

**Town of Amherst
Zoning Board of Adjustment
Tuesday April 16, 2019**

ATTENDEES: C. Vars, J. Ramsay, D. Pray, R. Rowe (Vice Chair) and Staff S. Tenney

The Vice Chair called the meeting to order at 7:02pm, explained the ZBA process and introduced the board members and staff present. He also explained that there are only four board members present tonight. Three votes in favor will be needed tonight for a variance to be granted. Each applicant was given the option to move forward tonight or to present at a later date. Both applicants chose to proceed.

OLD BUSINESS:

**1. CASE #: PZ11046-022119 – VARIANCE Adrian & Rahel Menig (Owners & Applicants), 27 Middle Street, PIN #: 017-105-000 – Request for relief from Article 4, Section 4.3D, Paragraph 3 to reduce the setback requirement from 50’ to 16’ from the Amherst Street lot line and to increase the allowable height of the garage from 22’ to 25’. Property located in the Historic District.
Continued from March 19, 2019**

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

Adrian Menig, owner presented the case.

He explained what has transpired since the last meeting. He presented his plans to the HDC. Three different options for placement of the garage were presented. The neighbors and HDC prefer option 1, though the HDC also approved option 2.

He reminded the board that the height request is only from 22’ to 23’.

The applicant prefers option 1 but could live with option 2 if needed.

R. Rowe suggested the ZBA does not have control over which option the owner chooses.

Mr. Menig explained no trees would have to come down for option 1. For option 2 he would try to put a garage entrance on either side of the tree, but it’s not ideal.

J. Ramsay stated he is the Chair of the HDC though he does not consider this case a conflict of interest. He stated option 1 and 2 are supported by the HDC. They approved the plan in the first or second location with the roof pitch no higher than 23’ from the garage floor.

C. Vars wondered if the board should support a particular option in case the applicant needs that for legal reasons.

R. Rowe said that’s not for this board to decide. They can grant the variance for 16’ and the applicant can decide which option he wants to utilize.

Public Comment

None

NEW BUSINESS:

2. CASE #: PZ11109-031919 - VARIANCE Dodge Road, LLC (Owner), 23 Gowing Lane, PIN #: 008-002-023 – Request for relief from Article 4, Section 4.5, Paragraph D 1&2 to create a “non-building lot” around the existing cell tower. Zoned Northern Rural.

49 The board members clarified with the applicant and staff what the board can and cannot grant.

50

51 R. Rowe suggested the applicant discuss the matter with S. Tenney and clarify the language for which
52 they seek relief. All factors needed for the Planning Board to approve a non-building lot should be
53 clarified.

54 The board took a brief recess for the applicant to talk with staff.

55

56 S. Tenney read into the record the revised request for relief:

57 "Create a non-conforming, sub-dividable lot around the existing cell tower for taxation separately, and
58 to remove liability from the proposed building lot that will remain by a subdivision, by way of relief from
59 lot area, frontage and setback requirements."

60

61 Presenting the case was Earl Sanford of Sanford Engineering and Steve Desmarais, managing member of
62 Dodge Road, LLC.

63

64 Steve Desmarais stated the tower was built on a residential house lot. The assessing office has to assess
65 everything on one lot together. If he builds a house on this lot, the lot has to be separated for the house
66 property and cell tower to receive separate tax bills.

67

68 Mr. Sanford addressed the tests as follows:

69 1. The purpose of the ordinance is to provide controlled density. The lot can legitimately contain both
70 the cell tower and a single-family residential home, regardless of approval of a variance.

71

72 2. The spirit will be maintained as it will not affect density or appearances and has no negative effect on
73 the rural character. (The existence of the cell tower went through its approval process separately and
74 should not be confused with this variance request)

75

76 3. The benefit of separation of liabilities for both taxes and physical liability is huge for the residential
77 land owner, allowing the corporate owner of the cell tower or his lessor to have full responsibility for
78 liability issues.

79

80 4. The value will be maintained as this variance does not affect density or appearances and has no
81 negative effect on the rural character. (Again, the existence of the cell tower went through its approval
82 process separately and should not be confused with this variance request)

83

84 5. Granting this variance will have no negative effect on the general public purposes of the ordinance
85 provisions spelled out to be: density, natural character, sensitive wetlands or steep slopes, rural
86 character.

87 The proposed use is a reasonable one because it logically separates liabilities between a homeowner
88 and a corporation operating a cell tower.

89 Other properties in the area do not contain a commercial cell tower and a variance is required for the
90 owner of this lot to separate liability from the corporate use of the lot. It is a reasonable use of a lot to
91 be taxed and insured as a residential lot without comingling taxes and insurance with a commercial
92 corporate use, and that hardship will be removed if/when the variance is granted.

93

94 Mr. Desmarais stated the cell tower is not a utility like a public utility, but it functions the same way. Tax
95 bills are not sent to the homeowners who live under them.

96

97 C. Vars wondered why this is a variance request for the ZBA rather than having the Planning Board grant
98 the non-buildable lot.

99 The Planning Board cannot grant the relief they need. This process has to occur first.

100 C. Vars inquired about the 6th note on the plan: insufficient non-steep slope area- what does that mean?
101 They explained the regulations have changed. This is now a non-conforming lot due to the slopes. There
102 is a certain amount of flat acreage needed now for a house lot.

103

104 D. Pray wondered who is paying the tax bill now. Mr. Desmarais gets the bill now and if the cell portion
105 doesn't get paid, he passes it along to them.

106

107 S. Tenney clarified if the variance is granted it is essentially granting relief from three items:
108 A five-acre lot, frontage (none) and setbacks from the cell tower.

109

110 **J. Ramsay moved and C. Vars seconded to enter deliberations. All in favor**

111

112 **CASE PZ11046-022119**

113 **J. Ramsay moved no regional impact. D. Pray seconded. All in favor**

114

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

116 C. Vars yes, they've gone through the HDC and all concerns have been addressed

117 J. Ramsay agree no concerns w/ HDC

118 D. Pray agree no further concerns from the HDC and it doesn't alter the character of the neighborhood

119 R. Rowe True

120 4 True

121

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

123 J. Ramsay yes, it's to control the area and this change is not substantial and it's within the character of
124 similar properties

125 R. Rowe True

126 D. Pray agree he's done a lot to maintain the character, keeping trees and keeping neighbors in mind

127 C. Vars agree

128 4 True

129

130 3. Substantial justice is done.

131 D. Pray yes, he's satisfied the criteria. Has considered the abutters

132 C. Vars substantial justice allows an accessory building on the property

133 J. Ramsay agree this allows the applicant to enjoy his property

134 R. Rowe True

135 4 True

136

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

138 C. Vars true everyone is allowed to have a garage / barn on their site, and he's considered the neighbors
139 including not obstructing their view of the church

140 J. Ramsay agree

141 D. Pray agree

142 R. Rowe True

143 4 True

144

145 5. Literal enforcement of the provisions of the Ordinance would result an unnecessary hardship.
146 J. Ramsay yes there is a hardship here. The property is different from others in the HDC- as they all are.
147 In this case setbacks cannot be maintained.
148 D. Pray agreed with J. Ramsay. In the applicant's testimony he claimed most homes in the area have
149 attached garages which makes his request a reasonable one.
150 C. Vars agree
151 R. Rowe True
152 4 True
153
154 The Vice Chair stated all the tests have passed and the application has been granted.
155
156 The board members discussed the height restriction and whether to add a condition.
157
158 **D. Pray moved and J. Ramsay seconded to come out of deliberative session. All in favor**
159
160 S. Tenney stated he calculates building height by measuring from average grade. The HDC approved
161 height of 23' from the slab.
162 The applicant explained there is currently a slight dip in that location and water pools there. The
163 foundation would be 4"-8" above the current grade of that location.
164
165 **C. Vars moved and J. Ramsay seconded to reenter deliberations. All in favor**
166
167 **J. Ramsay moved the height of the building be no more than 24.5' above average existing grade.**
168 **C. Vars seconded. All in favor**
169
170 **CASE PZ11109-031919**
171 1. The Variance will not be contrary to the public interest.
172 J. Ramsay it is not contrary to public interest and poses no threat to public health, safety and welfare
173 D. Pray also doesn't alter the character of the neighborhood
174 R. Rowe it adds tax efficiency
175 C. Vars agree
176 4 True
177
178 2. The Variance is consistent with the spirit and intent of the Ordinance.
179 C. Vars yes cell tower is already there. This is a request for tax purposes
180 J. Ramsay agree tax roll clarification is the only reason for the application
181 D. Pray agree
182 R. Rowe agree
183 4 True
184
185 3. Substantial justice is done.
186 J. Ramsay yes substantial justice for all involved including potential homeowners in the future
187 D. Pray agree it's best for current and future tax payers
188 C. Vars agree
189 R. Rowe True
190 4 True
191
192

193 4. The values of the surrounding properties will not be diminished.
194 D. Pray no testimony or evidence showing a change in value will occur
195 C. Vars agree whoever buys the lot in the future will know the tower is there
196 J. Ramsay agree
197 R. Rowe there's no change- the cell tower is already there
198 4 True
199
200 5. Literal enforcement of the provisions of the Ordinance would result an unnecessary hardship.
201 D. Pray yes, it's reasonable to separate the tax liabilities.
202 C. Vars there are special conditions on this property creating hardship
203 J. Ramsay agree
204 R. Rowe agree
205 4 True
206
207 The Vice Chair stated all the tests have passed and the application has been granted subject to approval
208 of the non-buildable lot by the Planning Board.
209
210 **J. Ramsay moved and C. Vars seconded to exit deliberations. All in favor**
211
212 **OTHER BUSINESS:**
213 **3. Minutes: March 19, 2019**
214 **C. Vars moved, and D. Pray seconded to approve the minutes of March 19 as submitted.**
215 **All in favor**
216
217 The Vice Chair stated the board needs alternates.
218 R. Rowe said R. Panasiti would come in if a quorum can't be met, but he'd need to be sworn in which he
219 seems to be reluctant to do.
220
221 The board asked for a notice to be put in the paper and on the website. S. Tenney said he will follow up
222 with this.
223
224 **J. Ramsay moved to adjourn at 8:35 pm. D. Pray seconded. All in favor**
225
226 Respectfully submitted,
227 Jessica Marchant