

**Town of Amherst
Zoning Board of Adjustment
Tuesday February 19, 2019**

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

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

NEW BUSINESS:

1. CASE #: PZ10942-011819 – VARIANCE Galen Cruess (Owner & Applicant), 92 Chestnut Hill Road, PIN #: 011-006-001 – Request for relief from Article 4, Section 4.5, Paragraph E.1 to build an addition greater than 50% of the lateral distance of the existing building. Zoned Northern Rural.

J. Ramsay stated he has worked with Mr. Cruess in the past but does not feel the need to recuse himself from the case.

Galen Cruess, applicant presented the case. The existing house is about 950 sq. ft. with an open floorplan which was renovated in 2012 using hardwood flooring and insulation. He is not interested in tearing it down. He explained the only location viable to put the addition. To stay within the zoning ordinance, it would be a very long, skinny house or he would only be able to add 12' on one side or the other. The way he proposes the addition creates a viable house and stays within the character of the neighborhood.

Photos were shown of the exterior of the existing house from the vantage point of abutters and the roadway. Mr. Cruess explained that the addition would not change the view of the property very much. It's only a one-story addition.

The regulation is very limiting for his property. This house is so small and it's such an anomaly on Chestnut Hill Rd. He's just trying to bring his home more in line with the rest of the neighborhood. The purpose of the regulation is to prevent owners from filling their entire frontage with structure. He is just trying to bring his extremely small home to a normal size.

He addressed the tests as follows:

1. The 50% rule is designed to prevent walls of buildings going up where a house would extend the length of its property and the scenic element would be lost. This proposal doesn't do that. It's making the home more in line with what's in the neighborhood. The scenic views will remain. The proposal does not threaten the health, safety or welfare of the public. It improves the run-down property.

2. The ordinance seeks to keep the scenic nature of the zone. His proposal won't do anything to compromise that. Other homes in the area have structures with much greater linear square footage.

3. Nothing he's proposing will benefit him at someone else's expense. The rule is working against the spirit of the ordinance at this property. Abutters can hardly see it. The proposed addition will look better than what's there now.

4. What's there now is run down. To renovate it would benefit the applicant as well as the abutters.

5. There's no other place on the property where the house could be extended without making it look strange or be non-functional. The proposed use is reasonable because the other homes on the street are

about 2,000 sq. ft. It's reasonable to have a single-family home without having to tear down what's there.

D. Kirkwood commented the regulations are to preserve the rural character.

R. Rowe said the end of the house faces the road. If this house was turned 90 degrees, the variance would not be necessary.

R. Panasiti asked for clarification about the regulation. G. Leedy said the 50% rule is based on the size of the structure, not the size of the lot.

It was clarified the applicant has just under four acres.

The septic system failed in the spring and it was redone as a four-bedroom septic.

C. Vars mentioned the slope of the land and how it would be worse for the applicant and the neighborhood if the house was moved back.

J. Ramsay reviewed the frontage and distance to abutters. This home sits well away from anyone else. The addition will be a bit further away from the road than the current garage already sits.

D. Kirkwood stated by demolishing the garage the applicant is getting rid of a non-conforming structure.

D. Kirkwood asked if the applicant has a survey and he does not. His deed states the stone wall is the boundary. There is some question as to where the Town right of way is for the road.

C. Vars asked if the same opening in the stone wall will be utilized. The applicant said he will not alter the stone wall. The new garage will be in nearly the same location as the old garage.

D. Pray inquired about the location of some properties whose frontages were described earlier.

Public Comment

None

2. CASE #: PZ10943-011819 – VARIANCE Peter & Carissa Kajenski (Owner) & Mark Cassidy (Applicant), 33 Windsor Drive, PIN #: 002-146-063 – Request for relief from Article 4, Section 4.3, Paragraph D.2 to construct an attached garage approximately 14 feet from the side property line where 25 feet is required. Zoned Residential/Rural.

Mark Cassidy, applicant presented the case.

Copies of letters from abutters were distributed.

The proposal is for a two-car garage to be attached to the existing house which will not meet side setback of 25'.

Tests:

1. The proposed variance will accommodate a 24x26 two-car garage and additional living space second story which will encroach on the eastern side set back by approximately 10 feet or less. The public would not be impacted by the granting of this variance. The proposed garage will be set back from the main road by 50 feet and not plainly visible by the casual passerby. Thus, the health, safety and welfare of the public would not be impacted.

2. The encroachment on the set back will not have an adverse effect on public safety. The addition will not increase the amount of traffic or restrict access to the residence by emergency personnel. Relative to overcrowding, the residence is in a rural wooded area. The area of the variance is densely wooded between residences forming a natural buffer zone.

3. Substantial justice is defined as the benefit to the applicant is not outweighed by harm to the general public or to other individuals. In this instance, there is no harm to the general public, as the variance would not affect public safety, public view, or any other impact to the town and general area.

4. It will only add value as the addition will bring the residence up to par with the rest of the community. This is one of only three residences in the area without a garage.

5. The proposed building site on the east side is the only logical place for construction because the paved driveway is already in place and in use and is already the common entry side of the house. Also, on the original house plans the garage was already included to be in this location but was never built.

a) Building on the western side of the house would be cost prohibited because a new driveway, entry and foundation would need to be constructed in order to accommodate the proposed garage on the bedroom side of the house and would also be plainly visible from the road.

b) The proposed use is a reasonable one because: expansion of a single-family home, while maintaining the same current use, is inherently a reasonable one. We are not proposing the variance for the purpose of an accessory apartment, in-home business or other alternative use. The proposed addition would enlarge the home to a size that is consistent with other properties in the area.

D. Kirkwood asked for more clarification regarding test five. The owner, Peter Kajenski, addressed the question by stating no fair and substantial relationship exists because the regulation protects from overcrowding and protects health and safety of the neighborhood. This proposal doesn't differ from any other homes in the neighborhood and there's no impact on health or safety. They are keeping the same driveway so the traffic flow will not be disrupted.

Mr. Cassidy clarified for J. Ramsay that the deck will be demolished and the garage will be added. The house was built in the 1960's and an addition was put on in the 1980's.

Public Comment

None

R. Panasiti moved and C. Vars seconded to enter deliberations. All in favor

CASE PZ10942-011819

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

Discussion:

C. Vars said this is not what the 50% rule was created for. This property has plenty of land and the proposal does not add much square footage.

R. Rowe said this is a unique situation where the house is turned side-on to the road.

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

C. Vars yes proposal is more in the public interest than leaving it the way it is

J. Ramsay yes agree with C. Vars. Only remedy is to raze the existing house and start from scratch. Not contrary to public interest.

144 R. Rowe yes
 145 D. Pray yes it won't affect public views along the road. The added frontage only takes up a small piece of
 146 his total frontage. No threat to public health, safety or welfare.
 147 D. Kirkwood yes
 148 5 True
 149
 150 2. The Variance is consistent with the spirit and intent of the Ordinance.
 151 J. Ramsay yes the spirit is to not make radical changes to the surroundings. He is proposing
 152 improvements to the structure which will be more in line with the surrounding properties.
 153 R. Rowe yes
 154 D. Pray yes it doesn't change the character of the area
 155 C. Vars yes won't detract from the area - it will enhance it
 156 D. Kirkwood yes the proposed addition is single story. It has a low profile.
 157 5 True
 158
 159 3. Substantial justice is done.
 160 R. Rowe yes an expansion from a small house presents a benefit to the applicant. There is no harm to
 161 any abutters.
 162 D. Pray yes agree with Bob
 163 C. Vars yes there is equal benefit to the applicant and the public. This would bring the square footage to
 164 the median of surrounding properties
 165 J. Ramsay yes it allows the applicant to enjoy the property to a fuller extent. Currently it is less desirable
 166 than other properties in that area.
 167 D. Kirkwood growth and change in neighborhoods is positive.
 168 5 True
 169
 170 4. The values of the surrounding properties will not be diminished.
 171 D. Pray yes improvements he's made already along with proposed changes will increase his property
 172 value and the neighbor's properties as well.
 173 C. Vars yes agree
 174 J. Ramsay yes agree
 175 R. Rowe yes agree
 176 D. Kirkwood yes agree no threat to surrounding property values
 177 5 True
 178
 179 5. Literal enforcement of the provisions of the Ordinance would result an unnecessary hardship.
 180 C. Vars yes the proposal is an asset to the surrounding properties. It's not viable to move the home back.
 181 This allows the same curb cut to be used. It's 80 feet to the next abutter.
 182 J. Ramsay yes it's improving the set back distance from the road
 183 R. Rowe yes considering the extensive frontage of the property, acreage of the property, size of the
 184 home it's reasonable to add the addition.
 185 D. Pray yes agree
 186 D. Kirkwood yes the use is a reasonable one. It doesn't impact the appearance in the neighborhood. The
 187 setbacks are observed.
 188 5 True
 189
 190 The Chair stated that having passed the tests, the application is granted.
 191

192 **CASE PZ10943-011819**
 193 **C. Vars moved no regional impact. J. Ramsay seconded. All in favor**
 194 Discussion:
 195 C. Vars notes the abutter letter states they are in favor of the proposal.
 196 D. Kirkwood read the letters into the record.
 197 J. Ramsay commented on the setback footage.
 198
 199 1. The Variance will not be contrary to the public interest.
 200 R. Rowe yes considering the topography, age of the structure and no abutter disapproval
 201 D. Pray yes it won't be seen by passerbys. No issues to threaten public health, safety or welfare
 202 C. Vars yes agree and gives the applicant a normal garage
 203 J. Ramsay yes agree
 204 D. Kirkwood yes
 205 5 True
 206
 207 2. The Variance is consistent with the spirit and intent of the Ordinance.
 208 D. Pray yes it won't change the character of the neighborhood. They are one of very few without a
 209 garage in that neighborhood.
 210 C. Vars yes if they weren't that close to the property line there wouldn't have been an issue
 211 J. Ramsay yes there's nothing to affect the surrounding area visually
 212 R. Rowe yes a two-car garage is a reasonable part of a home. The set backs are to prevent houses from
 213 being crushed together which is not happening here.
 214 D. Kirkwood yes
 215 5 True
 216
 217 3. Substantial justice is done.
 218 C. Vars yes to the owner and it won't affect the character of the area.
 219 J. Ramsay yes agree
 220 R. Rowe yes agree
 221 D. Pray yes the driveway is already on that side of the house
 222 D. Kirkwood yes
 223 5 True
 224
 225 4. The values of the surrounding properties will not be diminished.
 226 J. Ramsay yes more of the houses in the neighborhood have a garage than not
 227 R. Rowe yes agree
 228 D. Pray yes agree
 229 C. Vars yes agree
 230 D. Kirkwood yes
 231 5 True
 232
 233 5. Literal enforcement of the provisions of the Ordinance would result an unnecessary hardship.
 234 R. Rowe yes considering the topography, need for garage and wooded area between properties
 235 D. Pray yes reasonable to build the garage
 236 C. Vars yes unreasonable to have them put it on the other side due to cost and functionality
 237 J. Ramsay yes agree this property has hardship. The proposed addition is in the only practical place on
 238 the lot due to topography.

239 D. Kirkwood yes it's placement is in the only location it can be on the lot. It will be in keeping with the
240 other buildings in the neighborhood.
241 5 True
242
243 The Chair stated that having passed the tests, the application is granted.
244
245 **J. Ramsay moved and C. Vars seconded to exit deliberations. All in favor**
246
247 **OTHER BUSINESS:**
248 **3. Minutes: September 18, 2018**
249 **J. Ramsay moved, and C. Vars seconded to approve the minutes of September 18 as submitted. All in**
250 **favor**
251
252 **4. ZBA Membership**
253 K. Shea resigned from the board.
254 C. Vars moved to appoint D. Pray as regular member to fill Kevin's vacancy.
255 R. Rowe believes it's a moot point since she is running unopposed and will be sworn in prior to the next
256 meeting.
257
258 D. Kirkwood asked if R. Rowe will continue as Vice Chair
259 R. Rowe moved C. Vars be Vice Chair
260 C. Vars moved J. Ramsay be Vice Chair and Charlie will take over as Secretary. J. Ramsay had never
261 considered it and was not willing to decide at the moment.
262 This discussion was deferred to the next meeting.
263
264 **5. Rules of Procedures**
265 Revised Rules of Procedures were distributed. D. Kirkwood explained he had met with Town Counsel to
266 discuss the changes.
267 D. Kirkwood explained there are minor changes.
268 R. Rowe would like a paragraph explaining the ZBA will not hear cases without a certified plot plan
269 leaving it to the Zoning Administrator to determine if it meets zoning criteria.
270 G. Leedy said it may work if the board is willing to waive it in certain circumstances when appropriate.
271 Some areas with older roads are harder to survey than newer subdivisions that are all marked.
272
273 Discussion occurred about changing specific language.
274 D. Kirkwood suggested the board members read through the document on their own and discussion can
275 occur at the next meeting.
276
277 **R. Panasiti moved to adjourn at 9:27pm. C. Vars seconded. All in favor**
278
279 Respectfully submitted,
280 Jessica Marchant