

**Town of Amherst
Zoning Board of Adjustment
Tuesday May 16, 2017**

ATTENDEES: D. Kirkwood- Chair, R. Rowe- Vice-Chair, C. Vars, J. Ramsay, R. Panasiti (Alt), Staff G. Leedy

The Chair called the meeting to order at 7:09pm, explained the ZBA process and introduced the board members and staff present.

NEW BUSINESS:

CASE #: PZ8508-040517 - Variance Keith & Deborah Barker – 28 Windsor Drive, PIN #: 002-146-006 – Request for a variance to Article IV, Section 4.3D to allow the construction of a front porch 18” over building setback line of 50’. Zoned Residential Rural.

Keith Barker presented the case. He would like to put a porch on his house. A 5’ porch would be ok but he would like to have a bit more space so he is asking for 6.5 feet.

He addressed the tests as follows:

1. Granting the variance will not be contrary to the public interest because the proposed addition does not conflict with the purpose of the ordinance (providing adequate and consistent setback from a public road), and will not threaten public health, safety and welfare.

2. The spirit of the ordinance will be observed since there are other houses on neighboring properties that are closer to the road than the porch addition being proposed.

3. Substantial justice will be done because a reasonable addition to the property will be allowed and there will be no harm to the general public or other individuals.

4. The proposed use will have no effect on the value of surrounding properties. Actually, it will probably bring up the value.

5. The general public purpose of the ordinance with respect to front yard setback is to create a consistent streetscape appearance, consistent with other neighborhoods in the area. This proposal for an 18” encroachment into the front yard will not be discernable to the casual observer, and thus has no relationship to the general public purpose of the ordinance.

He explained that because he doesn’t have a porch, the front of the house has started to rot and he’s looking to fix that.

C. Vars pointed out that the encroachment is actually smaller than the 18” listed.

R. Panasiti asked if the neighbors have porches. The one across the street does. It is consistent with the neighborhood.

No public comment

CASE #: PZ8562-041917 – Variance Allison & John Truslow – 14 Steeple Lane, PIN #: 021-020-055 - Request for a variance to Article IV, Section 4.3D to allow for the construction of a deck within the setback of 25’. Zoned Residential Rural.

Allison Truslow presented the case. They currently have a deck on the back of their house. The plan is to take down the existing deck and put up a new deck. The house is squished in the corner of the lot. The deck is already close to the boundary. It is not currently square- it follows the angle of the property to minimize the encroachment to the side setback. They would like to square it up and pull it around the side of the house. The property line goes through the side of the porch.

She addressed the tests as follows:

1. The variance is on private property and not seen or accessed by the public. It will be only be seen by neighbors.

2. She passed around some pictures for the board's review. Privacy and space between our house and our nearest neighbor will not be affected. The natural topography, which includes a large ditch with trees, separates the two properties and lends privacy to both neighbors. The proposed deck would not encroach on this natural boundary.

D. Kirkwood clarified that the separation she mentioned is between her and the property to the west.

3. There will be no harm done to the general public or abutting properties as no public land is affected and no private land is harmed.

4. This variance will not change the value of the surrounding properties as it does not affect the surrounding properties.

5. The encroachment of the deck into the 25' offset will not affect the protection of health, safety or welfare of the public. The general public purpose of the setback is to provide adequate separation from other properties and to provide a consistent streetscape. When this lot was created and the house was constructed, smaller setbacks were allowed. The proposed encroachment will have no adverse effect on the general purpose of the zoning requirement but will allow the reasonable use of the property.

The proposed use is reasonable because it will not affect public or private land use in the area, and it is reasonable to have a usable deck. The one now is a weird shape and not very usable.

She also stated she informed the new neighbors who didn't receive the abutters letter and they came and walked the property and have no issues with the plan.

CASE #: PZ8565-042417 – Variance Garrett Trombi – 19 Tamarack Lane, PIN #: 002-087-071 – Request for a variance to Article IV, Section 4.3D to allow for the location of an accessory structure (pool) with a zero foot setback from the rear property line. Zoned Residential Rural.

Garrett Trombi presented the case. He is requesting a variance from the rear setback to put in a pool. The rear boundary adjoins common land for the subdivision. Beyond that land is the Audubon society. He addressed the tests as follows:

1. Granting the variance is not contrary to the public interest because the purpose of the setback is to ensure adequate separation between uses on adjacent lots. Since the adjacent lot in this instance is open space, there is no need to provide separation. There will be no threat to public health, safety or welfare.

2. the spirit of the ordinance provision requiring structure setbacks from property lines is to provide adequate separation between uses on adjacent lots. Since the adjacent lot is dedicated to open space,

there is no need to provide separation, and therefore zero setback from the open space lot could be allowed as consistent with the spirit of the ordinance.

3. There is no potential harm to the public or to other individuals from granting the requested relief. Allowing the variance would allow reasonable use of the property without harm to the public or others.

4. There will be no effect on the value of surrounding properties, since the back-yard area is not visible to the public, and setbacks to adjacent residential properties will be observed. The board has received letters of support from members of the neighborhood. Included in those letters are letters of support from the neighbors. Numbers 17 and 21 Tamarack have both reviewed where the pool will go and are satisfied with the plan.

5. When the lot in question was created, it was done as part of a PRD. This zoning provision allowed creation of relatively smaller lots than would otherwise be allowed in exchange for dedication of open space. The rear setback at the time was 15'. When the setback was changed to 50' several years ago (20' for accessory structures), the options for reasonable use of the property were diminished. As stated above, the general public purpose of the zoning provision is to provide adequate separation between uses on adjacent lots. Since the lot abutting the rear of this property is dedicated to open space, in this instance, no fair and substantial relationship exists between the purpose of the ordinance provision and the specific application to this property. Setbacks to adjacent residential properties will be observed. The proposed use is reasonable because use of one's property to provide recreational facilities for residential use in a residential district is by its very nature reasonable, particularly if the use is not visible to the public. There is more than 100 feet from his property to each of his neighbors.

D. Kirkwood asked if the pool is for personal use only. Yes

C. Vars asked if it will be above ground or inground. Inground with a liner.

C. Vars stated in full discloser that he was the consultant for this development. The lot lines behind this property ended up different than what was drawn which originally would have given these properties more space in the back. This was probably due to the leach field being in the front.

R. Panasiti asked if the common land is wetland. No, it drops down, but it's dry. Then it drops again into the Ponemah Bog.

No public comment

D. Kirkwood stated the board received letters from the abutters. They all sent in the same letter with different signatures on it.

The chair read the letter into the record as follows:

This letter is to confirm my approval for a variance to allow the owners of 19 Tamarack Ln. (002-087-071) to build an accessory structure (pool) with no setback from their rear property line. Adjacent properties 17 Tamarack Ln. (002-087-072) and 21 Tamarack Ln. (002-087-070) will be in excess of the twenty-foot setback requirement.

These letters were signed by the following:

#17 Jay Rosenthal

#21 Shari Moskowitz

#18 Lisa Kent

#20 Jim and Eileen Kalinowski

#22 Brendan Peterson

#24 Ann Hartman

144 **J. Ramsay moved and C. Vars seconded to enter deliberations. All in favor**
 145 The Chair stated R. Panasiti will vote for K. Shea in his absence.
 146
 147 **CASE #: PZ8508-040517 - Variance**
 148 **R. Rowe moved and J. Ramsay seconded no regional impact. All in favor**
 149
 150 1. The Variance will not be contrary to the public interest.
 151 C. Vars yes only a couple of square feet is encroaching
 152 J. Ramsay agree minimal encroaching
 153 R. Rowe 5' porch is not useful. This is reasonable
 154 R. Panasiti agree minimal encroachment
 155 D. Kirkwood true
 156 5 True
 157
 158 2. The Variance is consistent with the spirit and intent of the Ordinance.
 159 J. Ramsay yes comfortable with that. Not infringing on rights of neighbors and not imposing on health,
 160 safety or welfare
 161 R. Rowe true
 162 R. Panasiti true
 163 C. Vars true
 164 D. Kirkwood true
 165 5 True
 166
 167 3. Substantial justice is done.
 168 R. Rowe yes no negative aspects. 6' porch is reasonable
 169 R. Panasiti agree
 170 C. Vars yes
 171 J. Ramsay agree
 172 D. Kirkwood true
 173 5 True
 174
 175 4. The values of the surrounding properties will not be diminished.
 176 R. Panasiti surrounding values will not be diminished. Other properties have similar porches
 177 C. Vars it does not diminish that property or any other properties around
 178 J. Ramsay agrees with the applicant that it might raise the value
 179 R. Rowe true
 180 D. Kirkwood true
 181 5 True
 182
 183 5. Literal enforcement of the provisions of the Ordinance would result an unnecessary hardship.
 184 R. Panasiti doesn't think 18" of encroachment will be noticeable to passerby's.
 185 C. Vars true if we enforce the ordinance it will make for a poor appearance of the house
 186 J. Ramsay true
 187 R. Rowe true
 188 D. Kirkwood true
 189 5 True
 190
 191 The chair stated that after having passed the tests, the variance is granted.

192 **CASE #: PZ8562-041917 – Variance**

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

194 Discussion

195 J. Ramsay said this is one of the older subdivisions in town. He was surprised to see the right-of-way and
196 asked if anyone knew the history of that. No one did.

197 C. Vars referenced Meridian's plan. The existing house is now encroaching in the 25' setback because
198 the setbacks have changed. When it was built, there was a 15' setback. He would be more comfortable if
199 the deck was 15' rather than 13', but that is his only concern.

200 G. Leedy said when it was built, the angled deck was built that way to meet the setbacks.

201 D. Kirkwood asked where the leach field is and the applicant responded by pointing out the location of
202 the leach field on a plan.

203

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

205 J. Ramsay yes his only concern was encroachment to neighboring properties and that doesn't seem to
206 be a problem for the neighbor. There are substantial woods between properties and this is pretty
207 unnoticeable from the road.

208 R. Rowe this is a unique lot. It's not contrary to public interest to have a deck that goes into the setback.
209 The abutter seems ok with it. True

210 R. Panasiti when the easement was increased from 15'-25' they couldn't help but encroach. This squares
211 off the house to look more natural than it does now. True

212 C. Vars not contrary to public interest, true. He drove by today and the wooded area is a good buffer
213 and it's not noticeable. The deck will fit right in the corner.

214 D. Kirkwood true

215 5 True

216

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

218 C. Vars yes the original setback was 15 feet and they are only encroaching a couple feet. Does not deter
219 from the neighbor's property

220 J. Ramsay substantial justice is done. It's a reasonable use. Allows enjoyment of the property for the
221 owner. true

222 R. Rowe true

223 R. Panasiti true

224 D. Kirkwood true

225 5 True

226

227 3. Substantial justice is done.

228 J. Ramsay yes for same reasons he said before

229 R. Rowe no negative aspect to the public. Substantial justice is done

230 R. Panasiti agree

231 C. Vars agree proposed plan is better than what's there now

232 D. Kirkwood true

233 5 True

234

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

236 R. Panasiti true properties will not be diminished

237 C. Vars true if anything it enhances the value of the subject property

238 J. Ramsay true

239 R. Rowe true

240 D. Kirkwood true
 241 5 True
 242
 243 5. Literal enforcement of the provisions of the Ordinance would result an unnecessary hardship.
 244 R. Rowe true. It's a unique lot. It will be set back from the road. There are woods between the abutters
 245 and it's reasonable to have a deck in NH.
 246 R. Panasiti agree
 247 C. Vars true
 248 J. Ramsay true It's a reasonable request. It's a unique property with the shape of the lot. Setback of the
 249 house is a hardship
 250 D. Kirkwood true
 251 5 True
 252
 253 The chair stated that after having passed the tests, the variance is granted.
 254
 255 **CASE #: PZ8565-042417 – Variance**
 256 **C. Vars moved and R. Rowe seconded no regional impact. All in favor**
 257
 258 1. The Variance will not be contrary to the public interest.
 259 C. Vars yes it will never be seen from the road. Distance from abutters on either side is substantial.
 260 Nothing contrary to public interest.
 261 J. Ramsay abuts a property that is not going to be built on
 262 R. Rowe next to it is the open space and beyond is the Audubon society.
 263 R. Panasiti agree
 264 Discussion: the association owns the land in common with the other owners. When it was created, there
 265 was increased density given by leaving the open space. That land can never be developed. That is a
 266 condition of the establishment of the PRD.
 267 D. Kirkwood true
 268 5 True
 269
 270 2. The Variance is consistent with the spirit and intent of the Ordinance.
 271 J. Ramsay yes the spirit of the ordinance is for public health, safety and welfare. This will not have an
 272 impact on the general public or even the direct abutters.
 273 R. Rowe true
 274 R. Panasiti true
 275 C. Vars true he will have to fence in the pool and the fencing has to be on his property which will
 276 probably move the pool a few feet closer to the home and away from the property line.
 277 D. Kirkwood true
 278 5 True
 279
 280 3. Substantial justice is done.
 281 R. Rowe yes there is nothing negative to the general public and the abutters haven't objected to it
 282 C. Vars true
 283 J. Ramsay true
 284 R. Rowe true
 285 D. Kirkwood true
 286 5 True
 287

288
 289 4. The values of the surrounding properties will not be diminished.
 290 R. Panasiti yes in fact it may increase the value to surrounding properties
 291 C. Vars not sure they add anything to the property but does nothing to diminish the value of that
 292 property or surrounding properties
 293 J. Ramsay true
 294 R. Rowe true
 295 D. Kirkwood true
 296 5 True
 297
 298 5. Literal enforcement of the provisions of the Ordinance would result an unnecessary hardship.
 299 R. Rowe It's a unique piece of property because it's a PRD with smaller lots and large common land. It's a
 300 reasonable use and there's no downside
 301 R. Panasiti agree
 302 C. Vars agree the location of the existing house makes it impossible to meet the requirements of the
 303 setback.
 304 J. Ramsay agrees that there is a preexisting condition with the setback of the house on the lot
 305 D. Kirkwood true
 306 5 True
 307
 308 The chair stated that after having passed the tests, the variance is granted.
 309
 310 **R. Rowe moved and C. Vars seconded to exit deliberations. All in favor**
 311
 312 **Minutes: March 21, 2017**
 313 **C. Vars moved and R. Panasiti seconded to approve the minutes of March 21, 2017 as submitted.**
 314 **All in favor with R. Rowe abstaining.**
 315
 316 OTHER BUSINESS:
 317 **Board Reorganization**
 318 **R. Rowe moved to nominate D. Kirkwood as Chair. J. Ramsay seconded.**
 319 **All in favor with D. Kirkwood abstaining**
 320
 321 **R. Rowe moved that either C. Vars, K. Shea or J. Ramsay be nominated for Vice Chair.** He also stated K.
 322 Shea was Chair of the ZBA in Merrimack before he moved here. C. Vars declined the nomination.
 323 D. Kirkwood stated they should wait to vote on Vice Chair until K. Shea is present.
 324
 325 **C. Vars moved and R. Rowe seconded to retain J. Ramsay as secretary/treasurer.**
 326 **All in favor with J. Ramsay abstaining**
 327 The board discussed taking the treasurer position out of the zoning by-laws.
 328
 329 D. Kirkwood went to superior court with Town Counsel to hear the Grasset case and didn't expect to
 330 hear back very soon, but the decision came back quickly.
 331 D. Kirkwood believes the decision was very informative in dealing with grandfathered issues.
 332
 333 C. Vars asked what happens with the property now- does he have to shut down?
 334 The use has to reflect what it was back then. It can't be a depot and he can't store other people's
 335 vehicles.

336 G. Leedy said they can serve letters to circuit court and to the property owner. There are \$250 daily fines
337 that apply if not adhered to.

338

339 The LaBelle case is scheduled for the 18th of July

340 The Migrela Realty Trust case is scheduled for the 5th of August.

341

342 **R. Rowe moved to adjourn at 8:39pm. C. Vars seconded. All in favor**

343

344 Respectfully submitted,

345 Jessica Marchant