

TOWN OF AMHERST
Zoning Board of Adjustment

January 17, 2023

APPROVED

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

Doug Kirkwood called the meeting to order at 7:10pm. He outlined the process and introduced Board members and staff present.

PUBLIC HEARINGS:

1. **CASE #: PZ16740-121422 –VARIANCE FOR THE HANDICAPPED Marshall Strickland (Owner) & Jeffrey Manson (Applicant); 158 Amherst Street, PIN #: 018-001-000 – Request for relief from Article 4.3, Section D, Paragraph 1 to construct a handicap access ramp to the front door within the front property line’s 50-foot setback. *Zoned Residential Rural with Historic District overlay.***

Jamie Ramsay read and opened the case.

Doug Kirkwood stated that ordinarily the ZBA had to make determinations about what would constitute an unnecessary hardship but most of the variance criteria do not apply to this case, as it is a variance for the handicapped. He asked that the applicant address the reason for the proposed variance.

Marshall Strickland stated that the ramp he had for many years was brick and became distorted from frost issues. He further noted that he has issues with strength and has had a few falls and cannot walk up the cement steps to the front door. He installed the ramp without knowing a permit was needed and did so for his safety.

Jeff Manson, 62 Baboosic Lake Road, stated that he thought a bit about the future and wanted the ramp to be fully handicapped/wheelchair accessible. He noted that it was located so that the applicant could park the car as close as possible to the bottom of the ramp.

Mr. Strickland stated that he spoke with Scott Tenney, Building Inspector, regarding this item. Scott Tenney stated that he noticed the accessibility issue, having seen Mr. Strickland walking around Town in an effort to improve his strength and thought that he would be able to get a waiver for the construction.

In response to a question from Doug Kirkwood regarding the decking material, Jeff Manson stated that sand is placed on the decking to prevent slipping but there is no abrasive material covering the steps. Jeff Manson stated that he had built the ramp quickly to beat the bad weather and the temperatures were not conducive to placing anything on the ramp that would stick. He further noted that his observation was that in an ice storm even the rough surfaces could become slippery. He stated that he could put the abrasive material on next summer if needed. Marshall

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Strickland stated that he does not believe he needs handicap handrails at this time. Jeff Manson stated that official handicap handrails would require a 36" width between them. The current railings are approximately 40"-42" apart. Adding these handicap handrails would not be an obstacle, if required by the Board. Jamie Ramsay noted that the ramp appeared to serve a practical purpose at the moment without the handrails.

In response to a question from Danielle Pray regarding the fact that the application lists this as a temporary ramp, Jeff Manson stated that the ramp was not constructed to fall apart but it could be removed in the future. Marshall Strickland stated that he was aware that one of the stipulations of the waiver is that the ramp will be removed if he no longer needs it.

Doug Kirkwood asked if the applicant would be willing to agree to a condition that the variance will terminate if the applicant moves away from the property. He noted that, generally, a variance runs with the property. Marshall Strickland agreed. He stated that his wife may also need the ramp in the future though. Jeff Manson stated that if both Marshall Strickland and his wife are no longer at the address, the ramp will be removed.

Kent Chappel, an abutter stated that the applicant clearly requires the ramp and that he has no issue with this request. He thought it very fair to allow the ramp to remain while both Marshall Strickland and his wife need it.

**Tracy McInnis moved to enter into deliberations. Danielle Pray seconded.
Voting: 5-0-0; motion carried unanimously.**

**CASE #: PZ16740-121422 –VARIANCE FOR THE HANDICAPPED
Marshall Strickland (Owner) & Jeffrey Manson (Applicant); 158 Amherst
Street, PIN #: 018-001-000 – Request for relief from Article 4.3, Section D,
Paragraph 1 to construct a handicap access ramp to the front door within the
front property line's 50-foot setback. *Zoned Residential Rural with Historic
District overlay.***

**Jamie Ramsay moved that this application has no regional impact. Charlie Vars
seconded.
Voting: 5-0-0; motion carried unanimously.**

The applicants and their agent left the meeting.

Danielle Pray noted that the applicant answered the variance criteria questions in the written application form.

Charlie Vars stated that this proposal is being reviewed because it encroaches on the 50' setback of the house. There are no questions regarding the structure of the ramp itself. The ramp should have had an approved application, prior to construction. Tracy McInnis noted that the applicant constructed the ramp for his health and safety, as was needed at the time.

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Danielle Pray stated that, in regard to criteria #5, the applicant is exempt from showing a hardship aspect of the proposal.

Doug Kirkwood noted that there is an ability to have the approval for the ramp not travel with the property, but instead with the occupant. Jamie Ramsay stated that, if the property were deeded to a relative who was also handicapped, that person could also apply for a variance to the Board to continue to maintain the ramp. Danielle Pray stated that this would not necessarily have to be a relative, but anyone living at the property with this need.

Jamie Ramsay stated that safety of the occupant is the paramount concern. Charlie Vars agreed that this outweighs any potential negative impact to the Town.

Charlie Vars stated that the applicant did not speak to the variance criteria in person but he has no problem accepting the applicant's written variance criteria question answers, as written, and for the Board to then comment on those answers. Jamie Ramsay agreed.

Doug Kirkwood stated that the variance must be in harmony with the general purpose and intent of the zoning ordinance. In this case, there is nothing about a ramp that negates this being in harmony with the general purpose and intent of the ordinance.

Jamie Ramsay stated that Amherst operates on the 2018 Building Code, which specifies safe entrance and egress to the house. In this case, this is specific to the resident and the ramp allows for this. This would be conditional for allowance of the ramp. Doug Kirkwood agreed that this was addressed by the applicant.

Doug Kirkwood addressed the variance tests.

5. The Zoning Board may grant a variance from the terms of the zoning ordinance without a finding of hardship arising from the condition of a premises subject to the ordinance, when reasonable accommodations are necessary to allow a person or persons with a recognized physical disability to reside in or regularly use the premises provided that:

- a) Any variance granted under this paragraph shall be in harmony with the general purpose and intent of the zoning ordinance, and,
 - b) In granting any variance pursuant to this paragraph, the Zoning Board of Adjustment may provide, in a finding included in the variance, that the variance shall survive only so long as the particular person has a continuing need to use the premises.
- C. Vars – true, this proposed ramp is within the 50' setback. This is a temporary ramp. There is a disability in this case, and it would be discrimination to deny this.
 - J. Ramsay – true, he agreed with what was previously stated. Overarching, this allows for the owner's enjoyment and use of the property to their own best interest without

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132 impinging on the rights of the general public. The Board heard from a nearby abutter
133 who has no issue with this variance.

134 Danielle Pray stated that she believes the Board first needs to address the regular tests 1 – 4 with
135 regard to how granting the variance will not conflict with the explicit or implicit purpose of the
136 ordinance and how granting the variance would not threaten the public health, safety, or welfare.
137 Charlie Vars stated that he believed his answer was in regard to test #1. Danielle Pray continued
138 with answering this test.
139

140 • D. Pray– true, she does not believe that this applicant's request would threaten the
141 public health, safety, or welfare, nor would it change the character of the
142 neighborhood.

143 • T. McInnis - the ramp is temporary. It does not crowd abutting properties and the
144 current owner is in dire need of this ramp.

145 • D. Kirkwood – true.

146 **5 True**

147

148 Doug Kirkwood stated that he wants the Board to first make a determination regarding the
149 hardship item with respect to this item, as this is overarching to the other tests. Danielle Pray
150 stated that she would rather the Board address the tests in order, as all must be addressed by the
151 Board, aside from #5, from which the applicant is exempt. She stated that, in order for this
152 applicant to be exempt, the Board must find that the reasonable accommodations are necessary to
153 allow the applicant and his wife to use the property. This is a finding that the Board needs to
154 make. Charlie Vars agreed that the Board should review the first four criteria, and consider the
155 fifth criteria exempt, due to the mobility disability and that the Board is not allowed, by law, to
156 discriminate against those with disabilities.
157

158 Doug Kirkwood asked if the variance will not be contrary to the public interest. Tracy McInnis
159 asked if the Board was moving onto the second criteria, as answers were already given to address
160 the first. Doug Kirkwood stated that he would like to go back and address the first criteria again.
161

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

163 • T. McInnis – true, the ramp is temporary and does not affect the neighbors. The
164 closest abutter spoke to this. The applicant has significant mobility loss.

165 • C. Vars – true, he stated that he already addressed this in his previous reasoning.

166 • J. Ramsay– true, he stated that he already addressed this in his previous reasoning.

167 • D. Pray – true, she stated that he already addressed this in her previous reasoning.

168 • D. Kirkwood – true, the public interest, in this case, is to provide proper access for the
169 applicant to his house. By granting relief of the requirement through this variance,
170 this would not be contrary to the public interest.

171 **5 True**

172

173 2. The Variance will ensure that the spirit of the ordinance will be observed.

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- C. Vars – true, the spirit of the ordinance is advocating for health, safety, and welfare and, in this case, the health, safety, and welfare for the applicant outweighs any impact to the general public.
- J. Ramsay– true, this does not impose anything negative on the general public and allows the owners full enjoyment of the property.
- D. Kirkwood – true, substantial justice is done because denial of this variance would further impede the owner’s access. This would be an injustice.
- D. Pray – true, other considerations for variances include regulating density, providing adequate air and light, creating open spaces, and not blocking the views on streets. This proposal does not impact any of these items.
- T. McInnis – true, the spirit will be observed because the tenants could be left homebound without a variance to allow the ramp.

5 True

3. Substantial justice is done.

- J. Ramsay – true, this proposal does not create a hardship for abutters, but denial of the variance will create a hardship for the owner.
- D. Pray– true, this test for substantial justice is a balancing test between the benefits to the applicant and any harm to the general public. In this case, the applicant indicated that there is no harm to the public, and she agreed. The benefit to the applicant far outweighs the lack of impact to the public. The ramp will allow the owner to not be homebound and is a reasonable accommodation for the owner and his wife.
- T. McInnis – true, there is negligible harm to the general public. This ramp will allow the owner and his wife to continue on with their daily lives.
- C. Vars – true.
- D. Kirkwood – true.

5 True

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

- D. Pray – true, no evidence was presented that the property values will be diminished. She stated that this proposal may allow for a benefit to new owners.
- T. McInnis – true, a temporary ramp will not negatively impact property values. If the house is sold to someone who does not need it, the ramp will be removed.
- C. Vars — true, a temporary ramp will not negatively affect any surrounding property values.
- J. Ramsay– true, anyone has a right to appeal the Board’s decision. He cannot imagine anyone raising an issue with the allowance of a ramp which permits a handicapped person to access his home.
- D. Kirkwood – true, the issue of surrounding properties not being diminished in value was addressed by the applicant. It is illogical that this needs to be proven, because, as

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216 pointed out by the abutter, a ramp suggests that the owner of that house has a need for
217 the help. This is not associated with a correlation to surrounding properties.

218 **5 True**

219 Danielle Pray stated that, per the RSA, the Board does not have to find hardship but does first
220 have to make a determination that reasonable accommodations are necessary to allow that person
221 or persons with a recognized physical disability to reside in or regularly use the premises. This
222 item has been spoken to by Board members throughout the hearing. The other two requirements
223 are that the variance granted under this paragraph shall be in harmony with the general purpose
224 and intent of the zoning ordinance, and if the Board wants to allow the variance to survive only
225 so long as the particular person or persons has a continuing need to use the premises.

226
227 Tracy McInnis stated that she believes these items are true and were previously spoken to.

228
229 Charlie Vars stated that it is obvious that there is a mobility disability in this case and that the
230 ramp is a reasonable approach. He again noted that the variance was for the ramp to be in the
231 front 50' setback, and, if the ramp came off the side of the house instead, it would only need an
232 HDC application and a building permit. Charlie Vars thought that the ramp was the most
233 reasonable approach to give the applicant access.

234
235 Danielle Pray stated that RSA 674:33, V., applies if the proposal is in harmony with the Town's
236 Zoning Ordinance and also if the Board wants to make the ramp temporary for the use of the two
237 applicants who were present earlier this evening. She noted that any future owner or occupant
238 would need to come before the Board again for a separate variance.

239
240 Charlie Vars stated that the application should be exempt from the hardship criteria for all the
241 reasons previously stated and the obvious disability of the applicant.

242
243 Jamie Ramsay agreed, noting that the Board needed to see demonstration that the proposal was a
244 reasonable accommodation and use for the purpose and he agreed that had been
245 demonstrated. He went on to say that the construction being of pressure-treated lumber meant
246 that it would age and turn gray and will not be out of place as some of the more typical
247 temporary aluminum ramps are. He stated that it would weather into the community which was
248 a good thing.

249
250 Tracy McInnis stated that it was a shame that there was not some kind of funding available for
251 situations such as this to help with the cost of installation of ramps to assist access to homes.

252
253 **The Chair stated that the application, as it passed all of the tests, is granted, with the**
254 **condition that the variance will run with the use, i.e., the disability of the two**
255 **current individuals living in the home.**

256
257 **Jamie Ramsay moved to exit deliberations. Charlie Vars seconded.**
258 **Voting: 5-0-0; motion carried unanimously.**

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OTHER BUSINESS:

1. Minutes: December 20, 2022

Danielle Pray moved to approve the meeting minutes of December 20, 2022, as amended, [Line 96: change “not” to “noted”; Line 177 delete the “a” before “simply”; and Line 190 change to read “This proposal increases safety regarding off-street parking”.] Jamie Ramsay seconded.

Voting: 4-0-1; motion carried [T. McInnis abstained.]

2. Any other business that may come before the Board

Charlie Vars moved to adjourn the meeting at 8:35pm+/- . Danielle Pray seconded.

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

Respectfully submitted,
Kristan Patenaude

Minutes approved: March 21, 2023