

TOWN OF AMHERST
Zoning Board of Adjustment

August 18, 2020

APPROVED

1 In attendance: Doug Kirkwood – Chair, Robert Rowe – Vice Chair, Jamie Ramsay –
2 Secretary/Treasurer, Charlie Vars, Danielle Pray, and Tim Kachmar (Alternate).
3 Staff present: Natasha Kypfer, Town Planner, and Kristan Patenaude, Minute Taker.

4
5 Prior to the meeting being called to order, but with the public present and meeting being
6 recorded, Bob Rowe stated that he was appalled at not having recent a paper packet for this
7 evening's meeting. He stated that he cannot sit for the meeting, as he has not reviewed the
8 electronic copies of the information that were sent to him. He also doesn't understand why the
9 ZBA cannot meet in-person for these meetings. The decision to meet via Zoom was never
10 discussed by the group and he doesn't believe that this format works for ZBA meetings.

11
12 Doug Kirkwood explained that the ZBA and Town are following the Governor's protocols by
13 not meeting in-person at this time.

14
15 Bob Rowe stated that he believes the ZBA could meet and be socially distant.

16
17 Charlie Vars stated that he was able to obtain a hard copy of the meeting packet by calling Town
18 Hall. He also feels uncomfortable receiving an electronic copy only.

19
20 Doug Kirkwood stated that he is uncomfortable with the volume of information being provided
21 to ZBA members in the packets. He takes issue with the options listed for the ZBA to take after
22 hearing a case. He believes this is the Community Development Director working in an
23 advanced fashion, as the ZBA should not be told how to act. He will discuss this further with the
24 Community Development Director.

25
26 Charlie Vars stated that the directive to only send out packets electronically did not come from
27 the Community Development Office, but rather from upstairs at Town Hall.

28
29 Doug Kirkwood agreed that electronic copies are hard to follow. He has an issue with
30 suggestions being made for the ZBA as to how to make up their minds on cases.

31
32 Doug Kirkwood called the meeting to order at 7:20 pm., with the following statement. As
33 Chair of the Amherst Zoning Board of Adjustment, I find that due to the State of Emergency
34 declared by the Governor as a result of the COVID-19 pandemic and in accordance with the
35 Governor's Emergency Order #12 pursuant to Executive Order 2020-04, this public body is
36 authorized to meet electronically.

37 Please note that there is no physical location to observe and listen contemporaneously to this
38 meeting, which was authorized pursuant to the Governor's Emergency Order.

39 However, in accordance with the Emergency Order, I am confirming that we are:

40 Providing public access to the meeting by telephone, with additional access possibilities by
41 video or other electronic means:

42 We are utilizing Zoom for this electronic meeting.

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All members of the Board have the ability to communicate contemporaneously during this meeting through this platform, and the public has access to contemporaneously listen and, if necessary, participate in this meeting through dialing the following phone #312-626-6799 and password 879 7485 2721, or by clicking on the following website address: <https://zoom.us/j/87974852721> that was included in the public notice of this meeting.

Providing public notice of the necessary information for accessing the meeting:
We previously gave notice to the public of the necessary information for accessing the meeting, including how to access the meeting using Zoom or telephonically. Instructions have also been provided on the website of the Zoning Board of Adjustment at: www.amherstnh.gov.

Providing a mechanism for the public to alert the public body during the meeting if there are problems with access: If anybody has a problem, please call 603-440-8248.

Adjourning the meeting if the public is unable to access the meeting:
In the event the public is unable to access the meeting, the meeting will be adjourned and rescheduled.

Please note that all votes that are taken during this meeting shall be done by roll call vote.

Let's start the meeting by taking a roll call attendance. When each member states their presence, please also state whether there is anyone in the room with you during this meeting, which is required under the Right-to- Know law.

Roll call attendance: Jamie Ramsay, Danielle Pray, Charlie Vars, Robert Rowe, Tim Kachmar, and Doug Kirkwood – all present and alone.

Doug Kirkwood explained that Jamie Ramsay, Secretary, will read and open each case and then the applicant will have a chance to speak to it. The ZBA will then carry out its business for each case, including: asking questions, hearing from the public and abutters, going into private deliberations, and potentially voting.

NEW BUSINESS:

- 1. CASE #: PZ12820-070220 – VARIANCE**
Co-Ad Realty LLC (Owner & Applicant) Amherst Street, PIN #: 05-051-000 – Request for relief from Article IV, Section 4.3, Paragraph C to construct a single-family residence on a lot without frontage via an existing right of way. Zoned Residential Rural.

Jamie Ramsay read and opened the case.

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Tom Quinn, Esq., joined the meeting. He explained that he is representing Co-Ad Realty in this case and that Adam Vaillancourt, owner of Co-Ad Realty, and Dave Hall are joining him.

Tom Quinn, Esq., explained that the property was purchased from Rough Diamond in 2012. The property is currently under agreement and has been since February. The contract has been extended since this time and is contingent on tonight's meeting. The property is located at Map 5, Lot 51, and is approximately 9.93 acres. The plan has been recorded at the Registry of Deeds. The property lacks frontage, but there is access to the lot over an existing driveway that crosses Map 5, Lot 52. The property has an easement over this area. The property has existed as a separate parcel since at least 1957. The two lots were conveyed with the existing right of way before 1957, he believes, it was just not in the language of the deeds at that time.

Tom Quinn, Esq., explained that the lots were conveyed to John Dunn in 2007. At this time, access to the lot was declared via the easement. In March, an application was filed with the Board of Selectmen for a waiver restriction against RSA 674:41, that a building permit will not be allowed on a property without frontage on a Class V road or better. This application was hung up, as the Board of Selectmen needed to discuss it with the Planning Board. In the Board's opinion, the applicant needs both a variance and a waiver. Thus, the applicant moved forward with the variance application first. This will still need to go back before the Planning Board and Board of Selectmen.

Tom Quinn, Esq., explained that, per a 2007 Supreme Court case, it is appropriate to address the two tests regarding the application being contrary to public interest and the application addressing the spirit of the ordinance as one. He explained that any variance is technically contrary to the public interest in some sense, and so the ZBA's job is to determine if granting the application unduly and to a marked degree conflicts with the ordinance. There are two tests to determine if that standard is met:

- 1) If the variance alters the essential character of the neighborhoods
- 2) If the variance effects the health, safety, and welfare of the public

1) Tom Quinn, Esq., explained that he does not believe this request for a variance alters the essential character of the neighborhood. He explained that the property is located in the Residential/Rural district, where single-family homes are permitted and the minimum lot size is two acres. This property has approximately 10 acres and the request is to build one single-family residence. There is an apartment complex that abuts this lot, and some of the nearby lots are smaller than two acres. It is not uncommon in Town to have access to a lot via an access easement. There is nothing in this application that alters the essential character of the neighborhood.

2) Tom Quinn, Esq., stated that he does not believe this request for a variance effects the health, safety, and welfare of the public. This request is for a single-family residence on a 10 acre lot, simply because the lot lacks frontage. This residence will meet all other requirements, including: septic, setbacks, stormwater, etc. There will be no significant impact on traffic and there are good sight distances at the end of the driveway onto the t.

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3) Substantial justice will be done because without this variance nothing can be done on the property. Any permitted use would require frontage, which this property lacks. There is little gain to the public in denying this variance. There is no corresponding benefit to the public that offsets the total lack of use of the property that denying this variance would result in for his client.

4) The values of the surrounding properties will not be diminished. Tom Quinn, Esq., explained that this will be a nice house located in a residential neighborhood, within the permitted uses of the zone. It will not diminish the values of the surrounding properties.

5) Literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship because this is unlike any other property in the area, as it is a separate and distinct lot. This lot has been around forever and has always been accessed by the existing easement right of way. This grants legal access to the property. This access point predates the current zoning and zoning provisions. The current zoning is to prohibit the proliferation of back lots, excessive density, and curb cuts – but none of these items are at issue here. This variance does not interfere with the ordinance because it is the only back lot in the area. The land is adequate to handle this request without an adverse impact to the neighbors or Town. Shared driveways are also not uncommon in Town.

Tom Quinn, Esq., stated that the proposed use is reasonable (a single-family residence on 10 acres), in a zone that allows it, and which the lot has legal access to. It would be a hardship if the variance was denied, as there would be no reasonable use of the property at all.

In response to a question from Doug Kirkwood, Tom Quinn, Esq., explained that he is unsure of the exact sight distance at the end of the shared driveway.

Charlie Vars noted that he had a client who was also interested in this property. He does not believe this should lead him to recuse himself from this case.

Public Comment:

Brenda Lockwood, 112A Amherst Street, stated that she is the abutter whose driveway the right of way passes over. She has grave concerns about this request. She believes it will be a hardship to her and overburden the land. She explained that she has records from when the land was purchased from John Dunn that shows a map of the wetland permit plan, dated December 31, 2004. In the notes section of the map, it states that the proposed minor subdivision is accessed via an existing “cart path.” She is nervous that the owner will eventually sell the property and another variance will be sought to place another home on the property. The property is full of wetlands and wildlife. She also has concerns with the supposed sight line at the end of the shared driveway. Her tenant, who also lives on the property, cannot easily see when exiting the driveway, and Amherst Street has a 40mph speed limit to enter onto. She doesn’t believe that all of the abutters received proper notification for this hearing. She believes that her property will lose value because the easement runs so close to her house. She questioned who would purchase

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a piece of land that lacks frontage, knowing what the Town regulations are. She is surprised that the builder would still purchase this lot and put the burden on the other abutting homeowners. She requested that the ZBA not approve the variance and, if they do, to restrict the property to one single-family home forever. She also requested that the ZBA come out and look at the property and the wetlands on the property.

Tom Quinn, Esq., stated that the map referenced by Brenda Lockwood correctly calls the right of way a "cart path." However, in the easement plan from 2010 the location of the driveway is shown as a 35' wide easement. This hugs the southern boundary of the property and goes straight back. This is referenced in the easement document and deed. In regard to restricting the property to one, single-family house, Tom Quinn, Esq., explained that that is all that is being applied for in this case. He has no objections to that condition.

Deborah Duranceau, 112B Amherst Street, stated that she is the tenant of Brenda Lockwood. She believes that the 35' easement will probably take away all of the woods and trees planted. This is also in an area where local children play. She stated that she has almost been side-swiped by construction trucks in the area. She disagreed that there is a good line of sight at the end of the shared driveway.

Tom Quinn, Esq., noted that the potential buyer is responsible and will not be running construction trucks at an excessive speed. He understands some of the abutters concerns, but stated that the speed requirement could always be a condition of the approval.

Sri Kalyan, 2 Founder's Way, stated that he built his property within the last year with builder, Ben Chandler. When he bought his property, he was told that the land behind it was non-constructible. He purchased the land in part because he didn't want to lose the back half of the view. This variance would impact his view, and the value of his property.

Tom Quinn, Esq., stated that Map 5, Lot 47 abuts this property to the back, and Map 5, Lot 46 is a back lot to the property. Access to both of these lots is not over any frontage, but over the apartment complex property.

David Hall, 8 Elizabeth Lane, Mont Vernon, the listing agent for the property questioned when Brenda Lockwood received approval for the rental apartment on her property. He also questioned if Brenda Lockwood went through the driveway permit approval process through the Town.

In response to a question from Jamie Ramsay, Tom Quinn, Esq., stated that there are quite a few properties fronting on Founder's Way that share lot lines with the property in question.

Brenda Lockwood noted that these properties are within the Historic District and that there will a certain image that the community has about this area. She also explained that the apartment on her property has been there since John Dunn owned the land.

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In response to a question from Danielle Pray regarding the amount of land within the 10 acres that is buildable versus wetlands, Tom Quinn, Esq., stated that the engineering on the property isn't yet complete. He explained that Rough Diamond originally planned a two lot subdivision on the property and went to the State for two wetland crossing permits and to the Planning Board for a stormwater management plan. He is not sure if those wetland crossings were installed, but the permits were obtained.

Jamie Ramsay stated that, subject to verification, the stormwater management plan and the wetland crossing permits were both executed before the sunset dates of the permits. He believes the crossings were installed and that there is legal access into the rear of the property.

Brenda Lockwood stated that she has seen those permits/maps and that the proposal will ruin the view of this part of the property. She also explained that one would need to drive through all of the wetlands on the property to get to the two-acre section being proposed to build on.

In response to a question from Charlie Vars, Tom Quinn stated that once an easement is granted on a property, there is legal access to the property and no way to stop that access.

Charlie Vars noted that the only issue on this property is the frontage. The owner purchased the property with knowledge of the easement.

Tom Quinn stated that the property owner should not be stopped simply because the granting of the variance will not enhance someone else's view. He stated that the owner has a right to build on his property. The only way to ensure that a property is not built on, is to buy it.

Bennett Chandler, 6 Wildwood Drive, Brookline, NH, stated that he is the builder and representative for Sri Kalyan. He stated that this variance will diminish the value of Sri Kalyan's property. He noted that the proposed property was purchased for \$22,000 with the price reflecting an unusable back lot. If this variance is granted, this becomes a \$250,000-300,000 lot. He questioned if this property is being taxed as a buildable lot or open space. He believes that this will be similar to winning the lottery for the owner, if the variance is granted, as the property is essentially useless without it and will be turned into a high value piece of property with it.

Brenda Lockwood again asked the ZBA to come view the property before voting. Even though this is a legal easement, she believes the variance will allow for overcrowding on the land.

Doug Kirkwood noted that the ZBA does not usually do site walks unless absolutely necessary but will take the request into consideration.

Robert Rowe left the meeting.

2. CASE #: PZ12860-070820 – VARIANCE

**Linda L. Robinson, Trustee (Owner & Applicant) 312 Boston Post Road, PIN #:
004-011-000 – Request for relief from Article IV, Section 4.3, Paragraph D 2&3 to**

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construct a detached two-car garage a distance of more than 50' from the edge of Boston Post Road and a distance of 31.1' from the edge of North Meadow Road and with a maximum height of 23 feet. Zoned Residential Rural.

Tom Quinn, Esq., representing Linda L. Robinson, Trustee, stated that the applicant owns approximately 4.78 acres with an existing residence and barn at 312 Boston Post Road. The existing structures meet all of the current requirements. The property is a corner lot. The ZBA previously ruled that additional structures on the property must maintain a setback of 50' from Boston Post Road and North Meadow Road, and a maximum structure height of 22'.

Tom Quinn, Esq., explained that the property lacks a garage. The proposal is to construct a 28'x32' garage in the location shown on the plan, in the northeast corner of the property. The proposed garage would be 31.1' from North Meadow Road, with a proposed height of 22'9". He has rounded this number up to 23', as Bill Coco, builder, is content with that margin of error. The requested variance is for the less than 50' setback and the extended height of the structure.

Tom Quinn, Esq., explained that he will, again, be addressing the first two tests together, as he did with the previous case.

1&2) Tom Quinn, Esq., explained that the property is located in the Residential/Rural zone. Being proposed is a two bay garage for residential use. He believes that the fact that the proposed garage meets 30' setbacks should be satisfactory in this case. The proposed garage sits on an open woodland part of the property. In general, the property is very wooded and the owners take great care of the property. He explained that the proposed garage location has been marked for quite a while and that it should be of no surprise to the neighbors as to where it will be located.

Tom Quinn, Esq., explained that, as one travels down Boston Post Road, the properties on the east are at a higher elevation than those on the west. This should be a significant factor in the proposed height of the property, as, even at 23', the garage will still sit below the height of buildings on the other side of the street. Thus, the garage will not visually be noticed significantly. This proposal will not change the essential character of the neighborhood. The existing property is beautiful and is beautifully maintained. The addition of a garage will enhance the property and the neighborhood. Reducing the setback will cause no danger to the health, safety, or welfare of the public. There is a stop sign at the intersection where the property is located, and about 50-60' between the proposed location of the garage and the stop sign. The proposed garage will not interfere with the sight line at this intersection.

3) Tom Quinn, Esq., explained that substantial justice will be done because the proposed position of the garage on the property causes the least undermining of existing trees. Every garage also needs a turning radius, and this location offers a place for a small apron in front. Linda Robinson's husband also has a chronic health condition, and they would like to be able to enter the house easily from the garage, instead of it being far

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away. He also explained that there is no benefit to the public in denying the variance that outweighs the loss to the applicant to be able to build the proposed garage in a feasible location.

4) Tom Quinn, Esq., stated that the proposed garage will not diminish nearby property values. The neighborhood is fairly uniform in terms of quality and value of the houses, with the exception of the property in question, which is exceptionally nice.

5) Tom Quinn, Esq., explained that a hardship to the applicant is the house's orientation. The house's driveway is on the east side of the property, so the garage could logically be placed there. The west side of the property experiences a significant drop in terrain, and also holds the leach field. The proposed garage sitting approximately 20' closer to the road than required is not inconsistent with the spirit of the ordinance. The garage is otherwise a reasonable use of the land and allows for substantial compliance.

Charlie Vars noted that if the garage roof was pitched 10/12, instead of 11/12, the total height would be about 21'6" and no variance would be necessary. Tom Quinn, Esq., explained that a lower pitch would mean that the windows above the doors would need to be eliminated. The currently proposed windows match the barn windows and help to integrate the garage with the property.

In response to a question from Charlie Vars, regarding proving hardship when the pitch of the roof could be adjusted to meet the height requirements, Tom Quinn, Esq., explained that his client prefers the proposed pitch and style of the garage.

In response to a question from Jamie Ramsay, Tom Quinn, Esq., stated that the proposed garage has a footprint of 28'x32'. The 28' end is the gable end and runs north-to-south, and the 32' end runs in an east-to-west direction.

Public Comment:

Shane Humphreys, 5 North Meadow Road, stated that he lives directly across from the property in question. He gives his full support towards granting the variance. He stated that the Robinsons do an incredible job with their yard and their house is impeccable. Anything the Robinsons do to their property, he believes will increase the value of his property. He explained that the area is very wooded and doesn't believe most will even know the garage is there. He stated that the plans go well with the rest of the property and that it will be in the best interest of the community and the neighborhood to grant the variance.

3. CASE #: PZ12864-071020 – VARIANCE

Keith and Barbara Allen (Owners & Applicants) 5 Milford Street, PIN #: 025-083-000, & Stacey B. McMahon (Owner) 9 Milford Street, PIN #: 025-081-000 - Request for relief from Article IV, Section 4.3, Paragraph C 1&2, D 1,2,3&4 to enter into a lot line adjustment whereby 765 square feet of land will be removed from Lot 25-81 and added to Lot 25-83. Zoned Residential Rural.

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The Board confirmed that this application has been withdrawn at this time.

4. CASE #: PZ12945-072920 – VARIANCE

Sara Melone (Owner) & The Tree of Life Interfaith Temple, Inc. (Applicant) 5 Northern Blvd. Unit #8, PIN #: 002-504-008 – Request for relief from Article V, Section 4.9, Paragraph A to lease with the intent to purchase to use for religious services and support of members. Zoned Industrial.

May Balsama, of Berkshire Hathaway, Karen Manchester Administrator for the Tree of Life Interfaith Temple, and Linda Goodman, presiding Minister for The Tree of Life Interfaith Temple, joined the meeting.

May Balsama explained that this condo came on the market and was attractive to the temple, as the group used to use it as a meeting space on a regular basis, up until about two year ago. The condo has the proper number of rooms and space that meets the temple's need for offering counseling to its membership.

May Balsama read through the applicant's explanations of the five tests:

1) Granting this variance to The Tree of Life Interfaith Temple, Inc., to use the condo at 5 Northern Blvd. Unit #8 as offices and gathering space for our church and seminary is not contrary to public interest, and may even be considered beneficial to public interest. Our use of the space for public Worship Services, Client Services such as spiritual mentoring, spiritual counseling, pastoral services and the like, as well as Education and Seminary Classes, will serve to benefit and enhance the public interest. Most classes and gatherings happen in the evening hours or during weekend hours when many of the neighboring units are closed for normal business. We pose no threat to public health, safety, or welfare.

2) The spirit of the ordinance is preserved by our many offerings falling within the guidelines of the ordinance itself:

Section 4.9 Industrial Zone: A. PERMITTED USES: 8. Corporate and business offices compatible with other permitted uses in the zone and/or professional offices for individual or group practice, including doctors and dentists (including medical and dental clinics), counseling services, engineers, architects, planners, insurance, and accountants (3014078, 3-10-87).

Our Corporate/Business office, Client Services, and Educational offerings all fall within the scope of this section of the ordinance. Only our offering of public Worship Services is not explicitly permitted.

3) As most of our activities do fall within the Permitted Uses of the Industrial Zoning, and the only activity that does not would take place when most neighboring businesses are closed, there is no danger or harm, real or perceived, to any individual or to the public interest, there is nothing to weigh the benefit to The Tree of Life Interfaith Temple

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against/ Congregation Betenu, a Jewish Community, occupies the unit at 5 Northern Blvd. Unit #1.

4) Most of our gathering activities, such as Classes and Worship Services, take place in the evening and on weekends when other neighbors are closed for business. There is very little chance that our activities will adversely affect our neighbors or the condominium complex.

5) Because of the Industrial Zone restriction, when all other activities and services provided to our members and to members of the public are permitted, it is an undue burden that we would not also be able to meet for Worship Services within the confines of this space. This additional use, for gathering and worship, is both reasonable and will not alter the essential character of the neighborhood or place an undue burden on our neighbors.

May Balsama explained that she spoke with the Fire Chief during a walk-through of the property, regarding any life safety codes or building needs. She explained that they are currently looking into the possibility of a chair lift for the building. The first floor is handicap accessible though.

In response to a question from Charlie Vars, May Balsama explained that the unit in question is a center unit. Karen Manchester explained that the other offices in the building are an antique seller, a chiropractor, and a consulting business. The condo docs prohibit manufacturing on site.

In response to a question from Danielle Pray, Karen Manchester stated that the Temple holds hours at 10am on Sundays, and occasionally has Saturday classes or workshops from around 9am-1pm/4pm. On Monday through Friday, the Temple holds office hours and the presiding minister holds counseling hours. Evening hours are generally held on Tuesdays and Thursdays. The Temple does not have a fall schedule set yet.

In response to a question from Charlie Vars, Karen Manchester stated that the unit is a two-story building and that it can accommodate about 33 people in the sanctuary space.

Cycling back to the second application, *CASE # PZ12947-073020 – Rehearing of CASE #: PZ12445-032320 - Linda L. Robinson, Trustee of the Linda L. Robinson 2000 Trust (Owner & Applicant) – 312 Boston Post Road, PIN 004-011-000 – Request for rehearing of the Board’s decision denying the Appeal of an Administrative Decision of the Town Building Official. Zoned Residential Rural.*, in response to a question from Charlie Vars, Tom Quinn, Esq., explained that he would withdraw the request for rehearing, if the ZBA grants a variance on this case. He would be willing to withdraw this after the 30 day appeal period for the variance is up.

In response to a question from Jamie Ramsay, Tom Quinn, Esq., stated that he would also be okay with tabling the rehearing, if the variance is granted tonight.

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Tim Kachmar sat for Robert Rowe.

Charlie Vars moved to enter deliberations. Tim Kachmar seconded.

**Roll call vote: Danielle Pray – aye; Jamie Ramsay – aye; Tim Kachmar– aye;
Charlie Vars – aye; and Doug Kirkwood – aye. Motion carried unanimously.**

CASE #: PZ12820–070220:

Jamie Ramsay moved no regional impact. Danielle Pray seconded.

**Roll call vote: Danielle Pray – aye; Jamie Ramsay – aye; Tim Kachmar– aye;
Charlie Vars – aye; and Doug Kirkwood – aye. Motion carried unanimously.**

Discussion:

Jamie Ramsay explained that any issue with the sight line or access onto Amherst Street, would ultimately be decided by the Community Development Office/Building Official/Police Department. This is not a ZBA item to focus on.

The group discussed that the easement is legal and grants access to the site.

In response to a question from Danielle Pray, Jamie Ramsay stated that he believes the wetland crossings were put in on site and that the area is basically high and dry walkable from Amherst Street to the back of the lot. If the wetland crossings are not in place, the applicant will need to go through that permitting process again.

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

- C. Vars – true, this will be a single-family residence and the owner has a right to build on the lot.
- J. Ramsay – true, this appears to be a small, practical build, the envelope of which will not endanger the health, safety, or welfare of the public.
- T. Kachmar– true, this proposal will not be contrary to the public interest. There is no access except through the easement, making it hard for the property to require frontage in order to build.
- D. Pray– true, this proposal is not contrary to the public interest and does not alter the essential character of the neighborhood.
- D. Kirkwood – true, the lot size is 10 acres and if the build is placed toward the back of the lot, it will not disturb the wetlands.

5 True

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

- T. Kachmar – true, there is a legal easement in place. This ordinance applied but cannot be enforced on this lot due to existing conditions.
- D. Pray – true, she doesn't believe that a single-family home will crowd the land. She also doesn't believe it will create traffic issues.

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- C. Vars – true, the proposal will not alter the neighborhood. If the proposed residence is built well back on the lot it may not even be seen by the front two abutters.
- J. Ramsay – true, he believes the proposed residence will be well back on the property and thus the spirit of the ordinance is observed.
- D. Kirkwood – true.

5 True

3. Substantial justice is done.

- D. Pray – true, she believes that denying the owner's their right to build on the land would give no corresponding benefit to the public.
- C. Vars – true.
- J. Ramsay – true, granting the variance permits the enjoyment of the property to the owner.
- T. Kachmar – true.
- D. Kirkwood – true.

5 True

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

- C. Vars – true, the addition of a single-family residence on one lot does not diminish the values of surrounding properties, even if the abutters don't like the proposal.
- J. Ramsay – true, he does not believe granting the variance will lead to a substantial difference than the surrounding residential developments.
- T. Kachmar – true, he doesn't believe that being able to see a new residence from abutting properties diminishes their values. He also believes this proposed residence may be set far enough back to not notice it.
- D. Pray – true.
- D. Kirkwood – true.

5 True

5. Literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship.

- J. Ramsay – true, if the variance is denied, this land cannot be built on, and that will render the land useless, which is a hardship for the owner.
- C. Vars– true, the proposed use is a reasonable one and the only issue with this lot is lack of frontage. It will be a hardship to the owner if the variance is not granted.
- D. Pray – true, strict conformance to the ordinance will result in a hardship to the owner of the property. This will allow for no use of the property. The lot has been landlocked since at least the 1950's, and has never had frontage. These items were not caused by the applicant.
- T. Kachmar– true.
- D. Kirkwood – true, the necessary access to this land is granted through the easement across the abutters' land in front. This is a unique situation and speaks to a problem with applying the ordinance.

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5 True

In response to a question from Danielle Pray, Doug Kirkwood explained that, if the access road was to be rerouted, the easement would need to be rewritten as well as the deed. He also doesn't believe that the access road can be moved much closer to the property line than it already is. Jamie Ramsay noted that, with an access easement, the owner has the right to use the access way as needed to get from point A to B.

Charlie Vars suggested that a condition could be that the entrance off Amherst Street needs to be in the same location as the current driveway. This will push the access road slightly to the left, and make sure that a second driveway isn't created.

The Chair stated that the application, as it passed all of the tests, is granted with the following conditions:

- 1. That the property is to be kept to one single-family dwelling.**
- 2. That the entrance to the property and easement coincide with the current curb cut off Amherst Street.**

CASE #: PZ12860-070820:

Jamie Ramsay moved no regional impact. Danielle Pray seconded.

Roll call vote: Danielle Pray – aye; Jamie Ramsay – aye; Tim Kachmar– aye; Charlie Vars – aye; and Doug Kirkwood – aye. Motion carried unanimously.

Discussion:

Jamie Ramsay noted that, in this rural setting, an additional foot of height on the proposed garage will not be noticed. The other two existing buildings on the site are also taller than the proposed garage.

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

- D. Pray – true, this will not be contrary. Many or most of the houses in the area have garages. The incursion into the setbacks and the extra height of the proposed garage will not affect the health, safety, and welfare of the public.
- C. Vars – true, the size, as stated, will not dominate the site. The proposed garage will be tucked in the trees and is located in the right spot on the site.
- T. Kachmar– true.
- J. Ramsay – true.
- D. Kirkwood – true.

5 True

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

- T. Kachmar – true, the purpose of this ordinance is to prevent encroachment to neighbors and the road; due to the nature of this lot, these are not issues. The neighbors also spoke about being okay with the proposal.

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- C. Vars – true.
- J. Ramsay – true.
- D. Pray – true, she stated that the extra foot of height on the proposed structure does not overcrowd the site.
- D. Kirkwood – true.

5 True

3. Substantial justice is done.

- C. Vars – true, the proposed garage is suggested in the best location on the site.
- J. Ramsay – true, a garage is also semi-essential to modern living.
- T. Kachmar – true.
- D. Pray – true, she doesn't see a gain to the public for denying the variance to the applicant. The applicant also mentioned health issues that speak to the need for a variance.
- D. Kirkwood – true.

5 True

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

- D. Pray – true, she stated that she heard testimony from the neighbors that they believe their home value will be increased. The ZBA also received three similar letters.
- C. Vars – true, the proposed garage will be in a forested area and the height will not be close to that of the existing house. The neighbors are also okay with this garage.
- J. Ramsay – true, this is a good sized lot and there are no other practical places on the property to place the garage.
- T. Kachmar – true, the neighbors are in favor of the plan.
- D. Kirkwood – true.

5 True

5. Literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship.

- C. Vars – true, there are special conditions on the site. If the house had been built to the west, this would not be an issue. The proposed area for the garage will save trees on site.
- J. Ramsay – true, denying the variance would deny the applicant a reasonable use of the property.
- T. Kachmar – true, to deny the variance would be a hardship to the owner.
- D. Pray – true, there are special conditions on the property, such as that the leach field is located on the west of the property and the driveway and main entrance to the house are located on the east of the property.
- D. Kirkwood – true.

5 True

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The Chair stated that the application, as it passed all of the tests, is granted.

CASE #: PZ12945-072920:

Jamie Ramsay moved no regional impact. Tim Kachmar seconded.

Roll call vote: Danielle Pray – aye; Jamie Ramsay – aye; Tim Kachmar – aye; Charlie Vars – aye; and Doug Kirkwood – aye. Motion carried unanimously.

Discussion:

Jamie Ramsay explained that this variance is necessary because the zoning ordinance never contemplated the use of this property as a place of religious education and practice. He would like to open a discussion about allowing the alternate use in this zone.

Doug Kirkwood noted that, although the desired use is not listed as permitted, it is also not listed as not permitted.

Charlie Vars stated that he believed when he was on the Planning Board, this was supposed to be approved as a permitted use in all zones. This appears to be an oversight. Jamie Ramsay thought this might be a suggestion for a proposed amendment this year. He noted that if the use was being proposed in a "classical" industrial building with overhead doors and steel walls, it might be a different discussion, but this building was basically an office building.

Although the Board had already voted on regional impact, Tim Kachmar moved no regional impact. Jamie Ramsay seconded.

Roll call vote: Danielle Pray – aye; Jamie Ramsay – aye; Tim Kachmar – aye; Charlie Vars – aye; and Doug Kirkwood – aye. Motion carried unanimously.

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

- J. Ramsay – true.
- C. Vars – true, the proposed use will not pose a threat to the public health, safety, or welfare.
- D. Pray – true, a public worship service will not alter the neighborhood. The use of the unit will be limited during weekends and is consistent with the other units. The Fire Department has also been out to the site to look at a reasonable limit for the number of people in the space.
- T. Kachmar – true, there is another House of Worship in the same area.
- D. Kirkwood – true.

5 True

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

- D. Pray – true, there are other professional services offered in the area, and the proposed use is consistent with other uses.
- T. Kachmar – true.

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- J. Ramsay – true, there are rights of tenancy. Also the proposed use is not flagrant to the other units.
- C. Vars – true, the number of people in the building will be kept to a minimum.
- D. Kirkwood – true.

5 True

3. Substantial justice is done.

- J. Ramsay – true, granting the variance is to the enjoyment of the property – whether the owner or tenant.
- C. Vars– true.
- D. Pray– true, there is no loss to the public that outweighs the rights of the applicant to use the property as a place of public worship. The proposed use goes hand-in-hand with other services provided in the area.
- T. Kachmar – true.
- D. Kirkwood – true.

5 True

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

- J. Ramsay – true, the proposed use will have no impact on the surrounding properties.
- T. Kachmar – true.
- D. Pray – true, she believes the applicant has met the tests and presented evidence that there will be no diminished property values.
- C. Vars – true, the proposed use is consistent with all units in the area.
- D. Kirkwood – true.

5 True

5. Literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship.

- D. Pray – true, the only aspect of the business not allowed is the public worship one. The industrial zone is perfect for this type of use. Not allowing the proposed use would be a hardship.
- C. Vars– true, this is a reasonable use that will not affect the character of the industrial park.
- J. Ramsay – true.
- T. Kachmar – true, the proposed use is not listed as prohibited; it just doesn't happen to be listed as allowed.
- D. Kirkwood – true, there is already a religious use in the same building. The proposed fellowship will be a minimal use of the property and thus is not in danger of changing the overall use of the industrial park.

5 True

The Chair stated that the application, as it passed all of the tests, is granted.

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MOTION FOR REHEARING:

4. CASE # PZ12947-073020 – Rehearing of CASE #: PZ12445–032320 - Linda L. Robinson, Trustee of the Linda L. Robinson 2000 Trust (Owner & Applicant) – 312 Boston Post Road, PIN 004-011-000 – Request for rehearing of the Board’s decision denying the Appeal of an Administrative Decision of the Town Building Official. *Zoned Residential Rural.*

Discussion:

Tim Kachmar stated that that variance could have been approved, but the applicant would have had to come back anyway for the height issue.

Doug Kirkwood stated that this is a setback corner lot. He believes the ZBA should grant the rehearing and if Tom Quinn, Esq., then wants to pull the request once the 30 day appeal window lapses for the variance that was just granted, that will be okay.

Danielle Pray moved to grant the request for rehearing. Jamie Ramsay seconded. Roll call vote: Danielle Pray – aye; Jamie Ramsay – aye; Tim Kachmar – aye; Charlie Vars – aye; and Doug Kirkwood – aye. Motion carried unanimously.

Charlie Vars moved to exit deliberations. Jamie Ramsay seconded. Roll call vote: Danielle Pray – aye; Jamie Ramsay – aye; Tim Kachmar – aye; Charlie Vars – aye; and Doug Kirkwood – aye. Motion carried unanimously.

OTHER BUSINESS:

Doug Kirkwood stated that he will address the size of the meeting package with Community Development.

Tim Kachmar noted that Town Hall might be trying to save money by sending the package electronically. But the ZBA members are all volunteers, and it isn’t fair to ask them to print all of the materials at home. He would prefer the electronic copy, but feels that it should be an option to receive a hard copy.

Charlie Vars stated that there was the option to get the paper packet, in the email that was sent to the members with the electronic version. He mentioned that he contacted Deb Butcher, who had a hard copy printed for Bob Rowe but wasn’t able to get a hold of him, and so Charlie Vars was able to obtain that copy.

Tim Kachmar stated that he hadn't read the whole email so didn't see the offer of the paper packet. He suggested that each ZBA member let it be known what his/her preference is ahead of time.

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741 Doug Kirkwood stated that he will sit with Nic Strong to discuss not being told what the
742 ordinances/RSAs say. He would also like for the packet information to be made more concise.
743 It's a lot of work to put these packets together, but they do not serve the ZBA well.
744

745 In response to a question from Danielle Pray, Doug Kirkwood stated that he will also look into if
746 the ZBA can meet in-person.
747

748 **Tim Kachmar moved to adjourn at 10:57 pm. Charlie Vars seconded.**

749 **Roll call vote: Danielle Pray – aye; Jamie Ramsay – aye; Tim Kachmar – aye;**
750 **Charlie Vars – aye; and Doug Kirkwood – aye. Motion carried unanimously.**
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755

756 Respectfully submitted,

757 Kristan Patenaude
758

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761 Minutes approved: November 17, 2020