

TOWN OF AMHERST
Zoning Board of Adjustment

June 21, 2022

APPROVED

1 In attendance: Doug Kirkwood (Chair), Jamie Ramsay (Secretary), Danielle Pray (Vice Chair),
2 Charlie Vars, and Tracy McInnis
3 Staff present: Nic Strong, Community Development Director, and Nicole Stevens, Town Planner
4

5 Doug Kirkwood called the meeting to order at 7:00pm. He explained that the Secretary will read
6 the case. Each applicant will then be asked to present the case. Once completed, the Board will
7 be allowed to ask questions and make comments. Then, the public will have a chance to
8 comment. The input should be specific to what is presented this evening and not reflect the entire
9 project. All questions/comments must be addressed through the Chair. Someone wishing to
10 speak must be recognized by the Chair or are otherwise out of order. Everyone has a right to be
11 heard and everyone should listen to one another. The applicant has a right to due process. He
12 explained that each variance test must be addressed by each applicant. Voting on these tests will
13 then be undertaken by the Board. He noted that an applicant has to pass all five tests outlined in
14 the RSAs and if any test does not get the required number of votes, it fails. Doug Kirkwood
15 asked if there were any questions about the process and, there being none, then introduced
16 members of the Board.

17

18 **PUBLIC HEARING (S)**

19

20 **1. CASE #: PZ15534-032122 –VARIANCE - TANA Properties Limited Partnership**
21 **(Owner) & Flint Acquisitions LLC (Applicant); Hollis Road (Rear), PIN #: 002-012-002 –**
22 **Request for relief from Article IV, Section 4.3, Paragraph A to construct a warehouse in**
23 **the Residential/Rural District. Zoned Residential/Rural. *Continued from May 17, 2022.* –**
24 **WITHDRAWN BY APPLICANT**

25

26 **2. CASE #: PZ15531-032122 –VARIANCE - TANA Properties Limited Partnership**
27 **(Owner) & Flint Acquisitions LLC (Applicant); Hollis Road (Rear), PIN #: 002-012-002 –**
28 **Request for relief from Article IV, Section 4.3, Paragraph D.4 to allow a new structure to**
29 **be constructed with a floor area ratio of approximately 55% where no greater than 15%**
30 **floor area is permitted. Zoned Residential/Rural. *Continued from May 17, 2022.***
31 **WITHDRAWN BY APPLICANT**

32

33 **3. CASE #: PZ15533-032122 –VARIANCE - TANA Properties Limited Partnership**
34 **(Owner) & Flint Acquisitions LLC (Applicant); Hollis Road (Rear), PIN #: 002-012-002 –**
35 **Request for relief from Article IV, Section 4.3, Paragraph D.4 to allow a new structure to**
36 **be constructed to a height up to 55 feet where 40 feet is permitted. Zoned**
37 **Residential/Rural. *Continued from May 17, 2022.***
38 **WITHDRAWN BY APPLICANT**

39

40 Jamie Ramsay read each of the cases and noted that they have each been withdrawn by the
41 applicant.

42

43 Doug Kirkwood stated that there will be no discussion regarding the withdrawn applications.
44

TOWN OF AMHERST
Zoning Board of Adjustment

June 21, 2022

APPROVED

45 **4. CASE #: PZ15830-052322 - APPEAL OF ADMINISTRATIVE DECISION**
46 **Lori Ashooh (Owner & Applicant); 4 Middle Street, PIN #: 017-063-000 - Appeal of**
47 **Administrative Decision - Historic District Commission Denial of use of aluminum-**
48 **clad replacement windows. Zoned Residential/Rural w/Historic District Overlay.**

49
50 Jamie Ramsay read and opened the case.

51
52 *Jamie Ramsay recused himself as the Chair of the Historic District Commission.*

53
54 Doug Kirkwood noted that, with only four voting members available for the Board, tied votes on
55 any motion will be considered to fail. He noted that any applicant may request that their
56 application be tabled to the next meeting if they do not wish to move forward in this way. He
57 asked applicant, Lori Ashooh, if she would like to continue forward this evening with this
58 information. Lori Ashooh asked if she requests this to be tabled, if there can be an assurance that
59 there will be a full voting Board at the next meeting. Doug Kirkwood stated that he cannot assure
60 that. Generally, the Board has full attendance and one alternate at its meetings.

61
62 Danielle Pray noted that the ZBA does not have an alternate member anymore. This person
63 moved over to sit on the Planning Board as an alternate.

64
65 Rich Ashooh stated that he believes this will put he and his wife, as applicants, in an untenable
66 situation, as the makeup of the Board does not seem to be changing any time soon. He asked if
67 he could help to recruit someone as an alternate for the Board. Doug Kirkwood stated that he is
68 welcome to.

69
70 Rich Ashooh stated that he is quite confident in their case. The Historic District Commission
71 (HDC) vote to deny his application was voted on 3-2. He would like this appeal to be definitive.

72
73 Danielle Pray asked if the applicant can ask for a rehearing by the Board, depending on the
74 outcome of this hearing. Nic Strong stated that is the case. Doug Kirkwood stated that a
75 rehearing must include new information to be a sufficient case.

76
77 Lori Ashooh asked if another Board member would recuse him/herself, so that there could be
78 three votes. Danielle Pray noted that then the applicant would need to get all three votes in the
79 affirmative for the application to pass.

80
81 Rich Ashooh stated that they would like to move forward at this time. He asked if the Board
82 would like to hear a summary of the case. Doug Kirkwood explained that there are five variance
83 tests which need to be addressed. Danielle Pray stated that this is an administrative appeal, and
84 thus the applicant does not need to address the five tests. Doug Kirkwood stated that the
85 applicant then needs to show why the administrative decision is believed to be incorrect.

86
87 Rich Ashooh stated that his house is an early-1800's era house that is in need of some repair. The
88 renovations are being made to earlier renovations. He is working to update windows in the house

TOWN OF AMHERST
Zoning Board of Adjustment

June 21, 2022

APPROVED

89 and thus submitted an application to do so to the HDC. This was discussed with the HDC at a
90 previous meeting, and the HDC denied the application, in a 3-2 vote. He believes this decision
91 was incorrect and not well-founded because the regulations do not prohibit the type of windows
92 he is proposing, Pella aluminum-clad windows. These windows are designed for historic
93 preservation, which is why they were chosen. The regulations do specify a structure, style, and
94 look which must be maintained, which he fully agrees with. The proposed windows will improve
95 the historic view of the house. Currently, storm windows and screens are allowed in the Village,
96 though they may not be very historic looking. This proposed window type is fairly new and
97 would restore the look of the house to the historic vintage because it would allow for removal of
98 the existing aluminum storm windows and screens on the house. He is unclear what the
99 Commission's rationale was, but it seems to involve an implied issue with aluminum-clad
100 windows. He pointed out that the HDC has approved aluminum-clad windows on other homes,
101 one two houses down from his, as recently as one year ago. In reviewing the minutes from that
102 approval, the rationale given by the HDC was that it would improve the overall historic view of
103 the house; this is what he is proposing to do for his house as well. There is nothing in the
104 regulations to disallow aluminum-clad windows. These windows were chosen because they were
105 endorsed by the NH Preservation Alliance. Rich Ashooh noted that the Currier Museum received
106 a grant two weeks ago to improve the Chandler House, another historic home, using the exact
107 windows he is proposing. The net improvement of the house is that the look will be more
108 historic, in removing the aluminum storms and screens, and there is precedence in that the HDC
109 recently approved aluminum-clad replacement windows for a house two doors down. Finally, the
110 regulations have not been updated since 2009, which was to allow for storms and screens, with
111 the understanding that houses need to be modernized with these types of window protections.
112 The proposed windows were not available when the last update occurred. Rich Ashooh stated
113 that the regulations likely need to be updated, but he also believes that the HDC has the ability at
114 this time to approve aluminum-clad windows, as they have in the past.

115
116 Tracy McInnis asked if the applicant has any brochures or examples of the proposed windows
117 and pictures of what the existing windows look like. Rich Ashooh stated that he did not bring
118 photographic evidence of the existing house to this meeting, though it was presented at the HDC
119 meeting. He stressed that the existing windows on the house are not original to the house. An
120 example of the proposed windows was brought to the HDC meeting. One HDC Commissioner,
121 Doug Chabinsky, went to a Pella dealer to look at the proposed windows and noted, per the
122 minutes, that one could not tell the difference between all-wood windows and the proposed
123 windows. This Commissioner also voted in favor of the application at the HDC meeting.

124
125 Charlie Vars stated that he has used this type of Pella window in the past and he has been an
126 advocate to the HDC to change their regulations. The regulations are antiquated and there are
127 better products currently on the market. He agreed with the applicant on that point. Aluminum-
128 clad windows cannot be discerned from all-wood windows at a distance. There are two small
129 lines where the aluminum comes together, which is the only discerning item between the two,
130 and this can only be seen from approximately 15-20' away. Charlie Vars stated that he has
131 brought numerous projects before the HDC, most recently to put 30 metal doors onto garages at
132 the Country Mansions. He was told this was not acceptable and that the doors must be all-wood.

TOWN OF AMHERST
Zoning Board of Adjustment

June 21, 2022

APPROVED

133 His retort was that there are 55 garages in the Historic District which already have metal doors
134 because people do not go before the HDC prior to making these changes. He only brought this up
135 to highlight how important it is to update the regulations. Charlie Vars stated that he has the
136 highest regard for anyone who serves on the Town's board/commissions. However, he is
137 personally, very in favor of what the applicant is suggesting. Decisions made by the ZBA and
138 HDC are not precedent setting; however, when a house two doors down was allowed to install
139 aluminum-clad windows, it seems unfair not to let the applicant do the same.
140

141 Lori Ashooh stated that the HDC's denial referenced the regulations, and that the application was
142 for windows that are not all-wood. However, in reviewing that section of the regulations,
143 nowhere does it state that windows must be all-wood. Rich Ashooh stated that the regulations do
144 specifically ban certain materials for other items, such as fencing. The windows section is very
145 clear that there is no prohibition against, or requirement for, all-wood. He also reinforced his
146 respect for those who serve on Town boards/commissions. He agrees with the HDC's mission;
147 he simply believes this was the wrong decision.
148

149 Danielle Pray stated that she read through all the minutes and information provided for this case.
150 She believes the HDC decision reflected in the minutes is that the application was denied
151 because the proposed windows are not all-wood. There were no design or size elements which
152 this denial was based on.
153

154 Rich Ashooh agreed with this. He explained that there were three "nay" votes by the HDC. One
155 Commissioner noted that he was very much in favor of all-wood windows, one gave no
156 rationale, and the third expressed concern that all of the windows in the house were not being
157 replaced at once. Rich Ashooh explained that he would be happy to amend the application to
158 replace all of the windows at the same time if that was the reason for denial.
159

160 Danielle Pray stated that she has read through the regulations and agrees that there is nothing
161 stating that windows must be all-wood. She believes the ZBA rules only on the regulations at
162 hand. She is of the opinion that, strictly based on the all-wood condition this was denied by the
163 HDC, this appeal seems to be appropriate. She asked that the ZBA's vote include that the design
164 and size elements of the Historic District will still be met. Rich Ashooh stated that he does not
165 believe there is any issue with these items.
166

167 Doug Kirkwood said that there did not appear to be anything presented from the Community
168 Development side. Nic Strong stated that the Staff Report presents all of the information to the
169 ZBA that the Community Development Office has on this case.
170

171 Charlie Vars noted that he read that, where replacement windows are essential, they should
172 match the style of the original windows or be in character with the building as reasonably
173 achievable. Also, the sash members and exterior muntins should be reproduced or closely
174 approximated. He believes the aluminum-clad windows are well approximated to historic
175 windows. The proposed windows also have a U26 insulating factor. He does not believe that
176 reconstructing the existing glazed windows will meet the State standards for U35. This

TOWN OF AMHERST
Zoning Board of Adjustment

June 21, 2022

APPROVED

177 requirement has been eliminated for historic properties, but he doesn't understand why
178 applicants would be required to exceed the standard with reconstructed windows, when the
179 proposed windows meet the standards. Windows are sold with a U factor standard for insulation.

180
181 Doug Kirkwood asked for public comment. There was none at this time.

182
183 Charlie Vars stated that the Chair of the HDC asked him to read some of the regulations into the
184 record. He noted that the HDC Commissioner who was supposed to attend to speak on behalf of
185 the HDC was unable due to a sick family member. Danielle Pray asked if it is only the
186 regulations or a statement by the HDC. Doug Kirkwood stated that a statement could be read into
187 the record, but he does not believe the regulations need to be restated. It was determined that this
188 was a statement prepared by the HDC.

189
190 Charlie Vars summarized the document. It included the associated sections of the regulations and
191 the Commission's reason for denial. Also, it contained a statement that the Commission could
192 have been stricter in asking the applicant to provide proper documentation or proof that the
193 existing windows are not original to the building or in a state of disrepair, but it did not. The
194 Commission agreed with the applicant's intent and desire to leverage high quality windows for
195 the restoration project, however, regardless of any visual difference between aluminum-clad and
196 all-wood windows, the regulations are very clear in the use of historic materials. In fact, the
197 regulations also state that a multi-paned sash should have true panes, formed by true muntins,
198 and should not utilize applied or embedded muntin grids. The Commission has been lenient on
199 this specific part of the regulations in the past, as it believes a quality, all-wood, SDL (simulated
200 divided light) window without a storm is a much more appealing option.

201
202 Charlie Vars added that he believes there is the same amount of aluminum in a wood-clad
203 window as there is in an aluminum-combination window. In driving around the Village today, he
204 noted two houses on Middle Street that have aluminum-combination windows that are not white,
205 all the rest are white aluminum-combination windows.

206
207 Rich Ashooh stated that the energy efficiency of the proposed windows was secondary in this
208 project. He sought out quality historic preservation windows and found them through the
209 proposed Pella windows. Pella worked with the National Park Service to design these windows
210 as such, and they are now being used everywhere. Further, more updated regulations exist in the
211 towns of Exeter and Portsmouth. These regulations allow this type of proposed windows. Rich
212 Ashooh stated that photographic evidence that the existing windows are not historic to the house
213 was presented to the HDC. A photo from 1960 shows different windows on the house. By
214 removing the aluminum storm windows and screens and replacing them with windows that have
215 a hidden screen, the house will look more historically accurate to how Cyrus Eastman originally
216 built it.

217
218 As there was no additional comment at this time, the Board moved onto its next case.

219
220 *Jamie Ramsay retook his seat.*

June 21, 2022

APPROVED

221

222 **5. CASE #: PZ15831-052322 – VARIANCE**

223 **Gregory & Gianna Deer (Owner & Applicant); 5 Joseph Prince Lane, PIN #: 008-015-001 -**
224 **Request for relief from Article IV, Section 4.5, Paragraph E.2. to construct an addition**
225 **consisting of a two-story structure and housing a two-bay garage with living space on the**
226 **second floor. The structure will be situated within the side setbacks. Zoned Northern/Rural.**

227

228 Jamie Ramsay read and opened the case.

229

230 Gregory Deer explained that he is looking to expand the house a bit. He asked how the Board
231 would like for him to proceed. Doug Kirkwood noted that there may be abutters present who
232 have not reviewed the materials, so the applicant may wish to review the application and why a
233 variance is needed.

234

235 Gregory Deer stated that the proposal is for a two-story garage to be added to the house. The
236 existing structure is approximately 34-35' from the neighbor's property. He is requesting a 30',
237 2-bay garage, attached to the existing house. This is to increase the square footage of the
238 structure and parking area. This proposed garage will not go past the existing driveway. The
239 neighbors can currently see the house as it is. He asked if this explanation satisfies the Board.
240 Doug Kirkwood stated that this is up to the applicant.

241

242 Gregory Deer stated that the proposal will not have a negative impact on the value of
243 surrounding properties. It may help the neighborhood look better overall. This is a private
244 neighborhood, and this will not be a visual impediment.

245

246 Gianna Deer stated that the proposal will be within 30' of the left side of the property line, and
247 the front will be within 50' of the property line which is within the regulations. The right and
248 back side abutters will not be affected at all.

249

250 Doug Kirkwood asked why the applicant is asking for a variance. Gregory Deer stated that the
251 proposal is less than 40' from the left side property line and he wanted to make sure this went
252 through the proper procedures.

253

254 Charlie Vars stated that the two-story garage proposal is larger in square footage than the current
255 house. The proposed garage is 1,800 s.f.; the existing house structure is 1,794 s.f. Gregory Deer
256 explained that this will be a two-car garage with a living space above.

257

258 Charlie Vars stated that he believes this is the first time he's seen an addition within the setback,
259 only 4' off the property line. There is a reason for the larger setbacks – to not encroach on others.
260 He asked why the garage cannot be proposed further back on the property. Gregory Deer stated
261 that the existing well is located behind the house.

262

TOWN OF AMHERST
Zoning Board of Adjustment

June 21, 2022

APPROVED

263 Charlie Vars stated that the garage could be moved back at least 10-15' without impacting the
264 well. Also, if the garage was reduced to a normal size of 24' wide, it would be 12-15' from the
265 property line instead. He noted that there were no proposed drawings submitted of the structure.
266

267 Gianna Deer stated that they are only in the preliminary design stages at this time. The structure
268 is proposed at 30'x30' as a maximum size. It will likely not be that large.
269

270 Charlie Vars stated that the ZBA likes to see specifics, and that the fifth test looks for a hardship
271 factor. He is not sure, with the existing statement, that the hardship carries enough weight. A
272 specific design is needed, and he believes it should be smaller. A 34' wide structure would be
273 right on the property line. Almost the entire proposed structure is within the side setback, and
274 this is generally not approved by the Board.
275

276 Gianna Deer stated that the proposed garage will be attached to the existing structure, and she
277 does not see an issue with the proposal. The side setback in the neighbor's yard is only the area
278 for their sewer, leach field, and some woods; the abutting house does not exist in this space.
279

280 Doug Kirkwood stated that these are the existing conditions, but 20 years down the line, the next
281 owners of this property could be put in a difficult position based on approval of this item. There
282 is a reason for these setbacks. There is a need for regulations and development guidelines in the
283 RSA, so that the Town can meet the growth standards it has expressed in the Town Master Plan.
284 A variance, as requested, is not temporary. It will run with the property into the future. This also
285 flies in the face of the purpose of the regulations. The rules and regulations help to guide people
286 as to how to achieve the Town's goals. The applicants did not submit a plan that shows how this
287 will impact the neighbors, the drainage, etc. Many questions are not addressed by the plan as
288 submitted.
289

290 Gregory Deer stated that he does not believe drainage will be an issue. Doug Kirkwood asked for
291 the proof of this statement. Gregory Deer stated that there is already an existing driveway in this
292 location.
293

294 Danielle Pray stated that the Board makes its determination based on the five criteria. The
295 hardest one for applicants to prove is generally the hardship test. She believes this may be an
296 issue for this application, as submitted. The applicants usually need to show something unique
297 about the property that could lead to a hardship if the variance is not granted. She believes the
298 applicant may need to do more work on this item.
299

300 Jamie Ramsay stated that there is not specific enough information to move forward with this
301 application. He would recommend tabling this application to the next meeting to allow the
302 applicant to better assemble information to make a strong case. The Board does not have a
303 personal feeling about the application but, in fairness to abutters and to support and defend the
304 Zoning Ordinance, there is not enough information to base a decision on.
305

306 Gregory Deer agreed with tabling the application to the next meeting.

June 21, 2022

APPROVED

307
308 Doug Kirkwood asked for public comment. There was none at this time.
309

310 Doug Kirkwood stated that there is no specific information on the proposed structure or where it
311 will sit on the property. The RSA has certain criteria that need to be followed and five tests that
312 need to be met. He sees no reason for the Board to vote on this item, without the necessary
313 information.

314
315 Tracy McInnis asked if there is anything prohibiting the applicant from proposing to place this
316 structure on the other side of the property, other than that a new driveway would need to be
317 installed. This alternate location would allow the structure to be located outside of the setbacks,
318 outside of the neighbor's property, no closer to wetlands, etc. Gregory Deer stated that this was
319 considered but the septic and leaching system are on that side of the property. He noted that the
320 proposal as it stands would not be within the neighbor's property. Tracy McInnis noted that this
321 is correct; it would be very close, within 4' of the neighbor's property. Gregory Deer explained
322 that the driveway and a garage are already established on site. He also does not want to change
323 the way the road is currently structured.

324
325 **6. CASE #: PZ15832-052322 – VARIANCE**
326 **Joseph Goodridge & Karen Ray (Owner & Applicant); 1 Walnut Hill Road, PIN #: 006-**
327 **073-000 - Request for relief from Article IV, Section 4.3, Paragraph A. to construct a barn**
328 **on the Applicants' property for the secondary use as a kennel. *Zoned Residential Rural.***

329
330 Jamie Ramsay read and opened the case.

331
332 Tom Quinn, attorney for the applicant, explained that the property consists of approximately 3
333 acres of land. It has frontage on Route 101 and Walnut Hill Road. The property was purchased
334 by Karen Ray in October 2005 and conveyed by deed in 2010 to both herself and Joseph
335 Goodridge. The property contains a 3-bedroom house along with other outbuildings and
336 improvements. The property serves as the applicant's private residence. The applicants run a dog
337 care business in Boston, Massachusetts, known as the DogFather. That business is exclusively in
338 the Boston area, except to the extent that the overnight dog boarding services provided to these
339 customers is accomplished at the Amherst residence. A wide range of services of dog care are
340 offered at the Boston business. Dogs can also be groomed at the home boarding service. Dog
341 owners do not bring the dogs to the property in Amherst. They are picked up and brought there
342 by the applicants. The dog boarding and grooming services are not advertised locally, as they are
343 not looking for more local business and these services are only in conjunction with the Boston-
344 based business. Currently, the applicants board the dogs in the house. The applicants are now
345 proposing a barn to board and groom the dogs. Floor plans of the proposed barn have been
346 submitted to show this. This plan was presented to the Community Development Office to
347 receive a building permit and the applicants were told that keeping more than 4 dogs that do not
348 belong to the owner is considered a kennel, which is not a permitted use within the Residential
349 Rural zone. Thus, a variance is needed.

350

June 21, 2022

APPROVED

351 Tom Quinn stated that the barn is proposed to be 30'x48' with an attached garage on the
352 southerly end, 24'x12.5'. In addition, an exterior flight of stairs, 4.5' wide, to the second floor is
353 proposed. The structure is designed for boarding and grooming of dogs. He has included a
354 Sandford Surveying & Engineering plan showing the proposed location of the barn and a fenced-
355 in area for the dogs. This is proposed to be a solid, 8' high fence. The dogs will not be visible
356 from the street, and passersby on the street will not be visible to the dogs, to quiet any barking
357 noise.

358
359 Tom Quinn addressed the five variance criteria:

360
361 **1. & 2. The variance will not be contrary to the public interest and will be consistent with**
362 **the spirit of the ordinance.**

363 The requirement that the variance not be contrary to the public interest is related to the
364 requirement that it be consistent with the spirit of the ordinance and the two have for
365 years been treated together by the State Supreme Court. *See Malachy Glen Associates,*
366 *Inc. v. Town of Chichester, 155 NH 102 (2007)*. Because the provisions of the zoning
367 ordinance represent a declaration of public interest, any variance would be contrary
368 thereto to some degree. Consequently, the Supreme Court has instructed that to determine
369 whether a requested variance is not contrary to the public interest and is consistent with
370 the spirit of the ordinance, the ZBA must determine whether granting the variance
371 “would unduly and to a marked degree conflict with the ordinance such that it violates
372 the ordinance’s basic zoning objectives.” The court has recognized two tests for
373 determining whether a granting a variance would violate an ordinance’s basic zoning
374 objectives. One is to determine whether the variance would “alter the essential character
375 of the neighborhood;” the second is to determine whether granting the variance would
376 “threaten the public health, safety or welfare.”

377
378 Granting the variance will not alter the essential character of the neighborhood. The
379 applicant has been running this business from the property since 2005. The use is firmly
380 embedded in the neighborhood. The property is located on the corner of Walnut Hill
381 Road and New Hampshire Route 101. There are several other properties in the area to the
382 south that are used for commercial purposes of different kinds. There are 13 lots in the
383 Deer Hollow subdivision nearby, all protected by conservation easements. These lots do
384 not have frontage on a public road, so they all have frontage along Route 101. The
385 property is in close proximity to the Town's Transfer Station and additional commercial
386 uses to the north. This property is within the neighborhood of other, more intensive,
387 commercial uses, than what is being proposed.

388
389 The traffic count of Route 101 is approximately 20,000 cars a day. Deer Hollow Road
390 itself is a feeder-road, with many subdivisions off it. The effect is that Walnut Hill Road
391 is fairly well traveled. This proposal will not impact local traffic. Dogs are picked up

June 21, 2022

APPROVED

392 from the site and delivered to their owners. Owners do not travel to the site for boarding,
393 grooming, training, or purchasing of dogs.

394
395 The property will continue to be used for residential purposes. The kennel-related use
396 will be conducted within the newly constructed barn and a fenced in area of
397 approximately 45' x 20'. The property will continue to maintain its residential
398 appearance and character. Conditioning the property to remain as a primary residential
399 property is acceptable to the applicants.

400
401 Nor will granting the variance threaten the public health, safety, or welfare.

402 **3. Granting the variance would do substantial justice.**

403 Tom Quinn explained that this test means that any loss to the individual that is not
404 outweighed by a gain to the public is an injustice. He stated that the historic use of this
405 property has been for both a residence and the operation of a small kennel and dates back
406 many years. It is a key component of their business but is not the headquarters of the
407 business. This neighborhood is a mixed-use area with there being both residential and
408 commercial uses in the area. The applicant's property is only a short distance from the
409 Limited Commercial Zone. The residential use of this property will continue. The
410 operation of the kennel will be ancillary and subordinate to the residential use.

411
412 Denial of the variance will have a substantial negative impact to the applicant and the
413 applicants use of the land, without a corresponding substantial benefit to the public.

414
415 **4. Granting the variance will not diminish the value of surrounding properties.**

416 Tom Quinn stated that he had run the proposal by a real estate agent who lived in
417 Amherst for decades, Jim Spellman. Mr. Spellman is familiar with the property and his
418 conclusion was that he did not see any negative impact to surrounding values. Granting
419 the variance will not diminish the value of surrounding properties. Route 101 and the
420 related traffic is already there. Granting the variance will cause only the most
421 insignificant, if any, change to existing traffic. The kennel operation is small and
422 conducted mostly indoors. The use has existed for over 15 years without a detrimental
423 effect on the neighborhood.

424
425 Letters have been submitted from a couple of abutters in support of the project.

426
427 **5. Owing to the special conditions of the premises that distinguish it from other properties**
428 **in the area, denial of the variance would result in unnecessary hardship because (1) no fair**
429 **and substantial relationship exists between the general public purpose of the ordinance**
430 **provision and the specific application of that provision to the premises, and (2) the**
431 **proposed use is reasonable.**

432 i. The applicant's property is located on Route 101, one of the most heavily traveled
433 roads in the town of Amherst. The property is in an area where many properties
434 are used for commercial purposes and lies in very close proximity to the Limited

June 21, 2022

APPROVED

- 435 Commercial Zone. The property has historically been used for mixed residential
436 and kennel purposes.
- 437 ii. There is no fair and substantial relationship between the general purpose of the
438 ordinance provisions and these specific application of those provisions to the
439 applicant's property. The general purpose of the Residential/Rural Zone is to
440 encourage the development of residential neighborhoods and to maintain a rural
441 setting. That purpose has been reflected and accomplished in most areas of the
442 zone. But with respect to that area of the zone in the area of Route 101, there are
443 many exceptions. The part of the zone in which the applicant's property is located
444 is a mixed-use neighborhood. There are not many residential properties heading
445 north on Route 101 from the property in question. Despite being in the
446 Residential/Rural zone, this property is not truly in a Residential/Rural setting.
447 Kennels cannot be approved by right anywhere in Town. Two other kennels in
448 Town are located in the Residential/Rural Zone. This is a reasonable use of the
449 property. The applicant's property itself has been used for both residential and
450 business purposes with little effect. The property will continue to be used for
451 residential purposes in addition to the kennel use.
- 452 iii. The proposed use is reasonable. The variance will allow the applicants to continue
453 a use of their property that has existed since 2005 without an adverse effect to the
454 neighborhood. The proposed use is less intense than the use of commercial and
455 municipal uses in the area and will have minimal impact on the traffic in the area.

456 Charlie Vars explained that the building of the barn is a by-right use of the property; the variance
457 is only for the kennel use within that structure. This property was previously before the Board for
458 a variance for a porch. This was approved and he sees it as a benefit to the property. He asked
459 that the right and left elevations be transposed on the plans, as they are currently backwards.

460
461 In response to a question from Danielle Pray, Tom Quinn stated that there are currently
462 approximately 20 dogs on average on the property. 30-40 dogs in peak seasons are proposed for
463 the new structure.

464
465 In response to a question from Danielle Pray, Tom Quinn stated that his statements about the
466 property's historic use pertain only to this current owner. Previous to that, he believes the
467 property was used as an ostrich farm.

468
469 In response to a question from Tracy McInnis regarding the purpose of the second floor, Tom
470 Quinn stated that there is no proposed use for that space currently. Originally, the applicant was
471 considering an accessory dwelling unit (ADU) use of the space, but this would require a
472 Conditional Use Permit (CUP) from the Planning Board. The applicant did not want to go
473 through that more expensive process at this time.

474
475 In response to a question from Tracy McInnis, Karen Ray stated that the number of dogs
476 currently at the business varies, but is usually around 20 dogs per day, or more during holidays.

TOWN OF AMHERST
Zoning Board of Adjustment

June 21, 2022

APPROVED

477 The dogs do not spend the majority of time in kennels. The business is not currently accepting
478 new clients. Hopefully, the barn will eventually be able to be used simply as storage. The
479 business currently caters to only high-end, private Boston clientele.

480

481 Tracy McInnis stated that she has a concern that 20-35 dogs essentially is a small daycare center
482 for dogs on the property. Karen Ray stated that this is not her intention. The proposal is to make
483 the space more functional for herself, her neighbors, and the current business. This is supposed to
484 be a very private business. She stated that she has occasionally taken care of friends'
485 dogs. Karen Ray went on to say that she provides a unique service that she has built up over 21
486 years in Boston and this proposal was to be able to get the dogs out of their private residence.

487

488 Tom Quinn reiterated that there would not be people dropping off dogs at 9 a.m. and picking
489 them up at 4 p.m. He stated that this was not a transient business and that the dogs would remain
490 for a weekend or a week or two. He also pointed out that the property owners were going all out
491 with the application and soundproofing the barn to minimize any noise issues. Tom Quinn stated
492 that the owners had a good relationship with their neighbors.

493

494 Tracy McInnis suggested angling the 8' tall fence or placing some sort of protective barrier on
495 top, in order to better guard against the dogs possibly exiting the area and entering Route 101.

496

497 Diane Neumann, 21 Deer Hollow Drive, stated that she has known the applicants for
498 approximately 1.5 years, and that they are wonderful, helpful neighbors. The applicants have
499 kindly taken care of her dog in a previous emergency situation. She is confident that the proposal
500 will fit in with the style of the neighborhood.

501

502 Cecilia Stuopis, 11 Deer Hollow Drive, voiced her support for the proposal, noting that she had
503 known the applicants since 2005. She stated that the dogs in the rest of the neighborhood make
504 more commotion than the dogs on the applicants' property. She has not experienced any impact
505 from the business. Apparently, there is a property directly across the road from Walnut Hill
506 Road, located on Route 101, which is being run as a B&B property. This speaks to the area not
507 being as Residential/Rural as it is zoned.

508

509 Charlie Vars stated that Lot 6-70, located diagonally across from the abutter, is called the
510 Charles A. Vars/Kings Pine subdivision. He has no interest left in those lots and thus there is no
511 measure of conflict.

512

513 Charlie Vars noted that a variance runs with the property and asked if the applicants are willing
514 to entertain some restrictions. This property could be sold as a kennel in the future and not run
515 per the rules and regulations.

516

517 Tom Quinn requested that, if the Board is interested in conditions, these be discussed during the
518 public hearing itself, in order to hear from the applicant. The kennel is a secondary use of the
519 property. The property's primary use is as a residence. The applicants are willing to a condition
520 that the kennel cannot be operated separately from the primary residence. The applicant is

TOWN OF AMHERST
Zoning Board of Adjustment

June 21, 2022

APPROVED

521 willing to make sure that the two uses are tied together. The concern with making the variance
522 personal only to the applicants, is that the new barn will be a large expense and he would like the
523 applicants to have the option to sell the property for both residential and a kennel use in the
524 future. A restriction that the property will always be a residential/kennel use, is acceptable to the
525 applicants. A condition that the use only be personal to the applicants, and that a future sale
526 could not include the kennel use would not be preferred but would be accepted in order to
527 achieve the variance.

528

529 Charlie Vars stated that the variance runs with the property, not the owner. Charlie Vars stated
530 that he would like restrictions that this not be used as a doggy daycare and that there be no
531 signage on the property regarding the business.

532

533 Doug Kirkwood stated that the Board would enter deliberations.

534

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

536 **Voting: 5-0-0; motion carried unanimously.**

537

538 **CASE #: PZ15830-052322 –**

539 *Jamie Ramsay recused himself.*

540

541 Charlie Vars asked if a positive vote by the Board affirms the HDC decision. Danielle Pray
542 stated that this is a de novo decision, which means that it is not overturning the HDC's decision
543 but creating a new ruling. A positive vote would allow for aluminum-clad windows.

544

545 Doug Kirkwood stated that the regulations are clearly written, and the Board needs to make sure
546 it does not allow for a violation of the law.

547

548 Danielle Pray stated that there is no clear language in the regulations that states that windows
549 need to be all-wood. This appears to be, per the minutes, the reason that the HDC denied the
550 application. In the two sections of the regulations which speak to windows, there is no language
551 stating that they must be all-wood.

552

553 In response to a question from Doug Kirkwood regarding updates on the regulations, Nic Strong
554 stated that the HDC is currently in the early stages of making updates to their regulations.

555

556 Charlie Vars stated that the HDC seems to recognize that there are updates that need to be made
557 to the regulations, which will take time. That is not what is being dealt with this evening.

558

559 Danielle Pray noted that there is nothing in the minutes from the HDC meeting regarding the
560 design or style of the proposed windows and these being an issue. In the findings section, the
561 HDC found that it was difficult to tell the difference between the proposed windows and all-
562 wood windows. Tracy McInnis stated that this was reiterated by Charlie Vars.

563

TOWN OF AMHERST
Zoning Board of Adjustment

June 21, 2022

APPROVED

564 Danielle Pray stated that her concern is not with the material of the proposed windows, but that
565 the design and style need to be in keeping with the Historic District. She could likely draft a
566 motion that included similar language.

567

568 Doug Kirkwood stated that the HDC regulations cannot be changed by the Board.

569

570 **Danielle Pray moved to approve the aluminum-clad replacement windows for 4**
571 **Middle Street, CASE #: PZ15830-052322, with the condition that the applicants**
572 **receive approval from the Historic District Commission for the design, style, and**
573 **size of the windows. Charlie Vars seconded.**

574 **Voting: 4-0-0; motion carried unanimously.**

575

576 *Jamie Ramsay retook his seat.*

577

578 **CASE #: PZ15831-052322**

579

580 **Jamie Ramsay moved no regional impact. Charlie Vars seconded.**

581 **Voting: 5-0-0; motion carried unanimously.**

582

583 Charlie Vars stated that the second floor of the proposed structure will actually be the first floor
584 of this garage structure, because there will be a garage under that floor. He stated that the Board
585 should give the applicant specific criteria to consider before the next meeting. He expected that
586 Nic Strong will have a conversation with the applicant to express what these criteria are.

587

588 Jamie Ramsay stated that the current application has no architectural design and is an incomplete
589 application without enough information to deliberate on.

590

591 Charlie Vars noted that the proposal could be reduced to 24' wide and set back further on the lot
592 in order to come closer to meeting the prior setback requirement, 15', of the subdivision. Jamie
593 Ramsay stated that the onus of presenting this argument is on the applicant.

594

595 Doug Kirkwood stated that this application could be denied without prejudice for lack of
596 information. This would allow the applicant to come back to the Board with a new application.

597 Jamie Ramsay stated that this would require the applicant to pay a new set of fees. Charlie Vars
598 stated that he would prefer to continue the hearing.

599

600 **Charlie Vars moved to continue this hearing to July 19, 2022, 7pm, at Town Hall.**

601 **Tracy McInnis seconded.**

602 **Voting: 4-1-0; motion carried [D. Kirkwood against].**

603

604 **CASE #: PZ15832-052322**

605

606 **Jamie Ramsay moved no regional impact. Charlie Vars seconded.**

607 **Voting: 5-0-0; motion carried unanimously.**

June 21, 2022

APPROVED

608

609

Charlie Vars moved that the applicant be allowed to use the barn as a kennel with the following conditions.

610

611

612

Danielle Pray noted that the Board needs to first address the five variance tests.

613

614

Doug Kirkwood addressed the five variance tests.

615

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

616

- T. McInnis – true, the applicant will not have people dropping dogs off and increasing traffic to the area. The proposal will improve the neighborhood.

617

618

- C. Vars – true.

619

- D. Pray – true, it will not alter the essential character of the neighborhood. This will remain a primary residence and there are other commercial venues in the area. This does not threaten public health, safety, or welfare.

620

621

622

- J. Ramsay – true, the proposal will not be contrary to the public interest.

623

- D. Kirkwood – true.

624

5 True

625

626

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

627

- C. Vars – true, the location of the barn is ideal, and a kennel use in the barn will not affect the spirit and intent the ordinance.

628

629

- D. Pray – true, the residence is a primary use, and the kennel will be a secondary use. There will be limited traffic or noise and no signage.

630

631

- J. Ramsay – true, the proposal will not impact the health, safety, or welfare of the general public.

632

633

- T. McInnis – true.

634

- D. Kirkwood – true.

635

5 True

636

637

3. Substantial justice is done.

638

- J. Ramsay – true, the proposal will allow the applicants to enjoy their property and use it to a reasonable extent.

639

640

- T. McInnis – true, the proposal will allow the residents to have their home back in moving the kennels into the barn.

641

642

- D. Pray – true, the loss to the applicants, if denied, outweighs the benefit to the public. There was no evidence supplied regarding the benefit to the public of denial.

643

644

- C. Vars – true.

645

- D. Kirkwood – true.

646

5 True

647

648

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

649

- C. Vars – true, the property has been used in the past for a kennel purpose. This proposal will only increase the property value and not decrease value to any of the

650

June 21, 2022

APPROVED

651 other surrounding homes. The proposed location is approximately 100' from Deer
652 Hollow Road.

- 653 • T. McInnis – true, the proposal will only enhance the property values in the
654 surrounding area.
- 655 • D. Pray – true, the applicant submitted a letter from a real estate expert that this
656 proposal will not diminish any values.
- 657 • J. Ramsay – true, the proposal will not diminish the values. Although it is located on
658 the corner of Route 101 and Walnut Hill Road; it is a fairly private lot.
- 659 • D. Kirkwood – true.

660 **5 True**

661
662 5. Literal enforcement of the provisions of the Ordinance would result in an unnecessary
663 hardship.

- 664 • D. Pray – true, there are special conditions of the property: it is located along Route
665 101, and there are nearby commercial businesses. The purpose of the ordinance is to
666 separate incompatible uses. The proposal does not change the primary residential use
667 of this property, with an ancillary kennel use. The design and style of the building
668 will fit with the property. This is a reasonable use as there is historic precedence of
669 use.
- 670 • C. Vars – true, a barn could be built on the property to hold 50 cows, and this would
671 create more noise. This is a reasonable request, and it would be a hardship to deny the
672 application.
- 673 • T. McInnis – true, the purpose of the Rural Residential Zone is to encourage
674 development and maintain a rural setting. This will keep with that purpose and is 100'
675 off the road.
- 676 • J. Ramsay – true, denying this would be unreasonable, as this is located within an
677 area of many commercial businesses while still being in the Residential Rural Zone. It
678 is a unique property.
- 679 • D. Kirkwood – true.

680 **5 True**

681
682 **The Chair stated that the application, as it passed all of the tests, is granted, as**
683 **submitted. It was noted that the following conditions are placed on this approval:**

- 684 • **There shall be no sign.**
- 685 • **There shall be no daycare, dog training or breeding.**
- 686 • **The use of the kennel is to be primarily in conjunction with the applicants'**
687 **Boston-based business.**
- 688 • **Grooming will be done in conjunction with boarding and not as a distinct**
689 **line of business.**
- 690 • **No retail sales of dog food, toys, equipment or other dog-related**
691 **merchandise.**
- 692 • **Except for minor services to friends, customers will not drop off or pick up**
693 **dogs.**
- 694

TOWN OF AMHERST
Zoning Board of Adjustment

June 21, 2022

APPROVED

695 • **The main building/current residence is to remain a residence.**

696 **Charlie Vars moved to exit deliberations. Jamie Ramsay seconded.**
697 **Voting: 5-0-0; motion carried unanimously.**

698
699 OTHER BUSINESS:

700
701 **1. Minutes: April 19, 2022, & May 17, 2022**

702 The Board agreed to table discussion on these until the next meeting.

703
704 **Charlie Vars moved to adjourn the meeting at 9:40pm. Danielle Pray seconded.**
705 **Voting: 5-0-0; motion carried unanimously.**

706
707
708 Respectfully submitted,
709 Kristan Patenaude

710
711 Minutes approved: August 16, 2022