

TOWN OF AMHERST  
Zoning Board of Adjustment

May 18, 2021

**APPROVED-Amended**

In attendance: Doug Kirkwood – Chair, Tim Kachmar, Charlie Vars, Jamie Ramsay, and Danielle Pray.  
Staff present: Nic Strong, Director of Community Development, Natasha Kypfer, Town Planner, and Kristan Patenaude, Recording Secretary.

Doug Kirkwood called the meeting to order at 7:09 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 864 9442 4063, or by clicking on the following website address: <https://zoom.us/j/86494424063> 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](http://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, Tim Kachmar, Jamie Ramsay, Danielle Pray, and Charlie Vars – all present and alone.**

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*Tim Kachmar sat for Bob Rowe, in his absence.*

**1. No Show Policy**

There was a brief discussion amongst the Board.

**Charlie Vars moved to approve the No Show Policy, as presented. Jamie Ramsay seconded.**

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

**PUBLIC HEARING:**

Jamie Ramsay suggested in order to streamline proceedings that the Chair's usual repetition of the Board's procedures would not be necessary because everyone had been at the prior meeting. Danielle Pray noted that there had been a missed abutter at the last hearing and suggested that the procedures should be referenced. Doug Kirkwood noted that Sally Wilkins was present for the Amherst Land Trust who had been missed from the abutters list for the first hearing on this application.

Doug Kirkwood introduced the Board members and staff. He explained that applicants will have the chance to speak to their case. The ZBA will then carry out its business for each case, including asking questions, and hearing from the public and abutters. The Board will then enter into private deliberations, at which time no further comments are allowed from applicants or the public.

**2. CASE #: PZ13888-031521 –VARIANCE Steven and Barbara Chamberlain (Owners & Applicants), 102 Baboosic Lake Road, PIN#: 006-006-005 – Request for relief from Article III, Section 3.11 Paragraph B. (12.), to build a 14'x16' lawn and garden equipment shed along a scenic road. Zoned Residential/Rural. Continued from April 20, 2021.**

Jamie Ramsay read the case.

**Jamie Ramsay moved to untable this case. Charlie Vars seconded.**

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

Tom Quinn, attorney, stated that he is representing Steven and Barbara Chamberlain in this case. He explained that the Amherst Land Trust was not noticed prior to the last hearing, and he also did not attend that meeting.

Tom Quinn stated that the application was not particularly complicated and that the property in question is a 3-acre lot that is part of a subdivision plan which was approved in 2019. This is located in the Residential/Rural district along a scenic road. The proposal is to construct a

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14'x16' shed for garden tools and equipment. The materials are currently on site and the shed will be built to match the existing house. A variance is needed because the shed is proposed to be located approximately 50-55' from the road, instead of the required 100'.

Tom Quinn reviewed the tests:

1&2) The proposal will not alter the essential character of the neighborhood. He noted that as one drives along Baboosic Lake Road, there are some houses that are set back, some houses that are close to the road, and some undeveloped patches. The scenic road area of Pavillion Road to the Merrimack town line is lightly developed. The proposed location of the shed is located more than 50' from the road and set behind a large stand of white pine trees. There is also a significant drop in grade, approximately 4-5', in the proposed area, meaning that it will not be visible from the road. The proposal is for a shed to be installed next to a single- family residence. Many properties in this area have accessory buildings located closer to the road than this proposal. The proposal will also not threaten the public health, safety, or welfare. The proposal is for a garden shed, not a gas station and there is nothing about the proposal that would be a threat to anyone.

3) Tom Quinn stated that the purpose of the scenic setback was to preserve and enhance the rural character of the town and prevent unsightly development. This proposal will actually help to enhance the rural characteristics of the Town, by creating an attractive structure that will only be seen by the property owners. There is no substantial benefit to the public that will be gained by denying the application. It would thus be an injustice to not grant the proposal.

4) No nearby abutters will be impacted by the proposal, except for the Amherst Land Trust (ALT), as there is a conservation easement on ALT land. The ALT has provided comments for this proposal that do not oppose it. The proposal is a standard accessory building proposed to be built within the setbacks. There is nothing about the proposal that will undermine the value of nearby properties.

5) The special conditions of the site are that the property slopes from the main road towards the back and from east to west. The existing house is not in the center of the property but is located in the center of the disturbed area on the property with about 120' setback. Roughly 70% of the lot is wetlands and there is a 50' no build buffer to those wetlands. There is a small lawn area between the house and the woods, but it would be difficult to place the proposed shed there as there would need to be a large area filled. The shed is also intended to house the owner's snowblower, which is to be used on the driveway. Thus, locating the shed toward the back of the property would not be ideal. There is not enough room to place the proposed shed between the side setback and the existing garage. There is no place within the existing turnaround area by the garage that will allow the shed to fit within the setback. Tom Quinn presented some photographs of the site. He noted that the owners also need space in the gravel driveway area to allow for a turnaround, which would not be possible by locating the shed in this area. He further

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noted that some of these other locations would also make the shed more visible from the street. The proposed shed also cannot be placed on the leach field. The area near the leach field is quite wet, although not wetlands, and placing the shed in this spot could cause issues with drainage to an existing swale. The best place for the proposed shed is as presented because of the pine trees which provide a shield.

Tom Quinn noted that there is no fair and substantial relationship between the general public purpose of the ordinance to preserve and enhance the rural open character of the Town and prevent unsightly development. The proposal does not look to do anything inconsistent with this purpose. Single family homes and accessory buildings are permitted within this zone, and a garden shed is an allowable use. The proposal serves the purpose of the regulations and the shed is proposed to be located in the best spot for it on the property.

Danielle Pray expressed concern regarding sheds along this stretch of road and noted that she does not believe new sheds have been constructed in this area since the new ordinances passed.

Tom Quinn explained that not many people know that permits are necessary in order to build a shed. It is thus hard to know if nearby abutters built their sheds before or after the new ordinance was passed. In driving up and down Baboosic Lake Road, one would not be shocked to see this proposed shed based on the rest of the accessory structures along the road. The proposal will not change the character of this neighborhood. He cannot speak to when nearby sheds were constructed, if they were put up without permits.

In response to a question from Danielle Pray about locating the shed on the east side of the lot, Tom Quinn stated that there is a stonewall on the east side of the lot. The setback between the stonewall and the northeast corner of the existing garage is 40'. With the required 25' side setback, there would only be 15' in this area for a shed to be placed, without a variance. The proposed shed is 14'x16'. Thus, in this location, every foot the proposed shed would be moved from the house would force the shed into the setback. There is also a propane tank located in this area.

Danielle Pray asked about the area further down where Tom Quinn had explained an issue with the turnaround area. Tom Quinn stated that there was a significant grade there with 3' - 4' difference and the shed would be in the setback there as well. Danielle Pray commented that the various locations discussed would put the shed in one setback or another.

The Board discussed the possibility of some of the trees being cut on the property in the future, and thus wanting the shed to be moved further from the road. Tom Quinn stated that the Board could make it a condition of approval for this variance, that the deed be modified to recite the variance that this project is subject to. He noted that if trees are cut on the property, the Town could require that the shed be moved further from the road. He did not think that this would be an unreasonable enforcement action. Jamie Ramsay noted that this would be a compliance issue. The onus would be on the Town to exercise this condition. Doug Kirkwood asked a question

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about stumpage fees. Tom Quinn stated that if Doug Kirkwood was talking about timber tax, Sally Wilkins would be the best person to ask and she was present this evening.

Charlie Vars thanked the Chamberlains for allowing him a site visit of the property. He believes their argument is valid for this variance. He suggested this application be tabled at the Board's last meeting because he was unsure if there was enough credence to prove hardship by the applicant. Charlie Vars stated that 91 Baboosic Lake Road has an accessory building located less than 20' from the road. 90 Baboosic Lake Road has an accessory structure located 20-30' from the road. Consolidated Communications also has a shed nearby located approximately 25' from the road. Charlie Vars stated that he was looking at this as a fairness issue and noted that the site walk helped make it easier for him to make a decision this evening than it was last month.

Tim Kachmar stated that he had driven by the property and explained that he saw that the contours of the property are such that placing the proposed shed in the back corner of the lot would require serious excavation and steps leading to the shed. He also noted that woods are sparse in the turnaround area near the driveway. If the shed was placed there, the applicants would still need a variance and it would be easier to see the shed from this location than the one being proposed. He noted that it was not a great piece of property to put a shed on and he could understand the issues.

In response to a question from Danielle Pray regarding the subject property being typical of other lots in the area, Tom Quinn stated that the farm next door to the applicants probably has similar slopes and topography. The Vaughn property next door slopes up instead of down. Tom Quinn stated that the immediate area was typified by larger pieces of land and that the subject lot had been subdivided off the farm. He noted that it was long and narrow and 70% wet. He further noted that there was no room for a shed which was a fairly commonplace accessory structure these days. Tom Quinn noted that the two-car garage was not big enough for the vehicles and equipment. He also pointed out that the proposed shed would be a quality structure unlike some others in the neighborhood.

Danielle Pray was confused about wording in the applicants' memo regarding the shed being within the setback. Tom Quinn explained that the proposed shed encroaches on the proper setback, as noted in the Staff Report and that he could make the meaning clearer.

Charlie Vars stated that putting the proposed shed in the turnaround area would cause the same problem as putting it on the side of the hill. The proposed location is the best location on this property for the shed, even if there was no tree line there to buffer it.

Public Comment:

Sally Wilkins, Amherst Land Trust, explained that the ALT holds a conservation easement on the property next door, the Vaughn property. She noted that Bill Birchard, who is the ALT monitor for this easement, was present this evening and could comment if he wished, but that she did not believe the proposal will have a negative impact to the neighborhood, or on the road or the easement. Sally Wilkins stated that there was also a conservation easement on Map 6 Lot 8-1

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across the street which is a vacant lot. She believes it would be justice for the proposed shed to be constructed at the proposed location. Sally Wilkins noted with regard to the previous comment about intent to cut that an intent to cut would not be needed because there was no timber value to those trees. She also pointed out that if the owner wanted to take those trees down after the shed was constructed s/he would need a tree company to remove them, not a logger due to their location and where the shed would be.

There were no other hands raised by the public at this time.

**Jamie Ramsay moved to enter deliberations. Charlie Vars seconded.**

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

**Jamie Ramsay moved no regional impact. Danielle Pray seconded.**

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

**Discussion:**

In response to a question from Danielle Pray, Charlie Vars stated that he could not tell the age of all of the accessory structures he saw located along the road, but many were well within the 100' scenic road setback.

In response to a question from Danielle Pray regarding excavation and whether that had been a factor in previous variance applications, Charlie Vars stated that, from his perspective, the answer was yes. He acknowledged that the cost could not be the only issue for hardship as part of a variance application, but that, from a practical perspective, excavation could be very expensive for this property and could require that the applicants to put in a smaller shed.

Doug Kirkwood noted that the propane tank on this property is located entirely within the setback which could be an issue as well.

Doug Kirkwood moved on to the five variance tests.

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

- J. Ramsay– true, he sympathizes with the 100' scenic road setback, as he believes it keeps the character of the Town pure. He has great concern with proposals that would encroach on it. In this case, relocating the proposed shed to a different location on the property could cause large amounts of impractical excavation and would probably leave the shed more visible than it will be in the proposed location.
- C. Vars– true, the proposal is not contrary to the public interest. The shed would be more visible if placed in a different location than as proposed. He noted that the Chamberlains have proposed taking down the existing canvas shed located to the right of the garage, if this request is approved.

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- T. Kachmar– true, he has visited the property and believes the proposal is reasonable. He noted that the ALT has no issue with the proposal and no other abutters have voiced concerns.
- D. Pray – true, she does not believe this proposal will negatively affect the public health, safety or welfare, or negatively impact the neighborhood.
- D. Kirkwood – true, he sympathizes with the scenic road setback, similarly to Jamir Ramsay. He noted that other nearby properties along this scenic road have had the capability, whether permitted or not, to construct accessory structures within the setback. A denial of this request could thus be seen as a hardship on the owners. The proposed location for this shed has the least impact on the scenic setback, will be on the low end of the grade for the area, and will not alter the drainage pattern much on site.

**5 True**

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

- C. Vars– true, the proposal will not alter the essential character of the neighborhood. If this shed was being proposed on the neighbor’s property, it would be granted because it would not be located closer than other accessory buildings nearby. The proposal will not alter the characteristic of the scenic road.
- T. Kachmar – true. He noted that this was a scenic road with a lot of grandfathered, unscenic properties.
- D. Pray – true, this ordinance is concerned with preventing unsightly development along the scenic road and enhancing the rural, open character of the Town. This proposal is not contrary to these items. She would like the Board to consider a condition that the stand of trees be kept in order to preserve the spirit of the ordinance and prevent unsightly building along the scenic road.
- J. Ramsay – true, the proposal protects the spirit of the ordinance and will not change the character of the neighborhood. There are few situations where he would allow for encroachment to the scenic setback, but this item preserves the spirit of the ordinance.
- D. Kirkwood – true, he stated that it is the right of the property owner to use the property, as long as it is for a reasonable use. This proposal coincides with the spirit of the ordinance.

**5 True**

3. Substantial justice is done.

- D. Pray – true, the applicant has gone out of the way to try to find the best placement for the proposed shed on the property. The public will not be harmed by the proposed shed location because of the topography of the site.
- T. Kachmar– true, the applicants have taken thought and care to propose the best shed placement on the property.
- C. Vars – true, there is no significant gain to the public to deny this request, or to require the shed to be placed in a different location on the property.
- J. Ramsay – true.

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- D. Kirkwood – true.

**5 True**

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

- T. Kachmar – true, in considering this proposal from neighboring views, the proposed location will keep the shed hidden as much as possible. The applicants have proposed the location of the shed with consideration of the neighbors. No abutters are here to protest the proposal.
- C. Vars – true, there is no negative impact on nearby properties through this proposal.
- J. Ramsay – true, the design of this proposed shed is important, as it will be in keeping with similar surrounding properties.
- D. Pray – true.
- 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 of this property that distinguish it and make the proposed location for the shed the most practical. He stated that he thought it a reasonable proposal.
- J. Ramsay – true, the special conditions of this property include: the slope, the proximity to the scenic setback, and the building envelope. There is no other practical place on this property to place this shed that will make it less obvious.
- T. Kachmar – true, this property is unique due to the location of the house close to the eastern property line and the slope which limit the possible locations of the shed.
- D. Pray – true, this property has wet areas in the back. The locations of the propane tank, leach field, and well on the property narrow any proposed location for this shed. The topography of the site and proximity to the eastern property line also impact this. The applicant also explained issues with drainage on the west side of the property and placing the shed there.
- D. Kirkwood – true, placing the shed in the proposed location will lead to the least amount of hardship.

**5 True**

**The Chair stated that the application, as it passed all of the tests, is granted, with one condition: that the stand of trees indicated on the Zoning Exhibit Plan, dated May 12, 2021, situated in the southwest corner of the property, between the proposed 14'x16' shed, and Baboosic Lake Road, shall not be cut down.**

**Charlie Vars moved that to exit deliberations. Danielle Pray seconded.**

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



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OTHER BUSINESS:

Doug Kirkwood noted that Bob Rowe served on the Zoning Board of Adjustment for more than 30 years. He would like the Board members to sign a recognition letter for Bob Rowe's years of service, as this is his last meeting. He stated that he would leave it at the Town Hall with the conclusion sheet for this meeting. The Board members thought this was a good idea and very appropriate.

**1. Minutes: April 20, 2021**

**Charlie Vars moved to approve the meeting minutes of April 20, 2021, as written.  
Danielle Pray seconded.**

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

**Danielle Pray moved to adjourn the meeting at 8:53pm. Tim Kachmar seconded.  
Roll Call: Charlie Vars – aye; Tim Kachmar – aye; Jamie Ramsay – aye; Danielle Pray – aye; and Doug Kirkwood - aye. Motion carried unanimously.**

Respectfully submitted,  
Kristan Patenaude

Minutes approved, as amended: July 20, 2021