

TOWN OF AMHERST
Zoning Board of Adjustment

August 16, 2022

APPROVED

In attendance: Danielle Pray (Vice Chair), Jamie Ramsay (Secretary), Charlie Vars, and Tracy McInnis
Staff present: Nic Strong, Community Development Director, and Kristan Patenaude, Recording Secretary (remote)

Danielle Pray called the meeting to order at 7:00pm. She noted that she will be acting as Chair for the meeting. She explained to the applicant that a variance needs three votes for each criteria to be approved. The applicant can choose to table the hearing to a future meeting when additional Board members may be present. The applicant chose to move forward at this time. Danielle Pray stated that the applicant will present his case, the Board will ask questions/make comments, the public will have a chance to comment, and then the Board will close the hearing and move into deliberations to make a decision. Danielle Pray introduced the Board members.

PUBLIC HEARING

1. CASE #: PZ16046-071422 –VARIANCE

Gregg & Charity Jessen (Owners & Applicants); 2 Tranquility Lane, PIN #: 006-006-004 – Request for relief from Article III section 3.11, Paragraph B to build a shed that is 14 feet from the 100-foot setback line. Zoned Residential/Rural.

Jamie Ramsay read and opened the case.

Gregg Jessen addressed the Board. He explained that there is nowhere else on the property to place a shed than in the scenic setback, due to an existing leach field and septic tank, rising hill, and wetland. The proposed location is approximately 86' from the road itself and 14' from the 100-foot setback line. There is a row of approximately 70' of trees which will help to maintain the scenic ambiance.

Gregg Jessen addressed the variance criteria.

1. How will granting the variance not be contrary to the public interest?

Granting of the proposed variance will not be contrary to the public interest because there would be no change to the scenic natural character of the land. No trees are required to be removed and there are several trees between the scenic road and the property. The neighbor across the street is approximately 400' away. A shed with materials similar in appearance and quality to the main dwelling will blend well. It is also well isolated from the scenic road and thus will not cause any safety or welfare issues. A variance relief of 14' from the setback is requested for only 16' of property frontage or 0.005 acres.

2. How will the granting of the variance ensure the spirit of the ordinance will be observed?

The spirit of the variance will be observed because our proposal places a shed on the other side of trees from a scenic road. The variance is minimal (0.005 acres) and does not detract from the scenic, natural character of the land.

TOWN OF AMHERST
Zoning Board of Adjustment

August 16, 2022

APPROVED

3.How will substantial justice be done?

Denying the variance will deny full reasonable use of the property without a significant benefit to the general public. The lot design prevents construction for storage structures for seasonal equipment because there are wetlands to the northeast of the main dwelling, there is insufficient space within setbacks on the west and south of the property, and a shed cannot be placed in front of the main dwelling on the east side. The proposed location is 0.005 acres on the private side of the lot which is screened from the main road by trees.

4.How will the value of the surrounding properties not be diminished?

The proposed addition will have no negative impact on the value of surrounding properties. The proposed structure will be of similar quality and style to the existing dwelling and is only visible to one neighbor. Likely, this addition will raise the property value.

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

a. For the purpose of the subparagraph, “unnecessary hardship” means that owing to special conditions of the property that distinguish it from other properties in the area:

i. No fair or substantial relationship exists between the general public purposes of the ordinance provision and the specific application if that provision to the property because:

And

ii. The proposed use is a reasonable one because:

Comparable lots in the town have sufficient frontage and usable area for storage structures. This lot is unique in that the placement of the main dwelling in the corner near the 100 ft setback with wetlands on the northeast of the main dwelling makes it impossible to build a storage structure on site by literal enforcement of the ordinance. The proposed use is reasonable because it is common and expected to be able to build storage structures on residential properties. The proposed use here is a very slight variance from the 100 ft setback and provides incredible utility to the owners while not detracting from any other resident.

b. Explain how, if the criteria in subparagraph (A) above are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from properties in the area, the property cannot be reasonably used in strict conformance with the Ordinance, and a Variance is therefore necessary to enable a reasonable use of it:

This property is already enduring unnecessary hardship due to lack of storage for common equipment and tools that nearly all residents make use of. The unique layout of this lot makes the vast majority of the 2.1 acres unsuitable for any other buildings aside from the main dwelling. In order to have full utility of the property, a 0.005-acre variance is necessary.

Charlie Vars noted that he worked to subdivide this piece of property from its original owner. It was never listed in his name, but he did build one house on top of the hill.

TOWN OF AMHERST
Zoning Board of Adjustment

August 16, 2022

APPROVED

Charlie Vars stated that there is a conflict between what is being requested and what the plan says. The request mentions a 16'x10' shed, but the plan says 16'x16. This difference would change the setback requested as well, leaving only a 9' offset into the setback.

Gregg Jessen explained that a 10'x16' shed is planned, but he asked for a 16'x16' shed to be drawn as a worst-case scenario in case the orientation is changed. The plan is to place the shed parallel with the driveway, with the 16' side being placed parallel. An additional 1' for crushed stone will be needed. This is to be a Reed's Ferry shed.

In response to a question from Jamie Ramsay, Gregg Jessen stated that he would consider placing a 16'x16' shed on the property, if so approved. Charlie Vars noted that the application is for a 16'x10' shed.

Danielle Pray stated that the whole property is heavily wooded. There are 70' of trees on the Baboosic Lake Road side between the house and the road.

Gregg Jessen noted that the application requests relief for installing the shed 14' from the 100' scenic setback line which is the same as the 16'x16' shed as drawn.

There was no public comment at this time.

**Charlie Vars moved to enter into deliberations. Tracy McInnis seconded.
Voting: 4-0-0; motion carried unanimously.**

CASE #: PZ16046-071422 –VARIANCE

Gregg & Charity Jessen (Owners & Applicants); 2 Tranquility Lane, PIN #: 006-006-004 – Request for relief from Article III section 3.11, Paragraph B to build a shed that is 14 feet from the 100-foot setback line. Zoned Residential/Rural.

**Jamie Ramsay moved no regional impact. Charlie Vars seconded.
Voting: 4-0-0; motion carried unanimously.**

Danielle Pray noted that, for future cases, due to changes to state law, written findings of fact will be necessary. This could likely be the time of the meeting where this will be discussed for future hearings.

Danielle Pray addressed the five variance tests.

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

- C. Vars – true, the area of the site proposed to put the shed is heavily treed, other than the leach field, and is further from the setback than the previous nearby shed application which was approved.
- J. Ramsay – true, this poses no impact on public ways or private ways.

TOWN OF AMHERST
Zoning Board of Adjustment

August 16, 2022

APPROVED

- T. McInnis – true, the proposed shed will be setback far on the property and the area is well treed so the shed will be hidden. This will not change the neighborhood.
- D. Pray – true, the 15’ setback does not affect this proposal as it is a heavily wooded area. This will not change the character of the locality, as a shed for equipment is not uncommon.

4 True

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

- J. Ramsay – true, this imposes no substantial change if any at all, to surrounding properties. This area is heavily wooded. This will keep with the spirit of the ordinance.
- T. McInnis – true, the area is heavily treed and the shed will be set back from the road.
- C. Vars – true, this will not detract from the scenic area of the neighborhood. The pavement of Baboosic Lake Road sits an additional 15-18’ away, with a stone wall in-between.
- D. Pray – true, one purpose of this section is to preserve and enhance the rural character, and the proposal will not detract from this. Another purpose is to prevent unsightly development and the proposed shed will be in character with the existing home.

4 True

3. Substantial justice is done.

- T. McInnis – true, substantial justice would be done because there are no other places on the property to place this shed, due to a steep hill and wetland. This will allow for full use of the property.
- C. Vars – true, denial of the application would be a negative to the owner.
- J. Ramsay – true, the proposal is not impinging on any public rights.
- D. Pray – true.

4 True

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

- C. Vars – The proposal will not diminish nearby property values. The only value to be impacted will be that of the owner, as the new shed will be taxed.
- J. Ramsay – true, the structure will be in keeping with the neighborhood.
- T. McInnis – true, the shed cannot be seen from the road, and it will increase the property owner’s value.
- D. Pray – true, there is no evidence that the value of surrounding properties will be diminished, and the applicant answered the values would probably not be diminished. The shed will be keeping in style of the house and will not be seen from the road.

4 True

August 16, 2022

APPROVED

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

- J. Ramsay – true, literal enforcement would be a hardship for the applicant. If the delineated wetland didn't exist, this would be a different conversation regarding siting, but there are no other practical places to site this shed on the property.
- T. McInnis – true, there is a hardship regarding the wetlands and placement for the shed on the property.
- C. Vars – true, there are special conditions for this property, and this allows for a fair and substantial use of the property.
- D. Pray – true, the applicant has shown the wooded nature of the lot and the proposed placement of the shed is the only reasonable one. There is a large wetlands area and leach field constraining the siting. The purpose of the ordinance is to prevent unsightly development and keep with the character of the neighborhood, and the owner has shown that his interest would outweigh the benefit of these items.

4 True

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

OTHER BUSINESS:

1. Discussion regarding changes to planning and zoning laws

Nic Strong explained that an Omnibus bill was approved by the legislature that includes some planning and zoning changes. There will be changes, such as having written findings of fact for all approved applicants for all land use boards. The ZBA already reviews the criteria for each application and writes down the findings, as is already done in the minutes; these statements can serve what is included in the findings of fact.

Danielle Pray suggested that the findings could be included on the back of the decision signature sheet. The discussion on findings and an agreement by the Board could be had during the general discussion section of the deliberations.

Nic Strong stated that the findings could be considered during the discussion on each of the criteria. The Board members could each state true or false, and the Board could decide some general wording for each criteria to include in the findings of fact. The decision needs to be issued within five business days. Not having the written findings available for a denial would lead to an automatic reversal if it goes to court.

Danielle Pray stated that she is trying to get the most recent copy of the Board's rules and policies, in order to update the document with this information.

2. Minutes: April 19, 2022, May 17, 2022, June 21, 2022, & July 19, 2022

TOWN OF AMHERST
Zoning Board of Adjustment

August 16, 2022

APPROVED

**Jamie Ramsay moved to approve the meeting minutes of April 19, 2022, as submitted. Tracy McInnis seconded.
Voting: 3-0-1; motion carried [C. Vars abstaining].**

**Charlie Vars moved to approve the meeting minutes of May 17, 2022, as submitted. Jamie Ramsay seconded.
Voting: 3-0-1; motion carried [T. McInnis abstaining].**

**Charlie Vars moved to approve the meeting minutes of June 21, 2022, as submitted. Tracy McInnis seconded.
Voting: 4-0-0; motion carried unanimously.**

The Board agreed to table approval of the July 19, 2022, minutes to the next meeting.

3. Any other business that may come before the Board

**Tracy McInnis moved to adjourn the meeting at 7:51pm. Jamie Ramsay seconded.
Voting: 4-0-0; motion carried unanimously.**

Respectfully submitted,
Kristan Patenaude

Minutes approved: November 15, 2022