in that location
 610 C. Vars agree
 611 A. Buchanan true
 612 J. Quinn true
 613 J. Taggart true
 614 5 True
 615
 616 J. Taggart stated that having passed all of the tests, the request for variance is granted.
 617

618 **5. Case #PZ5153-032114 – Variance**
 619 W. Sullivan voted for D. Kirkwood
 620 J. Ramsay moved no regional impact. R. Rowe seconded. Vote: All in favor
 621 Discussion
 622 R. Rowe stated he thinks it should be a special exception. It was a conforming lot in the past. He doesn't
 623 think a variance is required.
 624 W. Sullivan explained the current requirements.
 625 J. Ramsay stated that by today's standards it doesn't comply.
 626 J. Taggart said the applicant noted that all criteria for a special exception will be met.
 627
 628 1. The Variance will not be contrary to the public interest.
 629 J. Quinn no harm to public safety and welfare
 630 W. Sullivan agree- no harm
 631 J. Ramsay agree
 632 R. Rowe true
 633 J. Taggart true
 634 5 True
 635
 636 2. The Variance is consistent with the spirit and intent of the Ordinance.
 637 R. Rowe yes allowable
 638 J. Ramsay true
 639 W. Sullivan true
 640 J. Quinn true
 641 J. Taggart true
 642 5 True
 643
 644 3. Substantial justice is done.
 645 J. Ramsay applicant can enjoy use of their property
 646 R. Rowe yes
 647 J. Quinn yes no objection from abutters
 648 W. Sullivan yes
 649 J. Taggart true
 650 5 True
 651
 652 4. The values of the surrounding properties will not be diminished.
 653 W. Sullivan no change to the footprint. To the neighbors it will appear the same
 654 J. Ramsay true
 655 R. Rowe true
 656 J. Quinn true
 657 J. Taggart true
 658 5 True
 659
 660
 661
 662
 663
 664
 665

666 5. Literal enforcement of the provisions of the Ordinance would result an unnecessary hardship.
 667 J. Taggart literal enforcement will result in unnecessary hardship. The use is allowed.
 668 J. Quinn the special feature was created prior to the current ordinance.
 669 R. Rowe true
 670 J. Ramsay true
 671 W. Sullivan true
 672 5 True
 673
 674 J. Taggart stated that having passed all of the tests, the request for variance is granted.
 675
 676 R. Rowe presented some questions to the ZBA and read them into the record as follows:
 677 *QUESTIONS FOR A MEETING WITH LEGAL*
 678 *1. It has been our practice to allow an applicant the discretion of not going forward when there is not a*
 679 *full board. To what extent is this mandatory or discretionary? Can the board move forward on an*
 680 *application with a quorum of three or four when there is not a full five member board present?*
 681
 682 *2. If a property owner is clearly in violation of a ZBA ruling, who can make a complaint to the select*
 683 *board and request action to be taken? Does the complaint need to be made by an abutter, or any*
 684 *citizen? If the complaint is made by a ZBA member is that member recused from sitting on the case if it*
 685 *comes before the ZBA again? If the select board doesn't take action, what recourse does the ZBA have?*
 686
 687 Discussion on question 1:
 688 R. Rowe clarified that it had been mentioned that Nashua makes the applicant move forward.
 689 C. Mailloux stated that Nashua is unique in that they will force an applicant to go forward with the board
 690 members present. The RSA requires three positive votes. Because of this, most towns let the applicant
 691 defer so they are not forced into a situation where they need a unanimous vote.
 692
 693 Discussion on question 2:
 694 Regarding enforcement, C. Mailloux stated that if the office receives a written complaint, they will look
 695 into a violation. Also, if an inspector sees something illegal when they are in the field, the office will look
 696 into enforcement.
 697 A ZBA member has the right as a citizen to send a letter to document an issue and it will be followed up.
 698 There are currently some outstanding enforcement issues being researched.
 699
 700 The board discussed the questions further and also discussed if board members should or shouldn't
 701 have private discussions regarding properties outside of ZBA meetings.
 702
 703 C. Mailloux stated she will research the procedure to have Town Counsel answer the questions in a
 704 timely fashion.
 705
 706 Minutes:
 707 R. Rowe moved and J. Ramsay seconded to approve the July 15th minutes. Vote: All in favor
 708
 709 R. Rowe moved to adjourn at 10:06pm. J. Ramsay seconded. Vote: All in favor
 710
 711 Respectfully Submitted,
 712 Jessica Marchant