

**Town of Amherst  
Zoning Board of Adjustment  
Tuesday January 17, 2017**

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

The Chair called the meeting to order at 7:05pm.

OLD BUSINESS:

**CASE #: PZ8007-101416 – Variance Keith & Barbara Allen, 8 Milford Street, PIN #: 025-073-000 – 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 December 20, 2016**

Attorney Tom Quinn was present with the owner, Keith Allen, to present the case.

He explained how the old plan has been revised and pointed out the changes that have been made to the plan. Basically, it's been downsized. They had the property surveyed and the measurements were very close to what they thought they were.

Last time they discussed having a 20 ft. setback in the front to allow for snow storage. The new plan has a 25 ft. front setback. Now both parking spaces will not be over the septic system. The septic design is not yet approved, but the designer doesn't anticipate any problems getting it approved. There will be no parking over the leach field.

In the new plan, they have narrowed the house and enlarged the setbacks as follows:

	<u>Old plan</u>	<u>New plan</u>
House size:	28x40	26x30
Front setback:	16 feet	25 feet
Side 1:	7 feet	8 feet
Side 2:	8 feet	9.5 feet
Square feet:	1760	1560
Floor ratio:	62%	55%

Attorney Quinn said that since this is a continuation of a hearing and not a new hearing, he may not go through his entire presentation again. The board discussed who was at the previous hearing to hear Attorney Quinn's statements and decided R. Panasiti would vote for K. Shea as he was not at the meeting when this case was first heard.

Attorney Quinn reviewed his previous statements from November 22<sup>nd</sup> describing the property. At the time, test pits had been done and since then, septic plans have been designed-though not approved yet. There are no issues with it being approved. The homes are all very close together. The two regulations that the proposal can't meet are setbacks and floor area ratio. Because of the zoning requirements that affect this area, it's impossible to build a home on this lot that meets the requirements.

Attorney Quinn briefly summarized his arguments for the tests.

1. Public interest and 2. Spirit and intent

Does it violate the ordinances?

Does it alter the character or threaten public health, safety and welfare?

The purpose of the zoning ordinance is to promote the public health, safety and welfare. One way the ordinance does that is to group similar uses in common neighborhoods. They also impose size regulations. In the rural, residential zone, the requirement is 200 ft. of frontage, 2 acres and 25 and 50 ft. setbacks. Those aren't unreasonable for new residential subdivisions, but this is an existing subdivision adopted over 100 years ago. Many lots in this area can't meet those requirements. They are looking for relief, but aren't going to change the character of the neighborhood. He gave examples of other lots in the area that don't meet the requirements. Granting the variance will not threaten the health, safety or welfare of the public. The septic design will have to be approved and all regulations will be met.

### 3. Justice

Denying the variance will leave the property unbuildable leaving the property useless and significantly lowering its value. The harm to the applicant is not outweighed by any significant benefit to the public. The proposed use is completely consistent with the neighborhood as developed.

### 4. Value

The proposal is consistent with the neighborhood, will be built to code and will be new and attractive. It won't significantly add to the traffic. Property values will not suffer with the addition of this house.

### 5. Hardship

This is a unique area of town. There are tight lots and close dwellings. The requirements of the ordinance cannot be met. It's been non-conforming for a long time. In order to use the property, the variance is necessary, not just desired.

The ordinance groups similar uses together. They are proposing a use similar to others in the area. It is consistent with the goal of the ordinance of grouping similar properties together.

Special conditions – strict regulations would prevent any building on that property. Other permissible uses (farming/food stands) aren't feasible.

### Questions from the board

R. Panasiti remembered that there was a neighbor concerned about the well distance and wanted to hear more about that issue.

Attorney Quinn said the wells are close together. DES determined a 75' well distance from the septic is not possible at this location and they understand this neighborhood already exists. In his experience, because one neighbor has a well, it does not mean another neighbor can't put in a well on their own property.

C. Vars said the septic is consistent with what he anticipated. He asked who owns the ice house drawn on the plan. The property owner.

The footprint is consistent with neighborhood. The septic at #74 is within 30 feet. On the old plan, the well was further away. That doesn't concern the ZBA, but DES may have an issue with it.

The owner said he is ok with flipping the locations to what they were if needed.

### Public comment

None

**C. Vars moved and R. Rowe seconded to un-table case PZ8007-101416**

**K. Shea moved and R. Rowe seconded to enter deliberations. All in favor**

**R. Rowe moved and J. Ramsay seconded no regional impact. All in favor**

97 Discussion  
 98 R. Rowe wanted to comment about the neighborhood. There are two neighborhoods in Amherst that  
 99 are unique. Baboosic Lake is one of them. It was developed in the 19<sup>th</sup> century as a summer resort area  
 100 and has turned into year-round housing. The lots are roughly 40 ft. x 60 ft. in size and none of the  
 101 properties meet the setback and density standards. This use is not out of character with the size,  
 102 setbacks and density of other homes in the neighborhood.  
 103  
 104 J. Ramsay agreed with that comment.  
 105 The owner has done his homework on this and the plan has come a long way.  
 106  
 107 **CASE # PZ8007-101416 – Variance**  
 108 1. The Variance will not be contrary to the public interest.  
 109 C. Vars yes footprint is consistent with other properties around it. Parking is adequate. Nothing contrary  
 110 to public interest  
 111 J. Ramsay agree nothing that would be against the rights of the abutters  
 112 R. Rowe yes  
 113 R. Panasiti agree with C. Vars unique in character and consistent with neighborhood  
 114 D. Kirkwood floor area ratio is high, but probably not much different than surrounding properties  
 115 5 True  
 116  
 117 2. The Variance is consistent with the spirit and intent of the Ordinance.  
 118 R. Panasiti the spirit will be observed. Not unlike other properties there. Nothing else could go in there  
 119 other than what is in that area. Granting the variance is in the spirit of the ordinance  
 120 C. Vars parking is consistent with being off the road and leaves a place to plow snow spirit is observed  
 121 J. Ramsay agree surprised the setback moved quite a bit- more than the minimum  
 122 R. Rowe yes  
 123 D. Kirkwood True  
 124 5 True  
 125  
 126 3. Substantial justice is done.  
 127 J. Ramsay yes the owner will be able to enjoy the property without infringing on the rights of abutters  
 128 and no health, safety or welfare issues for the public  
 129 R. Rowe yes house needs variances, but consistent with most of the other properties in the area. Unjust  
 130 not to allow it  
 131 R. Panasiti to deny it would make the lot unbuildable  
 132 C. Vars granting the variance is a benefit to the applicant and does nothing to threaten the health, safety  
 133 and welfare of the public. Substantial justice is done.  
 134 D. Kirkwood True  
 135 5 True  
 136  
 137 4. The values of the surrounding properties will not be diminished.  
 138 R. Rowe this is a new house and will be a higher quality house than others in the area. Won't diminish-  
 139 will probably enhance values  
 140 R. Panasiti agree new septic system too which is better than others in the area  
 141 C. Vars doesn't diminish surrounding property values. Consistent size- wise and with septic.  
 142 J. Ramsay agree will set a higher bar for the entire neighborhood  
 143 D. Kirkwood True  
 144 5 True

145 5. Literal enforcement of the provisions of the Ordinance would result an unnecessary hardship.  
146 R. Panasiti unless they approve a dome stadium on that property, whatever goes in there will be the  
147 same sized house as proposed. It is a reasonable use  
148 C. Vars there is hardship to the owner if denied. There are size and slope constraints on the lot. Denying  
149 it wouldn't allow other uses.  
150 J. Ramsay agree  
151 R. Rowe agree  
152 D. Kirkwood fundamental purpose of the zoning ordinance is to group similar uses in particular areas  
153 and granting the variance keeps that consistent here.  
154 5 True  
155  
156 The chair stated that after having passed the tests, the variance is granted.  
157  
158 **R. Panasiti moved and R. Rowe seconded to exit deliberations. All in favor**  
159  
160 **OTHER BUSINESS:**  
161 **Minutes: December 20, 2016**  
162 Line 84: 'facing away from the house'  
163 **S. Giarrusso moved and J. Ramsay seconded to approve the minutes of December 20<sup>th</sup> as amended.**  
164 **All in favor with J. Ramsay abstaining**  
165  
166 R. Panasiti mentioned there are zoning changes on the warrant article about the IIHO regarding density  
167 to clarify that all parts fall under the regulations.  
168 K. Shea asked if the planning board is addressing the Northern Transition Zone this year.  
169 Language was drafted, but the topic is not being dealt with until next year.  
170  
171 D. Kirkwood talked to Town Counsel and he's working on his response to the filing of the LaBelle appeal.  
172  
173 J. Ramsay mentioned some ZBA members are up for renewal.  
174 J. Ramsay will run for reelection. C. Vars will probably run for reelection.  
175  
176 **C. Vars moved to adjourn at 8:00pm. R. Rowe seconded. All in favor**  
177  
178 Respectfully submitted,  
179 Jessica Marchant