

TOWN OF AMHERST
Zoning Board of Adjustment

March 23, 2021

APPROVED

In attendance: Doug Kirkwood – Chair, Bob Rowe, Charlie Vars, and Danielle Pray.
Staff present: Nic Strong, Director of Community Development, and Kristan Patenaude,
Recording Secretary.

Doug Kirkwood called the meeting to order at 7:08 pm., with the following statement. As
Chair of the Amherst Zoning Board of Adjustment, I find that due to the State of Emergency
declared by the Governor as a result of the COVID-19 pandemic and in accordance with the
Governor's Emergency Order #12 pursuant to Executive Order 2020-04, as extended by
various executive orders, this public body is authorized to meet electronically.

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

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

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

We are utilizing Zoom for this electronic meeting.

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 868 0078 6076, or by clicking on the following website address:
<https://zoom.us/j/86800786076> 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: Doug Kirkwood, Bob Rowe, Danielle Pray, and Charlie Vars –
all present and alone.**

TOWN OF AMHERST
Zoning Board of Adjustment

March 23, 2021

APPROVED

Doug Kirkwood explained that each case will be opened 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 #: PZ13800-021921 – VARIANCE Peter L. & Christine M. Row (Applicants & Owners), 124 Baboosic Lake Road, PIN #: 006-011-000 – Request for relief from Article IV, Section D, Paragraph 1,2,3 & 4 to construct an addition consisting of a two-story structure and housing a two-bay garage with living space on the second floor. The structure will be situated within the front and side setbacks and will exceed the allowable 15% floor area ratio. Zoned Residential/Rural.**

Bob Rowe noted that he has known the applicant for many years and represented the applicant's parents at one point. He believes that he can still be objective on this application.

Charlie Vars noted that he has walked the property in question with a previous owner to help find additional square footage for a leach field. He did this as a friend and was not paid for his time. He believes that he can still be objective on this application.

Danielle Pray also noted that she knows the Row family casually through Town and school items.

Neither the Board nor the applicant had objections to these notes.

Bob Rowe read and opened the case.

Tom Quinn, attorney from Milford, represented the case on behalf of the applicant. He explained that the lot is 11,762 sq. ft., or approximately ¼ of an acre, with an existing residence located on Baboosic Lake Road in the Residential/Rural District. The property predates the current Zoning Ordinance, as it was created in 1962. A residence was built on the property in 1969. The property lacks frontage and has access to it over a right of way from Baboosic Lake Road that mostly crosses over Lot 10. The property is located just under ¼ mile from the road. The existing residence is approximately 850 sq.ft. It lacks a garage. There is also a 124 sq.ft. shed on the property, as well as a 229 sq. ft. waterfront deck. Including upper and lower decks that are attached to the property, the total square footage of structures on site is 1,580.

Tom Quinn explained that the existing house does not meet the west sideline requirement of 25'. The proposal is to construct a two-car garage at the south end of the structure, with living space above. A small portion of the garage will also be added to the existing structure, for some additional living space.

TOWN OF AMHERST
Zoning Board of Adjustment

March 23, 2021

APPROVED

The total proposed garage is 28'x32', with an 8'x4' staircase. This is a triangular shaped property that is bounded by Baboosic Lake on its north side. There is a requirement that the front lot line have a 50' setback measured from the frontage, but the property has no frontage. The proposed garage will still be 90' from the southernmost part of the property. Thus, he doesn't believe the front setback is in play for this property, as there is no frontage, and the garage is located far enough away from the southernmost property line. The east side of the property has a building setback of 14'4" from the lot line, and the west side of the property has a building setback of 16' from the lot line. There is also an issue with the proposed floor area ratio for the property. The proposed floor area ratio is 21%, where the allowable maximum is 15%.

Tom Quinn ran through the tests:

1&2) The variance will not be contrary to the public interest and will be consistent with the spirit of the ordinance. Granting the variance would not alter the essential character of the neighborhood. The property is an undersized lot that has existed for decades. The property is used for residential purposes, which is a permitted use. The other properties in the area are used for residential purposes as well. The Applicant's proposal simply is to add a garage and more living space, which is a permitted and reasonable use. The variance is required only because of the limited size of the lot. There is nothing about the proposal that will alter the essential character of the neighborhood.

Nor will granting the variance threaten the public health, safety, or welfare. All that is proposed is the construction of a garage with finished living area above. The project will require a new septic system. The applicant has engaged Meridian Land Services, Inc., to design a new septic system and obtain all necessary local and state approvals. That work is underway. The property is already serviced by a well producing a sufficient volume of potable water. The property is situated so far from Baboosic Lake Road that the existing residence is, and the new structure will be, difficult to see from the road.

3) Granting the variance would do substantial justice. Any loss to the applicant caused by the strict application of the ordinance that is not outweighed by a gain to the public is an injustice." Malachy Glen Assoc., supra. The proposed use is consistent with uses and development in the Baboosic Lake area and the neighborhood. It is only the limited size and unusual shape of the property that necessitates a variance. Granting the variance will permit the Applicant reasonable use of the property. Denying the variance will deny the Applicant full reasonable use of the property without a significant benefit to the general public.

4) Granting the variance will not diminish the value of surrounding properties. The Applicant's proposed use is consistent with the development of the Baboosic Lake area. The proposed addition is attractive and will not detract from the appearance of the neighborhood nor add significantly to the traffic in the neighborhood. The proposed addition will have no negative impact on the value of surrounding properties.

5) Owing to special conditions of the premises that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship

March 23, 2021

APPROVED

because 1) no fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the premises and 2) the proposed use is reasonable.

Literal enforcement of the provisions of the ordinance would result in unnecessary hardship. There are special conditions of the property that distinguish it from other properties in the area. The property exists today as it has since at least 1962. It is a small lot consisting of approximately 0.27 acres of land. Given the small size and unusual shape of the lot, there is a very limited building envelope that results. And considering that the existing residence is already in place, possible locations for placement of the addition are limited. Also, the existing residence is undersized and lacks a garage. Due to the small size of the lot, virtually any addition would cause the floor area ratio to exceed 15%.

No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property. A primary purpose of the Ordinance is to group similar uses and properties in a common zone and to promote the orderly development of the individual zones and the Town in accord with the regulations. The general purpose of the Ordinance and the specific requirements of Section 4.3 are reasonable attempts to achieve these goals. And the goal of larger lots and frontage requirements and the large setbacks and stringent floor area ratios are consistent with the goals of promoting open space and avoiding excessive density. And they probably work in situations where new subdivisions are being created or where preexisting lots are large enough to meet the regulations.

But in this case, given the special characteristics of the Baboosic Lake Area, and of the property, the requirements of Section 4.3, particularly the setbacks and floor area ratios, cannot be met if the Applicant is to have full and reasonable use and enjoyment of their property. And they are not necessary. The Baboosic Lake area is already developed in its own special way. The existing residence and decks are already in place. The size and location of the existing improvements dictate the placement of the proposed structure. Granting the variance will simply allow the reasonable use of the property in a manner that is consistent with the development of the area.

The proposed use is a reasonable one. Again, the proposal is reasonable because it is a reasonable balance of the strict requirement of the Ordinance, the realities of the Baboosic Lake area, and the specific requirements of the property. The proposed use is consistent with the area as developed, will enable the Applicant to have full and reasonable use of their property, and will not negatively impact the neighborhood.

TOWN OF AMHERST
Zoning Board of Adjustment

March 23, 2021

APPROVED

In response to a question from Charlie Vars, Tom Quinn explained that the request for a variance may be for slightly more than 224 sq. ft. based on the setbacks, but that most of the proposed structure will be located within the setbacks.

Charlie Vars noted that a smaller structure would leave the applicant without enough space for a garage and living space above.

In response to a question from Charlie Vars, Tom Carr, of Meridian Land Services, explained that there is a verbal agreement between the Amherst Land Trust and the owner regarding space abutting the property for effluent movement. A new septic design approval will be needed as part of this project.

In response to a question from Danielle Pray, Sally Wilkins, of the Amherst Land Trust, stated that the Amherst Land Trust is up-to-date on this project. The Land Trust does not believe there will be any impact on the conservation value of the property it holds under easement. The group has no objection to this proposal and will write a letter stating this, if desired by the Board.

Danielle Pray questioned why all four sections of 4.3d are being requested as part of this variance. Tom Quinn explained that he was unsure how the Board would want to handle the frontage issue, so he listed it just in case. He noted that the application mostly deals with items 1, 2, and 4 under that Section. Item 3 might be applicable, as the proposed structure is technically a garage, but it will be attached to the existing structure, so this may not truly be applicable.

Danielle Pray noted that there seems to be a discrepancy on the plan versus in the application regarding the distance from the lot line on the west side – 18.6’ or 16’. Tom Carr explained that the boundary has been surveyed. He had suggested that the plans show a 16.4’ distance, but the intent was to allow for a certain margin of error during construction in the field. Danielle Pray noted that the existing structure appears to be 17.1’ away. Tom Quinn noted that the applicant could live with the distance being 17’ on the west side and 14’ on the east side to the property lines. He explained that the southeast corner of the garage is proposed to be 14.4’, the northwest corner of the existing structure where it meets the deck is approximately 17.1’. There is a little jog in the northwest corner of the garage where it meets the house after it goes east.

In response to a question from Danielle Pray, Tom Quinn stated that the proposed driveway will terminate into the proposed garage. Tom Carr noted that it will not technically be a driveway, as the surface is proposed to be pea stone.

Doug Kirkwood noted that the proposal appears to be 17.1’ from the northwest corner of the structure to the lot line. Tom Carr explained that the 18.6’ is from outside of the jog, the closest point to the lot line. The proposed landing and steps will fall at about 18.8’ away.

Charlie Vars noted that if the proposed addition was proposed when the rest of the house was built, there would have been 15’ setbacks requirements from the sidelines, which would be under the 17.1’, within 6” of the 14.4’. There would hardly have even been a need for a variance.

March 23, 2021

APPROVED

It was noted that there were no hands up from the public at this time.

Bob Rowe moved to enter deliberations. Danielle Pray seconded.

Roll Call: Charlie Vars – aye; Bob Rowe – aye; Danielle Pray – aye; and Doug Kirkwood - aye. Motion carried unanimously.

CASE #: PZ13800-021921:

Bob Rowe moved no regional impact. Danielle Pray seconded.

Roll Call: Charlie Vars – aye; Bob Rowe – aye; Danielle Pray – aye; and Doug Kirkwood - aye. Motion carried unanimously.

Discussion:

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

- Bob Rowe – true, this is located within one of the two unique neighborhoods in Amherst, Baboosic Lake. This neighborhood is characterized by summer houses and smaller lots, which are contrary to the current zoning ordinance. The proposal keeps with the neighborhood and is not against the public interest.
- D. Pray – true, the applicant has shown that this will not be contrary to the public interest. The proposal does not violate Amherst’s purpose for public health, safety, and welfare. The variance required does not alter the character of the neighborhood but simply adds space for the applicant.
- C. Vars – true, the proposal is consistent with the spirit of the ordinance.
- D. Kirkwood – true.

4 True

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

- D. Pray – true, for the same reasons as stated previously, and because the ordinance tries to keep overcrowding and density down; this proposal is not in opposition to that.
- C. Vars – true, this proposal will have no negative effect on the public health, safety, or welfare. The new structure will be impossible to see from the road.
- Bob Rowe – true.
- D. Kirkwood – true, the spirit of the ordinance is maintained by the proposal.

4 True

3. Substantial justice is done.

- Bob Rowe – true, there is no detriment to the public interest from the proposal. The proposal will make the property more livable, and a garage is almost a necessity.
- D. Pray – true, the applicant has demonstrated that there is no public benefit if the request is denied. There has been no showing of concerns for the public health, safety, and welfare from this proposal. The applicant has checked with the abutters

March 23, 2021

APPROVED

- and all seem in agreements. This proposal will not create overcrowding or excessive density.
- C. Vars – true, this is a reasonable use of the property. The general public cannot see it, but this property has a beautiful view of the Lake. The proposal will make the property better for the owner and will not cause damage to the public.
 - D. Kirkwood – true.
- 4 True**
4. The values of the surrounding properties will not be diminished.
- B. Rowe – true, the surrounding properties will not be reduced in value. If anything, the values will be enhanced by the proposal.
 - D. Pray – true, no evidence was presented to show that property values will be diminished. The applicant instead showed that values will be enhanced. The structure will also not really be visible by neighbors and will thus probably have no factor on surrounding values.
 - C. Vars – true, the proposal should give a significant increase to the property value.
 - D. Kirkwood – true.
- 4 True**
5. Literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship.
- C. Vars – true, the existing home is essentially a cottage. The proposal will be an asset to the owners. This is a small lot, and it is hard to increase the proposal further past what is being requested. To deny the request would be a hardship to the owner.
 - D. Pray – true, there are several special conditions to this property: the size, the fact that the lot was created before current zoning, and that it is bounded by the Lake. There are few opportunities to make better use of the property than this proposal. If the request is denied, there would be no benefit to the public health, safety or welfare, but there would be harm to the owner. This is a reasonable use of the property.
 - B. Rowe – true.
 - D. Kirkwood – true.
- 4 True**

Danielle Pray noted that the west lot line distance was changed by the applicant during discussion from 16' as in the application, to be 17' or to match the existing encroachment of the building. Doug Kirkwood stated that in the applicant's Exhibit 6, the westerly lot line should be shown as 17'.

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

Charlie Vars moved to exit deliberations. Bob Rowe seconded.

Roll Call: Bob Rowe – aye; Charlie Vars – aye; Danielle Pray – aye; and Doug Kirkwood - aye. Motion carried unanimously.

TOWN OF AMHERST
Zoning Board of Adjustment

March 23, 2021

APPROVED

OTHER BUSINESS:

1. Minutes: February 16, 2021

Charlie Vars moved to approve the meeting minutes of February 16, 2021, as written. Danielle Pray seconded.

Roll Call: Bob Rowe – abstain; Charlie Vars – aye; Danielle Pray – aye; and Doug Kirkwood - aye. 3-0-1; motion carried.

2. No Show Policy

Doug Kirkwood noted that the only change to this draft policy is that applicants will notify the Zoning Office by 6:30pm if they will be absent, instead of 6:55pm. He will circulate the draft document to the Board members for review when he puts the Board's conclusion worksheet at Town Hall for all the members to sign.

Charlie Vars moved to adjourn the meeting at 8:23pm. Bob Rowe seconded.

Roll Call: Bob Rowe - aye; Charlie Vars – aye; Danielle Pray – aye; and Doug Kirkwood - aye. Motion carried unanimously.

Respectfully submitted,
Kristan Patenaude

Minutes approved: April 20, 2021