

**Town of Amherst
Zoning Board of Adjustment
Tuesday November 22, 2016**

ATTENDEES: D. Kirkwood- Chair, R. Rowe, C. Vars, R. Panasiti (Alt), J. Ramsay, S. Giarrusso (Alt)
Staff: G. Leedy- Community Development Director

The Chair called the meeting to order at 7:07pm.

OLD BUSINESS:

1. CASE #: PZ8007-101416 – Keith & Barbara Allen, 8 Milford Street, PIN #: 025-073000 – Request for approval to construct a dwelling on the lot notwithstanding that the front, rear and side setbacks required by the ordinance cannot be met and that the building will exceed the floor area ratio. Zoned Residential Rural. Continued from November 15, 2016

Discussion

R. Rowe believes the applicant should get a building permit if they can receive waivers from the state regarding septic and well. That is a unique neighborhood with very small lots. Many of the lots are .5 and .6 of an acre in size. The ZBA recognizes the limitations in the Baboosic Lake area and has been good about giving waivers. In this case they are asking far too much in terms of gross floor area and footprint based upon the law. He will not vote in favor of it for that reason, but would like to give the applicant an opportunity to adjust their plan if they choose so they can come back with a smaller plan. This plan takes up 90% of the lot. If the board is agreeable, he would like to exit deliberations to discuss if they want to table the case tonight and have the applicant come back with a revised plan.

C. Vars is agreeable. There are an awful lot of problems with the lot like where the septic and well will go. He would like to see a 20' setback in the front rather than 16' to make room for parking and snow removal.

R. Panasiti mentioned the parking issues that the abutters brought up. It sounds like there is so much congestion that if they went ahead as planned, it's a little too much. We should ask if they are willing to alter the plans. That whole area is overgrown and the board should look into it another time.

J. Ramsay is amenable to offering that option to the applicant. Two things stand out to him: 1. the notation of certification by the surveyor. 'approximate lot lines per the deed' which is open-ended and 2. 'physical evidence found' On the site plan he found little, if any, physical evidence for delineating that property. D. Kirkwood said that's probably the case for all of the lots down there.

C. Vars said the town maps show different frontage amounts than the plan, which can cause a problem. The frontage on Milford St on the town map is 42 feet and rear is 41.6 which is a discrepancy of 1' on the front and 2' on the rear.

S. Giarrusso asked if it is consistent for this board to ask for certified plot plans. J. Ramsay said it's required for a CO to be issued. That's for construction, not variance. D. Kirkwood said it's not required for ZBA, but certified surveyed maps are required.

J. Ramsay said the certification shown says there is nothing to certify. D. Kirkwood clarified they are saying this plan is not the result of a boundary survey. It's information from the deed.

J. Ramsay moved to untable deliberations. R. Panasiti seconded. All in favor

J. Ramsay moved to come out of deliberations. R. Rowe seconded. All in favor

D. Kirkwood explained to the public why they came out of deliberations. The board does not accept new information during deliberations, so in order to get more information from the applicant, they have come out of deliberations to have that discussion.

Attorney Quinn came forward to speak with the board. His clients were not in attendance. He said he appreciates the board's comments especially Charlie giving numbers stating 20' of front setback is better than 16'. He knows the board can't commit to exact figures, but if he can hear the board's concerns regarding the side setbacks he can take them back to the client to revise the plan.

R. Rowe looked through 15 lots in that neighborhood and only two houses were in the range of 1700 sq. ft. The rest were much smaller. He doesn't want to lock the applicant into a specific sq. ft. area, and he knows the 15% doesn't work in that area. A smaller footprint would be better.

D. Kirkwood said the board concerns are the setbacks are crowded. Given the other situations on that street, they should give room for snow storage etc. R. Rowe thought the project was not planned to begin soon. Attorney Quinn stated most houses on that street have a 45% ratio. The applicant's plan was to get a foundation in before winter. This wasn't intended as a spring project. He would like to get the plans revised and be put on the next available ZBA agenda.

C. Vars said it would be helpful if the applicant finalized a septic system design. What was shown is extremely small for a two-bedroom house. His other concern is what if it's raised a foot or two? What happens to parking? Also, where is the well going to go? It looks like the slope may cause an issue. He has no problem granting a variance for putting a house on the lot. He would vote in favor of all five criteria for that. That's the owner's right. On the other hand, there are these other issues.

Attorney Quinn said they won't have an approved septic by the December meeting, but he'll check if they can finalize a design.

J. Ramsay said the applicant was amenable to reducing the footprint to 26x38. That gives them a foot of setback on each side and some depth room. A narrower building is preferred and a 20' front setback is also preferred. This plan indicates a 2' setback in the rear and he doesn't see any problem with that because there's a pathway between the properties.

R. Rowe said this neighborhood has roads that were put in the subdivision plans that were never used as roads. Attorney Quinn expanded that each of the abutters with a right-of-way owns to the center of the road. That extra land is not considered part of the lot. So that's 9' of land to the back that belongs to his client, though it's not countable by land use law.

R. Rowe moved to table case PZ8007-101416 to the December ZBA meeting. C. Vars seconded.

All in favor

The board discussed submittal dates for that meeting and G. Leedy stated there wouldn't be an issue with these applicants submitting their updated plans beyond the submittal date, as long as it is about a week before the meeting.

2. CASE #: PZ8032-102016 – Rehearing Arboleda Realty, LLC (dba LaBelle Winery), 340 NH Route 101, PIN #: 008-052-000 Rehearing of the decision approved by the Zoning Board of Adjustment on August 30, 2016 & September 30, 2016 for a variance from Article IV, Section 4.4,B to allow the following uses that are not permitted in the Zone: a distillery with tasting room/small function, event center, office building, and an inn with a spa and restaurant. Continued from November 15, 2016.

R. Rowe moved and J. Ramsay seconded to exit deliberations for case PZ8032-102016. All in favor

Discussion

D. Kirkwood said one of the abutters at the last meeting made mention that the sound measurements were not made at an appropriate time of day and he thinks that is a reasonable point. He asked the applicant to have the noise expert address the issues of why that time of day was chosen for the reading

and if an additional set of reports should be made during the times associated with the increase of noise level for proposed functions.

Attorney Hollis addressed the board saying RSP Consulting did the noise report. Dr. Palermo signed the report but is not in attendance tonight. His colleague, Dr. George Bower, is here to answer questions.

Dr. George Bower has worked with Rob Palermo for many years. The question is about the timeframe when the noise measurements were taken. What Rob did was a series of measurements in and around the site as well as on the local streets of the neighborhood. He found a range of what you would expect for this type of development. The sound levels are not very high- a bit above ambient. Same goes for the neighborhood-the readings are what they consider just background noise. Some measurements were 50-60 decibels (dB). The most significant impact was 84-87dB taken at Rte. 101 when a truck went by. It was in the 70s when there was regular vehicle traffic.

What you do for an impact study is to make a projection as to what would be reasonable prior to something being built. For this study, Rob projected the noise level at the proposed site to be 90 decibels- which is higher than the background noise and higher than the trucks on the road. He asked, if this was the case, what kind of impact would you see up at the residences at Holly Hill.

He found with the standard calculations of reduction of noise over distance, the prospective noise generated at 90dB is at background levels when you get to the receptors in the neighborhood. This was a conservative approach because it does not take elevation, terrain, vegetation or atmospheric conditions into account. All of these would significantly reduce noise across distance. Instead, he assumed the area as a flat, open field.

Is this an appropriate way to conduct the study? Yes, it is. Assuming 90dB for this type of activity is very high. A social gathering or wedding reception with a noise level at 90dB is uncomfortable.

R. Panasiti asked if that number is used as a standard. Yes, OSHA says more than 90dB requires ear protection.

R. Rowe said from the road to the neighborhood there is elevation and vegetation. If there was a 90-decibel truck going by, what is the estimation for what it would read in that neighborhood? Dr. Bower replied this is shown on the last page of the report. 42.7 decibels is the answer.

J. Ramsay asked what the ambient level was. It was in the low 40s.

D. Kirkwood asked if the measurements were taken when an event was going on. No, but those events take place inside and they wouldn't be as loud as the 90dB that was used.

The reduction of sound over distance works like this: When you double the distance, you reduce the decibel level by 6. For example, 80dB at 10' away is 74dB at 20' away and so on.

D. Kirkwood asked, if you were to have a rock band at 120dB, would you get below the 90dB threshold by the time you get to the neighborhood?

Dr. Bower showed that he ran the report for 100dB and at 1847 feet, the result was 52dB.

Public comment

Bruce Derienze- 29 Holly Hill

There are documented incidents of outdoor wedding music and announcements being heard in the neighborhood- especially on Winterberry Dr. There were two letters submitted to the board from residents stating they could hear these activities. That facility is about 800 feet further away than the proposed facility will be.

144 The normal threshold for a person is to hear at 10 decibels. 40-50dB would be blowing your brains out.
145 The test should be whether the sound is heard from the porches of these homes.

146

147 **C. Vars moved and R. Panasiti seconded to go into deliberations. All in favor**

148 D. Kirkwood stated R. Panasiti will vote for K. Shea

149 **J. Ramsay moved and C. Vars seconded no regional impact. All in favor**

150 Discussion

151 C. Vars gave a statement based on comments made in the application for rehearing.

152 As the board member who cast the deciding vote to grant the motion for rehearing, I am content that
153 we have given the proper venue for again hearing all of the pros and cons of why it is appropriate or
154 inappropriate to grant the variance needed to allow the uses requested by Arboleda Realty LLC for Lot 8-
155 52 on Rte. 101 in the Northern Transitional Zone. I have spent an inordinate number of hours making
156 sure that my decisions on the proposal are in the best interest of the townspeople as well as the
157 proponent.

158 As you are well aware Mr. Chairman, I spent six years along with you as a regular member of the
159 Amherst Planning Board from 1977-1983 during critical times in the growth and development of the
160 Town. I often re-read your written comments of April 1983 about the high degree of integrity and
161 sincerity, and your quote "your belief in fair and reasonable dealings and adherence to the old Yankee
162 standard of practicality has been a benefit to us all." When the Town was facing steep criticism for not
163 providing any diversity of housing, I suggested the Planned Residential Development Ordinance which
164 was adopted in November 1982 and with some minor adjustments to fit the times is still a viable
165 ordinance today- 34 years later. Additionally, when there were concerns about numerous "spot zoning"
166 issues, I authored the General Office Zone Ordinance which has been in effect since March 1985- 31
167 years ago.

168 Over the succeeding years, having attended many master plan meetings, much of my 'free' time was
169 spent on various sewer study committees relating to Rte. 101A. I'm now in my fifth year on the Zoning
170 Board of Adjustment- the last two as a regular member.

171 All of this to simply say that after 42 years involvement in the planning process here in Amherst, having
172 built numerous homes and commercial projects including the Meeting Place and the 10,000 sq. ft.
173 addition to the rear of the Congregational Church in the village, I have had the best interests of the
174 Town of Amherst as my guide!

175 While the resident abutters who requested the rehearing had the absolute right to do so, the testimony
176 offered by their learned legal counsel, who asked that we listen with an open mind, did nothing to
177 dissuade me that my judgements on this project were improper or in error as has been suggested in the
178 request for rehearing.

179 I am perplexed with the numerous references to the Harborside Assocs. Vs Parade Residence Hotel, as I
180 understood that variance to be about the size of the sign allowed on a Hotel in Portsmouth with little to
181 do with the application before us.

182 Frankly this hearing has served as a vehicle to solidify my previous opinion that the variance application
183 was thoroughly vetted and that we did not make any egregious mistakes as characterized by the
184 Applicant's legal counsel.

185 Thank you for allowing me to express my thoughts.

186

187 R. Rowe stated two points. 1. An email was sent out stating the board negotiated with the applicants to
188 get the conservation acreage- that is not true. 2. Years from now, Rte. 101 will be a divided highway and
189 you won't even be able to turn left onto it.

190 He can't see much difference between this use than the other allowed uses. And none of the permitted
191 uses without conditions such as: one dwelling, farm, agricultural use, roadside stand or home

192 occupation is going to happen there. It's unique land. There is a sliver of land beside the road and then it
193 goes up a steep embankment which is difficult to use. The applicant has made a case for a variance for
194 this use on Rte. 101.

195 R. Panasiti said he understands that view, but can't get out of his mind the master plan and to maintain
196 the rural character of Amherst. That's what they've tried to do. Rural character of the neighborhood has
197 nothing to do with putting businesses there. Even if I think that's the best use of that property, I don't
198 think it's within the ZBA purview to change the wording just to suit the situation.

199 J. Ramsay agrees but after reviewing all the reports submitted, this is not going to interrupt the rural
200 character. The proposal is being designed to fit in with the character. Where in the ordinance does it say
201 that hospitality is a contemplated use in any area of town? There is no definition of rural character.
202 What's proposed here is not a blight to the rural character in that part of town.

203 R. Rowe asked if the master plan is voted on by the Planning Board, not the town people? No, Doug
204 replied it's the reverse. It is voted at town meeting.

205 D. Kirkwood seconded what Charlie said. He was on the original master plan development and has been
206 on similar committees since then. What does the phrase, 'maintain rural character' really mean?

207 Depending on who you talk to, you get different answers. Everyone has a different idea. Given the tools
208 we have today we can only make a judgement based on our own personal perception and what's put
209 forward in the testimony. The problem with granting a use variance is we could be interpreted as
210 broadening the scope of general use available to anyone in this particular zone. But if you read the 5th
211 test, the characteristics of this particular property need to differentiate it from others which prevents it
212 from being allowed in the general area. Because of special circumstances, the proposed uses that are
213 generally allowed in the transitional zone won't work on that piece of land. Another use could work on
214 that one lot.

215 It's up to us to determine how we reconcile that with a change to the rural character. It is a balancing
216 act. Speaking for himself, he grew up on a farm where there were no other houses in view. Now there
217 are a lot more houses there, but when you compare it to urban areas, the density is still much less and
218 can be determined to be rural.

219 At some point in the future, everything can change. What we can do is perpetuate our vision as long as
220 it makes sense and is practical. But there's progress and we have to deal with that. If we do allow some
221 development on this particular land, if it's done in a tasteful way, then what we may have done is
222 incorporate a style of development which respects some of the elements of a rural environment. At the
223 rehearing, he heard a concise, practical and informative description of the uniqueness of that land.

225 C. Vars said it's instructive to get into the history of that area of town. The town voted for 5-acre zoning
226 for the entire northern rural area which encompassed what is now the northern transitional zone. At the
227 time of the change, the minimum acreage was reduced to 3.5 acres and it was recognized that the word
228 transitional means change and that was the reason for that zone name at that time. They anticipated
229 the changes coming due to the highway and that expansion has now begun in Bedford.

231 **CASE # PZ8032-102016 - variance**

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

233 R. Rowe – yes. The development has to be considered for the uniqueness of the land and it's going to be
234 done to enhance the topography of the area and he thinks it will be a great entrance to Amherst.

235 R. Panasiti not against public interest, but it's against some neighbor's interest. True

236 C. Vars – True. It's my belief this variance is in the public interest and does not alter the character of the
237 surrounding neighborhood. In the words of a planning board member at a previous hearing, "the
238 proposal is without a doubt, the highest and best use of the site in question." My feedback from others
239 on the golf course, at church, at the lumber yard and in phone calls asking about what is happening tells

me that the majority of the Townspeople are strongly in favor of the proposed plans. In the process 65% of the letters received backed approval including various neighboring property owners on Holly Hill Rd. It is in the abutting neighbors interest and concern that the applicant has voluntarily provided that the rear 25 acres would be protected as unbuildable space in perpetuity.

J. Ramsay- True, for all reasons stated.

D. Kirkwood understands what Reed is saying that some would disagree with the development. Because we have a democratic society, it's important to listen to all the comments. Based on that information we received, granting the variance would not be contrary to the public interest. True

5 True

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

R. Panasiti had a hard time with this one. If we look at the ordinance as written, the spirit of the ordinance hasn't been observed by this with maintaining the character. But listening to Doug and his conclusions, yes, it is in the spirit. It doesn't fit into the category of uses, though. Not True

C. Vars – True. The proposed use is consistent with allowing such an unperceived outstanding use, while still protecting the stated rural and scenic appearance at the entrance into Amherst. The sensitive design elements of the structures plus preserving two historical buildings in many ways mimics the very desirable aspects of the historical Amherst village which once had a sizable hotel and historically retains two office buildings, a church, retail store, gas station and repair shops along with a 30 unit Country Mansion Condominium with its large architecturally beautiful nine mansion units along with 21 additional units in the original attached barn and buildings behind, which by variance, filled a desired need in the village district. As an interesting aside, some of those who spoke out against that project back then are, or have been, residents of the Country Mansion Condos.

J. Ramsay-True, for all reasons stated. Generally zoning maintains health, safety and welfare and the application is sensitive to those items

R. Rowe- True. We've heard the property has been on the market for years. Potential sales have fallen through for one reason or another. The property is on busy the road of Rte. 101. Permitted uses and special exception uses aren't much different than this use will be. The project will be attractive based on the landscaping which will be set by the Planning Board. The proposal is not contrary to the spirit and intent of the ordinance.

D. Kirkwood - Permitted uses in the transitional zone and the residential zone are all the same except for one. These uses could be put in with no review other than Planning Board review. All options would increase the density. He has a hard time rationalizing these permitted uses as coming close to maintaining the rural character. The spirit of the ordinance is dictated by the master plan. What kind of development would most closely be tolerated by the goal of the master plan, which is to maintain the rural character? He has to believe that because there is uniqueness and because the proposals they've seen, which, if they grant the variance, need to be adhered to because that's the basis of the decision, that the best interest of the town is served by this particular development on this particular property. There's still a semblance of rural character with the space between properties on Rte. 101.

4 True, 1 Not True

3. Substantial justice is done.

J. Ramsay yes it speaks to enjoyment of property: using it for a use that is not contemplated as a use in that zone or any zone. Substantial justice would be done in allowing the applicant to proceed.

C. Vars- True. The property does not lend itself well to any of the current allowed uses stated in the Northern Transitional Zone. Many years ago, my building company investigated the potential of constructing a Planned Residential Development (PRD) which was not pursued due to excessive costs due to steep slopes and wetlands.

288 The current proposal allows the owner to sell the property for a combination of reasonable uses, is far
 289 enough away from the residences to not be offensive and is equitable to the Town's best interests
 290 including tax structure.

291 The proposal is an excellent use of the property especially in light of the fact that the State of NH Dept
 292 of Transportation has an approved design to construct a four-lane with 16' landscaped median buffer
 293 with limited access through Bedford and Amherst and is currently included in the ten-year highway
 294 construction program.

295 I believe there will be harm to the owner if the project is denied, but there will be no harm to the public
 296 if granted.

297 R. Panasiti based on what Charlie said, he agrees substantial justice will be done. Topography prohibits
 298 what that land could sustain. True

299 R. Rowe- True. It's a fair balance between the interests of the applicant, the abutters and the residents
 300 of Amherst

301 D. Kirkwood-True

302 5 True

303

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

305 C. Vars- True. The testimony provided by F&M Appraisal and my own 42+ years of experience in NH
 306 while pursuing a living in land development, construction management and real estate business tells me
 307 there will be no reduction of property values should this project be completed as proposed.

308 I've heard the opposing negative argument for years. When we proposed the Meeting Place in 1979, we
 309 were told we would destroy the values on Pinnacle Rd which overlooked the retail proposal and I also
 310 remember how many Amherst Village residents argued that the historic values would be greatly
 311 diminished which never occurred.

312 The site's topography, the heavily wooded acres and the existing wetlands to the rear make the front of
 313 the property the best location for development. There being a distance of roughly 1800+ linear feet or
 314 about 1/3 of a mile to most nearby homes, values should not be affected.

315 For a point of interest, the distance between the rear of the proposed inn and abutters on Holly Hill,
 316 Greenbriar and Winterberry Rds. is approximately the same distance as the front of town hall to just
 317 short of the entrance to the Country Mansion at the other end of Main st with the roads connecting
 318 them.

319 R. Panasiti agreed with Charlie. True

320 R. Rowe- True

321 J. Ramsay-True. If this project would redefine the neighborhood, his answer would be different. It will
 322 not impact Holly Hill neighborhood because Holly Hill does not define that area. It is not even visible
 323 from Rte. 101.

324 D. Kirkwood agreed for the same reasons. True. He has yet to have heard one argument for property
 325 values decreasing in all his years of sitting on the ZBA. No evidence was presented that values would
 326 diminish.

327 5 True

328

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

330 R. Rowe- True. We have heard testimony on the uniqueness of the land. The applicant has tried to sell
 331 for years and has had no takers. The front of the property is unique and the proposal is a reasonable use

332 R. Panasiti agreed with Bob and it is a reasonable use for the front of the property.

333 C. Vars- True. The hardship is with the owner/seller and would run with the property. There are special
 334 circumstances that differentiate this lot from surrounding lots. It is my opinion that the proposal to build
 335 a 24-unit inn with internal retail space and other amenities along with a small distillery, tasting area and

function room and using the current 'home' on the site for corporate office space is a reasonable one owing to the special conditions of the site's severe topography.

The property is the largest and last available piece along Rte. 101. The very name-Northern Transitional Zone indicates there will be change. This is certainly a change that anyone that I know ever envisioned over the past 40 years. There are numerous provisions of the ordinance that make the property undesirable for the expressed allowed uses. Thus, denial of this well-conceived project would continue the unnecessary hardship that exists.

J. Ramsay a hardship does exist for all reasons stated. When we left last week, there was discussion of the gravel pit that exists as being a self-imposed hardship. That planted a seed of doubt in his mind. He resolved by realizing if that wasn't a sand pit, it would be a part of the steep hillside so we would be approaching the hardship of topography in just a different way, but it would still be part of that parcel's difficult terrain for development.

D. Kirkwood took seriously the comments that were made about the noise, and a number of other concerns of the abutters. He went to the area and couldn't see much of where this development would go from the residential neighborhood. Even from Rte. 101, he was hard-pressed to identify houses through the woods.

He was worried about the water- but for different reasons. The figures that were presented early on were way out of scale. Some people were treating the wells up there the same way as if there were dug wells. That's not the case. Almost all the wells up there are bedrock wells that draw from the bedrock aquifer. It is entirely possible for someone on Greenbriar Ln to be in the same vein as somebody down on Rte. 101A. There are places where you could draw the same vein as another and if the draw was heavy enough, both wells could be compromised. That's just the nature of bedrock aquifer.

It was pointed out that there are instances when you can hear stuff. And under certain conditions you can hear a lot. But there are hills and vegetation that will work to mute some sound. Based on what he's read, he's convinced it shouldn't be an oppressive thing to have to deal with.

That property is unique regardless of the depth of that quarry. He has a hard time seeing the K9 facility moved up a few lots and still being able to function. Both criteria for hardship have been met given what the permitted uses in the ordinance are which are far worse than this proposal in terms of rural character. True

5 True

The Chair stated, having passed all the tests, the variance is granted.

R. Rowe moved that the 25-acre conservation land be subject to terms and conditions as set by the Planning Board. This plan is shown on exhibit A tab 20 prepared for LaBelle Winery.

R. Panasiti seconded. All in favor

C. Vars said testimony was given at the first hearing regarding five recommendations given by StoneHill Environmental and were offered as conditions by the applicant. They are found on tab 4 page 6 of exhibit B.

C. Vars moved to include those recommendations by StoneHill Environmental. J. Ramsay seconded. All in favor

The Chair revised his statement: the application has passed all tests and variance has been granted with two conditions as seen in Exhibit A Tab 20 and Exhibit B Tab 4 page 6.

J. Ramsay moved to come out of deliberations. R. Rowe seconded. All in favor

C. Vars moved to adjourn at 8:55pm. R. Panasiti seconded. All in favor

Respectfully submitted, Jessica Marchant