

**Town of Amherst
Zoning Board of Adjustment
Tuesday September 18, 2018**

ATTENDEES: D. Kirkwood- Chair, K. Shea, C. Vars, J. Ramsay, D. Pray (Alternate), R. Panasiti (Alternate), R. Rowe and Staff G. Leedy

The Chair called the meeting to order at 7:04pm, explained the ZBA process and introduced the board members and staff present.

OLD BUSINESS:

1. CASE #: PZ10087-071118 – VARIANCE Frank Reynolds (Owner & Applicant) – 52 Spring Road, PIN #: 006-025-002 – Request for relief from Article IV, Section 4,3, Paragraph A to build a detached accessory dwelling unit. Zoned Residential Rural. Tabled from August 21, 2018

R. Rowe moved to remove the case from the table. J. Ramsay seconded. All in favor

Frank Reynolds, property owner, presented the case.

Accessory dwellings are allowed in Amherst. He is requesting to change the barn into a dwelling. He discussed the aspects of the site. An addition was put on in 1989. A workshop was constructed in 1994. The barn was built 14 years ago. It is used for storage. A shed and lean-to were added in the 1980s. Since a survey has been done, he has moved the shed out of the setback. He addressed the test as follows:

1. To be contrary to the public interest, the variance must unduly and in a marked degree, conflict with the ordinance such that it violates the ordinance's basic zoning objectives. The application under consideration does not violate the basic zoning objectives because it supports the intent of Accessory Dwelling Units which is to expand the supply of housing in NH communities without further land development while blending with the surrounding neighborhood.

This is accomplished by using a structure that already exists and requires no exterior modifications. The only change would involve obtaining state septic plan approval. Compliance with state regulations and local building codes will guarantee the public's protection with regard to this use.

2. Under the proposed scenario, additional living space will be provided without the need for additional construction. By using the existing barn, the character of the surrounding rural neighborhood will also be preserved.

3. When the loss from denying a variance is greater than the gain to the public by its rigid enforcement, substantial justice is appropriate. Strictly enforcing that aspect of the ordinance which requires an accessory apartment to be attached to the primary residence will not benefit the public interest. However, rejecting the requested variance will be a substantial loss to the applicant because he will be denied an accessory apartment through the safe and reasonable use of an existing structure on the property. This proposal does not compromise public health, safety or welfare. In addition, the proposed dwelling would be allowed by right but for the fact it is not attached.

4. The existing barn fits well in the neighborhood. Because no exterior changes will be required, it would continue to be appropriate for this rural setting. The interior fit up and septic system would both require permits and inspections which would protect the surrounding properties.

5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship because options for adding onto the primary residence are unavailable. This lack of options was the basis for the zoning board's original approval in 1989 to permit an expansion of the primary residence into the 15' setback from the property's east side line. The building's proximity to the property line and lack of reasonable options for expanding the primary residence make this a special condition and unique from other properties in the area.

Accessory dwelling units are intended to provide additional and flexible housing opportunities while minimizing new construction and integrating into the neighborhood. In this case, an alternative is readily available in the form of an existing detached structure which conforms with all other requirements of an accessory dwelling. Except for this solution being detached, the accessory apartment would be permitted by right. As such, no fair or substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property.

The proposed use is reasonable because:

- adding to the primary residence is not feasible
- the building under consideration already exists
- exterior changes would not be required
- the public's health and safety would be protected by permits and inspections

In closing he stated this request is nearly identical to a Clark Island request proposed to the ZBA last year.

K. Shea regarding the exterior of the structure – how will emergency responders know it's a residence rather than a barn?

G. Leedy stated there's currently living space in the barn even though it's not an accessory dwelling. It could be given its own E-911 address.

R. Panasiti asked about a septic system for the barn. The current septic would need to be modified. Tom Carr of Meridian will create the design for that. Further board discussion occurred about the septic pump and 75'-100' pipe. The leaching field would need to be expanded to cover the extra bedroom. G. Leedy confirmed in order to get a building permit, he will need to provide the approved septic design.

Public comment

none

2. CASE #: PZ10153-072018 – VARIANCE Pathway Homes (Owner & Applicant) – 16 Pinnacle Road, PIN #: 006-074-011 – Request for relief from Article 4.3, Section D, Paragraph 2 to add a 14x12' exterior structure with a rear setback of 18' where 25' is required. Zoned Residential/Rural. Tabled from August 21, 2018

C. Vars moved to remove the case from the table. J. Ramsay seconded. All in favor

Property owner Kevin Allard represented himself and presented the case.

He recently purchased this triangle shaped lot with two roads of frontages with setbacks. He is requesting to add a 12x14 deck or sunroom. He addressed the tests as follows:

1. Granting this variance will not conflict with the ordinance because the sunroom under normal circumstances, would be allowed in the Residential Rural Zoning requirements. However, due to the circumstances of the restricting lot it is not allowed because of the forced placement of the house. Granting this variance will not threaten public health, safety or welfare because the abutter to the property is approximately 120ft. from the property line. Between the abutting properties, the lots are

buffered with a densely wooded area. Granting this variance would not have any impact on the neighboring home's land or views.

2. This is within the spirit of the ordinance because this addition will have no impact on the surrounding homes. The existing neighboring lots are non-sub dividable therefore granting this variance will have no current or future impacts because there is a sufficient separation between lots.

3. Here, substantial justice will be done by granting the variance because the owner will be allowed to enjoy a sunroom or outside deck similar to neighboring lots. Granting this variance will not give the owner any more than the others in the neighborhood currently enjoy, as the public would gain nothing by strict enforcement of the ordinance. The public has nothing to lose by granting this variance because the addition of this deck or sunroom will not infringe on any abutting land or views. Additionally, the applicant is only seeking to build a simple deck or sunroom that will not be visible from the neighboring lots.

4. In this case, granting the variance will not diminish the surrounding property values because adding the sunroom or deck to the exterior of the home will only add value to this home. In effect, the neighboring homes' values will only increase due to this addition. Therefore, granting this variance will not have a negative effect on the surrounding properties.

5. The hardship of this lot is the abnormal shape and road frontage. In a normal situation, the setbacks would be a front setback, two side setbacks and one rear setback. However, due to the three-sided shape of the lot with two road frontages, we were forced to push the house to the rear of the lot. If these restrictions were not in place we would have moved the house closer to the front of the lot, allowing us to build the desired deck or sunroom. The proposed addition is reasonable because I will build a common and popular addition of a deck or sunroom which will be in character to the homes in the surrounding area.

R. Panasiti asked why the sunroom wasn't built with the house. Because of the setbacks, he thought he would do a patio originally, but now wants a sunroom.

C. Vars thinks the foundation could have been set forward 7'.

R. Rowe asked how far away is lot 6-75? 120'-150' from the side of their house.

D. Pray asked if the area is wooded in between the two houses. Yes.

J. Ramsay asked if the porch on the front is included in the "foundation" on the plot plan? Yes – he believes so. Discussion continued among the board on this matter and was determined it is not included.

C. Vars now understands the hardship with the back of the property since he sees where the front of the structure sits in regard to the building setbacks.

Public Comment

1. Paul Kaminski- 4 Pinnacle Rd asked if the request is for a deck or a sunroom.

Mr. Allard said for now it will be a patio. If the variance is granted, he will leave the option to the buyer if they want to add a deck or sunroom.

Mr. Kaminski is concerned about encroachment between the lots. He wondered if Mr. Allard is planning on putting in a fence. Not at this time.

NEW BUSINESS:

3. CASE #: PZ10304-081718 – VARIANCE FOR THE HANDICAP Thomas Sommers (Owner & Applicant) – 8 Nichols Road, PIN #: 003-031-001 – Request for relief from Article IV, Section 4.3, Paragraph D.1 to locate a 20’ aluminum modular ramp adjacent to front steps in the front yard setback (less than 50’ from road Right of Way). Zoned Residential/Rural.

Donna and Thomas Sommers, owners of the property, presented the case.

Mr. Sommers explained his elderly parents are moving in and need a temporary ramp to enter the home. This access will act as emergency egress as one parent is almost wheelchair bound. Mr. Sommers addressed the tests as follows:

1. My elderly parents ages 95 and 93 are moving in with us this fall. My mother has to use a walker and sometimes a wheelchair. The front door access provides the least elevation differential for handicap access to the main level. The ramp will only remain as long as they reside with us. We hope this is to be for their remaining life spans.

The 50’ front door setback is intended explicitly, as I understand, to keep building structures away from the street ROW. It appears to be implied through RSA 674:33 V that handicap ramps are to be excepted. Granting this variance will not threaten any public health, safety or welfare. Not granting it will prevent my parents’ safe access. The end of the ramp is still 30 feet away from the street ROW on a dead-end road that has very minimal traffic. (Nichols Rd)

2. The spirit of this ordinance appears to be to maintain unobstructed front yards. This use will not cause any more obstruction. There are two very large oak trees, both closer to the street, protecting this ramp. There will be no visual impact.

3. Substantial justice is done because we can have my parents living with us and know that we have a safe egress for them without relying solely on mechanical means. (A chair lift has been added at the garage level) This is especially a concern in an emergency. This is a right which we and they should enjoy. There is no negative effect on the public.

4. The ramp is a temporary structure which will have no impact on surrounding property values. These ramps are architecturally designed to be safe and pleasant looking. The fact that it will set back between two large oak trees will also reduce any visual impact.

5. We are applying under exception provided for in RSA 674:33 V which appears to provide for handicap uses, such as this ramp, by variance without unnecessary hardship established.

C. Vars has used the business services of Thomas Sommers in the past but does not feel any need to recuse himself.

Discussion ensued about possibly needing to keep the ramp in place for Mrs. Sommers mother if she ever chooses to move into the house. The language of the variance was discussed with relation to naming specific people that might need to use the ramp. G. Leedy stated the language of the variance does not need to be to a specific person but can be worded to include ‘any eligible person’.

4. CASE #: PZ10306-081718 – VARIANCE Rob Gomeau (Owner & Applicant) – 3 North Meadow Road, PIN #: 004-013-002 – Request for relief from Article IV, Section 4.3, Paragraph D to build a garage addition with a side yard setback to 11’ where 25’ is required. Zoned Residential/Rural.

Rob and Melissa Gomeau presented the case.

They are requesting a garage addition with two floors of living space above to include family room, bedroom and bathroom. Mr. Gomeau addressed the tests as follows:

1. Granting the variance for the addition will not be contrary to the public interest because the existing tree line and wooded area between houses currently separates the two properties and would remain undisturbed. The neighbor's house is also set back from the line a sufficient amount to keep enough separation between the two structures. The addition would make our residence comparable to other homes in the neighborhood as we do not currently have a garage. It would also contribute to neighborhood value due to the increased living space and improved aesthetics.

2. The addition will observe the spirit of the ordinance, as the requested variance is minimal. The proposed addition will be built on the current driveway and there is a well-established hedge and line of thick trees currently separating the two properties which will not be disturbed. The abutting neighbor has only one window that faces our property which is shielded by the line of trees.

3. Granting the variance for the side setback requirement would allow us to build the addition in the most functional and aesthetically pleasing design possible. When the house was constructed it was not placed in the center of the lot so adding onto the other sides of the house would be difficult because of the septic system in the front yard and leach field on the side of the house. The addition will bring more value to the neighborhood and to the town as well as make it comparable to other homes in the neighborhood with garages. Our family, with two growing children, would greatly benefit from the extra space.

4. I do not see how this addition would diminish the values of surrounding properties. As mentioned, the existing wooded area between the neighbor's property would remain undisturbed. Not only is our house currently one of the two homes on North Meadow Rd that do not have a garage, it is also one of the smaller square footage homes in the neighborhood. The road consists of many different styles of homes built over a long period of time. Therefore, our house with an addition would not be out of character for the neighborhood. In the past few years, two of the homes on our street have built either an addition or barn on their properties.

5. This is a large lot, however there are circumstances that make this lot difficult to fully utilize. The existing house is not centered in the property which makes it difficult to adhere to the ordinance. If the house would have been built in the center of the property, a variance would not have been required. We are unable to put the addition on the other side of the property as the septic is in the front yard and the leach field on the side. The driveway is on the right-hand side of the house now so positioning the addition on the current driveway and utilizing the current driveway to drive into the new garage is really the only way we can make this work. This request for a variance is a reasonable one because the two properties are now separated by a well-established hedge of bushes and trees and that will not change by granting the variance.

C. Vars mentioned the 35' height limit and how that could be an issue with the garage and two living floors.

The builder spoke stating the garage will only be 7' so the total height will only be about 31'.

C. Vars moved and J. Ramsay seconded to enter deliberations. All in favor
CASE PZ10087-071118

K. Shea moved no regional impact. J. Ramsay seconded. All in favor

C. Vars mentioned these buildings are not visible from the road even in the winter.

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

241 C. Vars yes health, safety and welfare are not compromised
 242 J. Ramsay agree with Charlie
 243 R. Rowe yes
 244 K. Shea agree with Charlie
 245 5 True
 246
 247 2. The Variance is consistent with the spirit and intent of the Ordinance.
 248 J. Ramsay yes- no negative impact on surrounding properties and allows the owner to enjoy the
 249 property to the fullest extent
 250 R. Rowe yes
 251 K. Shea yes using the existing structure is in the spirit of the ordinance. No visual impact
 252 C. Vars the fact that it's detached is the only reason to seek the variance
 253 5 True
 254
 255 3. Substantial justice is done.
 256 R. Rowe yes this is a large lot with existing structures. This will not be noticeable
 257 K. Shea yes owner has 5 acres and owner doesn't need to alter the other three structures
 258 C. Vars yes if had more frontage, they could subdivide. No negative impact
 259 J. Ramsay agree proposal can be implemented with no impact to the property
 260 5 True
 261
 262 4. The values of the surrounding properties will not be diminished.
 263 K. Shea yes- no alteration to exterior structures visible
 264 C. Vars agree
 265 J. Ramsay agree
 266 R. Rowe agree
 267 5 True
 268
 269 5. Literal enforcement of the provisions of the Ordinance would result an unnecessary hardship.
 270 C. Vars true- to enforce the regulation, they'd have to put an addition onto the existing structure which
 271 wouldn't make sense. All of the work will be interior, and it doesn't affect the general purposes.
 272 J. Ramsay agree with Charlie
 273 R. Rowe true for reasons stated
 274 K. Shea agree
 275 5 True
 276 The Chair stated that having passed the tests, the application is granted.
 277
 278 **CASE PZ10153-070118**
 279 **K. Shea moved no regional impact. C. Vars seconded. All in favor**
 280 1. The Variance will not be contrary to the public interest.
 281 J. Ramsay yes- the encroachment on the rear property line is not an issue
 282 R. Rowe agree
 283 K. Shea agree
 284 C. Vars true the porch would extend beyond the front right corner of the foundation
 285 5 True
 286
 287 2. The Variance is consistent with the spirit and intent of the Ordinance.

288 R. Rowe true extremely small lot and the distance is from an 'approximate' lot line- so it could be ok.
 289 This is in normal use of residential zone
 290 K. Shea yes- the back of the property is where this needs to go for some privacy
 291 C. Vars agree
 292 5 True
 293
 294 3. Substantial justice is done.
 295 K. Shea this will allow them to use the only side of the property suitable for it
 296 C. Vars true it's a reasonable request and not going to diminish the appearance of the home
 297 J. Ramsay the request is a reasonable one. Fronting two roads with 50' setbacks limits the building
 298 envelope. Substantial justice is done, and the project is reasonable without negative impact to
 299 neighbors
 300 R. Rowe true
 301 5 True
 302
 303 4. The values of the surrounding properties will not be diminished.
 304 K. Shea yes professional opinion was submitted in the documentation. Always believe these add value to
 305 homes. And the size is reasonable.
 306 C. Vars true this is the best possible proposal for this property
 307 J. Ramsay agree
 308 R. Rowe true
 309 5 True
 310
 311 5. Literal enforcement of the provisions of the Ordinance would result an unnecessary hardship.
 312 R. Rowe true a unique property and a sunroom/deck is a reasonable use. There is a hardship
 313 K. Shea the unique shape creates the hardship. There are a lot of limitations to the property. This is a
 314 reasonable use.
 315 C. Vars agree they would have had to build a smaller house in order to have incorporated this into the
 316 original plan which would have been its own hardship because of the sizes of the homes in that area
 317 J. Ramsay the frontage and setbacks create a hardship
 318 5 True
 319 The Chair stated that having passed the tests, the application is granted.
 320
 321 **CASE PZ10304-081718**
 322 **R. Rowe moved no regional impact. C. Vars seconded. All in favor**
 323 1. The Variance will not be contrary to the public interest.
 324 R. Rowe not contrary
 325 K. Shea no threat to public health, safety or welfare
 326 C. Vars agree
 327 J. Ramsay agree
 328 5 True
 329
 330 2. The Variance is consistent with the spirit and intent of the Ordinance.
 331 K. Shea they did and it's for handicap usage
 332 C. Vars true not a permanent structure and reasonable usage
 333 J. Ramsay true not changing the character or neighborhood
 334 R. Rowe true

335 D. Kirkwood it's a shame the applicants have to go through this process for a temporary need. Society
 336 should make things easier for the older generations
 337 5 True
 338
 339 3. Substantial justice is done.
 340 C. Vars yes helping with safety egress. It's a right
 341 J. Ramsay yes- it is temporary and the right thing to do
 342 R. Rowe true
 343 K. Shea substantial justice for the occupants and emergency services is served
 344 5 True
 345
 346 4. The values of the surrounding properties will not be diminished.
 347 K. Shea yes- it's temporary and no impact to surrounding properties
 348 C. Vars no impact
 349 J. Ramsay agree
 350 R. Rowe agree
 351 5 True
 352
 353 5. Literal enforcement of the provisions of the Ordinance would result an unnecessary hardship.
 354 D. Kirkwood because of the RSA: there's no need to establish hardship so the chair entertained a
 355 motion:
 356 **J. Ramsay moved, and K. Shea seconded this test does not need to be met. All in favor**
 357 Discussion ensued as to whether a condition should be added to the variance that once the need for the
 358 ramp has been satisfied it be removed. No condition was determined to be necessary.
 359
 360 The Chair stated that having passed the tests, the application is granted.
 361
 362 **CASE PZ10306-081718**
 363 **J. Ramsay moved no regional impact. K. Shea seconded. All in favor**
 364 1. The Variance will not be contrary to the public interest.
 365 K. Shea yes adding a garage where there isn't one is no threat to public health, safety or welfare
 366 C. Vars true also, the regulations allow for 40' of height rather than the 35' mentioned earlier
 367 J. Ramsay not contrary and no threat to health, safety or welfare
 368 R. Rowe true
 369 5 True
 370
 371 2. The Variance is consistent with the spirit and intent of the Ordinance.
 372 C. Vars yes if it was done when the subdivision was built it probably would have fit within the setbacks
 373 J. Ramsay agree
 374 R. Rowe true for the reasons stated
 375 K. Shea agree
 376 5 True
 377
 378 3. Substantial justice is done.
 379 K. Shea yes will allow them to cover their parking and not negatively impact anyone
 380 C. Vars the proposal is reasonable considering the topography. No affect
 381 J. Ramsay reasonable request with no negative impact to surrounding properties
 382 R. Rowe true garage is a reasonable expectation today

383 5 True
384
385 4. The values of the surrounding properties will not be diminished.
386 J. Ramsay yes- it's an expectation to have a garage with a house. No negative impact to surrounding
387 properties
388 R. Rowe True
389 C. Vars true won't diminish the value of any nearby properties
390 K. Shea lives in that area and this is a normal request
391 5 True
392
393 5. Literal enforcement of the provisions of the Ordinance would result an unnecessary hardship.
394 C. Vars true special conditions exist and this is a reasonable option
395 J. Ramsay agree this is a preexisting nonconforming lot with a 50' front setback. At the time it was built
396 the home was tucked into a reasonable part of the property, but this is a reasonable request
397 R. Rowe unique property and setbacks were less when the house was constructed. This is a reasonable
398 request
399 K. Shea hardship is where the house is located. Already parking in this area. The leach field and well
400 create limitations. It's a reasonable use
401 5 True
402 The Chair stated that having passed the tests, the application is granted.
403
404 **C. Vars moved and K. Shea seconded to exit deliberations. All in favor**
405
406 OTHER BUSINESS:
407 **Minutes: August 21, 2018**
408
409 **K. Shea moved, and J. Ramsay seconded to approve the minutes of August 21 as submitted. All in**
410 **favor with R. Rowe, D. Pray and R. Panasiti abstaining**
411
412 D. Kirkwood will meet with Town Counsel on the 20th regarding the Rules of Procedure so it can be
413 discussed at the next ZBA meeting.
414
415 **K. Shea moved to adjourn at 9:13pm. C. Vars seconded. All in favor**
416
417 Respectfully submitted,
418 Jessica Marchant