

**Town of Amherst  
Zoning Board of Adjustment  
Tuesday, October 21, 2014**

ATTENDEES: D. Kirkwood; Chair, J. Taggart, R. Rowe, J. Quinn, C. Vars (Alt), R. Panasiti (Alt) and C. Mailloux- Community Development Director

D. Kirkwood called the meeting to order at 7:12pm, explained the ZBA process and introduced the board members.

The first case was read by J. Taggart.

**1. Case #PZ5445-100214 – Variance**

**Chris M. Gagnon, 18 Schoolhouse Road, PIN # 008-035-000** – requests a variance from Section 5.2, A (1) of the Zoning Ordinance to allow a special exception for an accessory apartment on a lot with 244 feet of frontage on Schoolhouse Road where 300 feet of frontage is required.

The next case was also read by J. Taggart.

**2. Continuation of Case #PZ5186-071814 – Special Exception**

**Chris M. Gagnon, 18 Schoolhouse Road, PIN # 008-035-000** – requests a special exception under Section 4.4, E.7 of the Zoning Ordinance to construct an accessory apartment.

Chris Gagnon presented his case along with Bob Demarius.

He stated at last month's meeting it was determined the plans were not to scale and after that meeting we discovered that the frontage for the property is also not to code. The applicant has since submitted the scale drawings and is tonight asking for a variance for the frontage and a special exception for the accessory apartment.

Mr. Gagnon stated that granting a variance would not affect traffic or public health or neighboring property values. It's an existing lot and impossible to make the lot bigger. It's a reasonable use.

D. Kirkwood asked for him to address all of the tests.

C. Gagnon read his answers to the five tests as presented in his application.

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

*Granting this Variance request will not be contrary to the public interest. This addition was built by the previous owner several years ago, and has been used as an in-law / accessory apartment with no negative effect on public interest. If, instead of constructing an accessory apartment, the applicant elected to keep the structure as additional living space to the primary residence, no action by the Zoning Board of Adjustment would be required.*

*Normally, the construction of an accessory apartment is subject to a Special Exception by the Zoning Board of Adjustment. Paragraph A of the Special Exception section of the Zoning Ordinance (Sec. 5.2 A (1) (1)) requires that all dimensional requirements of the District should be met. This lot, with current zoning has 243FT of frontage and does not meet the requirements for minimum frontage of 300 FT. All other dimensional requirements are met.*

*The addition which was previously built, does have the appearance of the existing structure, and was allowed on the lot without a Variance or Special Exception. Once the previous owner added the additional kitchen as part of the addition, the addition became an accessory apartment. The current owner is trying to take the proper steps to have the accessory apartment approved by the Zoning Board of Adjustment and allow for the Special Exception for the accessory apartment.*

There will be no impact on public health, safety and welfare as a result of granting the Variance and Special Exception.

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

As indicated above, the variance will allow an addition that was built on an existing residence to be constructed that would otherwise be allowed, but for the accessory apartment use. All other criteria for the Special Exception for an accessory apartment will be met.

3. How will substantial justice be done?

The benefit to the applicant will be that the spirit and intent of the zoning ordinance will be preserved, fair use of the property will be allowed, and no harm will be done to the general public or other individuals.

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

The value of surrounding properties will not be affected, as the style of the addition is indistinguishable from other structures in the neighborhood. He added that you can't tell that there is an apartment when looking at the property.

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

The lot has physical constraints that limit its use, but the provision from which the applicant is seeking relief is simply the criteria for Special Exception that requires the lot to have 300FT of frontage. The current frontage is 243 FT.

No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because the construction would otherwise be allowed, but for the accessory use. The purpose of the provision requiring a Special Exception for accessory for accessory apartments is to protect the public interest, and to ensure that any such uses will not have a deleterious effect on abutting properties.

This proposed use is reasonable because its construction does not have any effect on the general public or on abutting properties by way of property values, additional traffic, noise, fumes or inappropriate lighting. There will continue to be safe pedestrian and vehicular access to the property. There will be no adverse impacts on safety and general welfare of the neighborhood or the town. There will be no adverse impacts to groundwater or other natural resources. Importantly, the proposed use is reasonable because the construction is indistinguishable from otherwise allowed construction from the outside of the structure.

D. Kirkwood asked if the board or the public had any questions for the applicant.

Ron Nelson of 14 Saddle Hill rd.

He is an abutter across the street from the property. What is the use of the property? Is it for rent? Or an in-law apartment?

C. Gagnon stated yes, the intent is a family apartment- not for rent.

D. Kirkwood added that if a new person buys the apartment and wants to rent it, there are regulations they'd have to go through before they can do that.

J. Quinn asked why they are prohibited from renting it out- he could not find evidence of that in the law.

C. Mailloux stated the town does not regulate if it's rented out. It could be a condition of the variance, but that is difficult to enforce.

R. Rowe explained this type of unit started as an in-law apartment and that's how it got its name, but in-laws pass on and who is the ZBA to stipulate who in the family can or cannot live there?

R. Panasiti asked why this case is before the board since there is already an apartment there. C. Gagnon explained that they are new owners and the owner that built the apartment did not get the proper building permits in place. They are trying to rectify the situation.

C. Mailloux stated that the property is now preexisting nonconforming.

Charlyn Jordan of 14 Schoolhouse Rd.

She is an abutter who has been there since 1986. The apartment has always been there. You can't tell it's even there. The home was in really bad shape including mold. What Mr. Gagnon is doing has really improved the property. He has done an amazing job and the neighborhood is improved because of it.

Keith Healey of 23 Border St.

If he doesn't get the variance, does he have to tear it down? D. Kirkwood replied that it means he doesn't get approval. An accessory structure is usually interior with access to the rest of the home, so it would in some way become part of the home.

Ron Nelson of 14 Saddle Hill Rd.

Is the owner planning any change in access? Driveways? No.

Other than the discussion about the rental which he would like some consideration of, he has no problems with the project.

D. Kirkwood still does not see a scale on the plan- the actual visual scale. The board showed C. Gagnon an example of what they're looking for.

The board discussed the scale issue with the applicants.

C. Vars stated that one of the drawings appears to be to scale so he has no problems with the scale in this particular instance.

The applicant then addressed the seven questions for special exception as follows:

*1. Is the use allowed by special exception in the Zoning District?*

*- Yes. Accessory apartments are allowed with no more than 800 sq ft and (1) bedroom, which we meet.*

*2. Is the property in conformance with the dimensional requirements of the zoning, and is the use compatible with the Amherst Master Plan?*

*-Yes. The apartment is 800 square feet, which is the allowable size. And the apartment has access from the main house living area.*

*3. Is there a safe pedestrian and vehicular access?*

*- Yes. The existing driveway and parking area allows for apartment.* He added that he did away with the old driveway that was on the lawn.

*4. Will there be no significant adverse impacts resulting from the proposed use on safety and general welfare of the neighborhood and the town?*

*-No. There are no adverse impacts on the neighborhood or the town from the apartment.*

*5. Will the use be more objectionable to nearby properties by reason of noise, fumes, or inappropriate lighting than is existing now?*

*-No. The property will not be objectionable to nearby properties.*

*6. Does the plan submitted accurately depict the use and physical dimensions of the property?*

*- Yes. The plans detail the main house and the apartment in detail.*

*7. Will the use adversely affect the ground water?*

*- No. The apartment will have no effect on the ground water because it has existed for the past ten years and hasn't had any effect.*

145 D. Kirkwood asked if he will change the foundation at all. No.  
 146 He further asked if there will be any grading done. No.  
 147  
 148 J. Quinn asked – will there be a total of four bedrooms?  
 149 C. Gagnon answered there will be four bedrooms in the main house and one bedroom in the apartment.  
 150 J. Quinn asked if the septic will support that. Yes, that has been signed off and an additional septic was  
 151 added. That’s one thing the previous owner did properly.  
 152  
 153 Ron Nelson of 14 Saddle Hill Rd.  
 154 Will there be any exterior improvements? Lighting? Separate access?  
 155 Mr. Gagnon replied that the side door that was always there will remain the access to the apartment.  
 156 The lighting over the side door is the only exterior lighting.  
 157 Some large trees were removed, but that has already been done.  
 158  
 159 The next case was read by J. Taggart.  
 160 **3. Case #PZ5312-082514 – Equitable Waiver**  
 161 **James & Lori Egersheim, 24 Border Street, PIN # 014-004-000** – requests an equitable waiver for an  
 162 existing pool which was constructed over 10 years ago located 10 feet from the side property line where  
 163 a setback of 20 feet is required.  
 164  
 165 D. Kirkwood stated that an aerial view of the property was displayed on the projection screen.  
 166  
 167 James Egersheim presented his case. Craig Hone of 20 Border St. joined him at the presenter’s table.  
 168 Mr. Egersheim received a letter from the town notifying him of the pool complaint. He came to the town  
 169 hall to find out the next steps. The pool has been there for longer than 10 years so he sent in an  
 170 application for an equitable waiver.  
 171 He originally purchased the pool in March of 2004. The excavation was begun when he wasn’t home and  
 172 when he saw how close it was to the property line, he spoke to his direct neighbor to see if he had a  
 173 problem with it and he didn’t.  
 174 Charlie Guidmore, who was the neighbor at the time, believed that the property line was to the left of  
 175 the telephone pole so the pool portion is probably within the 20’ setback, but the 2’ side decking extends  
 176 beyond. Mr. Egersheim further explained while looking at the visual slides that you can’t see the pool  
 177 from the street because it is inside the boundary of the house and does not extend beyond it.  
 178  
 179 J. Quinn inquired about the setback requirements.  
 180 The board discussed the regulation which requires the setback. C. Mailloux further explained that either  
 181 a variance or equitable waiver can be sought. One way to receive approval for an equitable waiver is to  
 182 prove these two criteria: the violation has been there 10 years or more and there was no enforcement  
 183 history or complaint in that time. The board needs to validate that the pool has been there more than  
 184 10 years and if any enforcement has been done in that time. C. Mailloux stated she could not find any  
 185 proof of complaint prior to 2014.  
 186 Mr. Egersheim explained that he purchased the pool on 3-21-04 and it was installed in the first week of  
 187 April of 2004. He showed the receipt/ purchase agreement of the pool as evidence.  
 188 R. Rowe asked Mr. Egersheim if the pool was moved in 10ft, would it be any quieter or use less water?  
 189 No.  
 190 Mr. Egersheim was asked about the cost of moving the pool.  
 191 It cost him \$17,000 to install it 10 years ago and the company no longer exists so he’d have to find  
 192 someone to come in and move it.

193 In addition, he explained that the pool is used every day all summer long by the whole neighborhood  
 194 and it has been a real asset to the neighborhood which otherwise does not have recreational options.  
 195  
 196 Keith Healey of 23 Border St.  
 197 Mr. Healey was in attendance in support of Mr. Egersheim and disagrees with the complaint.  
 198  
 199 Kevin (?) of 26 Border St.  
 200 This abutter has lived there for 12 years. He backs up everything Mr. Egersheim said. His kids grew up  
 201 swimming in the pool and now his grandkids do too.  
 202  
 203 C. Vars moved to go into deliberations. J. Taggart seconded. Vote: All in favor  
 204  
 205 **DELIBERATIONS:**  
 206 C. Vars voted for J. Ramsay  
 207  
 208 **1. Case #PZ5445-100214 – Variance**  
 209 J. Taggart moved no regional impact. C. Vars seconded. Vote: All in favor  
 210 Discussion:  
 211 J. Taggart the discrepancy between 244 and 300 ft. is immaterial. It's not half the distance. The property  
 212 is conforming.  
 213 D. Kirkwood the only issue is the sightline.  
 214  
 215 1. The Variance will not be contrary to the public interest.  
 216 C. Vars true it's an existing structure that's not objectionable to nearby properties. Testimony was given  
 217 that you can't tell the apartment is there  
 218 R. Rowe true  
 219 J. Quinn true  
 220 J. Taggart true  
 221 D. Kirkwood true  
 222 5 True  
 223  
 224 2. The Variance is consistent with the spirit and intent of the Ordinance.  
 225 J. Taggart true the ordinance speaks to public safety and the footprint with regards to overcrowding.  
 226 The footprint doesn't change so the overcrowding issue is moot. The driveway stays the same.  
 227 R. Rowe true  
 228 J. Quinn true the footprint matches the current house  
 229 C. Vars true  
 230 D. Kirkwood true  
 231 5 True  
 232  
 233 3. Substantial justice is done.  
 234 J. Quinn The applicant bought the property thinking it had approval for the apartment. Approval would  
 235 be fair.  
 236 R. Rowe true any harm to the public is no different than before since it's been there many years  
 237 C. Vars true  
 238 J. Taggart true agree with Bob and Jim

239 D. Kirkwood it's a difference in 56' of site distance than what's required. It's not 50' in one direction and  
 240 300' in the other. It's a reasonable, acceptable, safe sightline. And it's existed in that condition for a long  
 241 time with no considerable amount of accidents. Justice would be done by granting the variance.  
 242 5 True  
 243  
 244 4. The values of the surrounding properties will not be diminished.  
 245 R. Rowe true heard from the witnesses that the owner has improved the property  
 246 C. Vars true  
 247 J. Taggart true  
 248 J. Quinn true he's improving the property  
 249 D. Kirkwood true  
 250 5 True  
 251  
 252 5. Literal enforcement of the provisions of the Ordinance would result an unnecessary hardship.  
 253 J. Taggart true a special condition of the property is that it's constrained along the front edge of  
 254 Schoolhouse Rd. for whatever reason. It does not threaten the public safety so if literally enforced, it  
 255 would be a hardship.  
 256 C. Vars true if the home had been built further back, there would be more than enough frontage. D.  
 257 Kirkwood clarified that the frontage is the distance in feet the property has along the road.  
 258 R. Rowe true  
 259 J. Quinn true reasonable use  
 260 D. Kirkwood true  
 261 5 True  
 262 J. Taggart when looking at the lots on the map, if this one was squared off, it would be the same size as  
 263 the other lots. The board spent some time looking at the aerial view of the neighborhood property lines.  
 264  
 265 D. Kirkwood stated that having passed all of the tests, the request for variance is granted.  
 266  
 267 **2. Case #PZ5186-071814 – Special Exception**  
 268 J. Taggart moved no regional impact. C. Vars seconded. Vote: All in favor  
 269 Discussion: none  
 270  
 271 1. Is the use allowed by special exception in the Zoning District?  
 272 J. Taggart true clearly an allowed use  
 273 C. Vars true  
 274 R. Rowe true  
 275 J. Quinn true  
 276 D. Kirkwood true  
 277 5 True  
 278  
 279 2. Is the property in conformance with the dimensional requirements of the zoning, and is the use  
 280 compatible with the Amherst Master Plan?  
 281 C. Vars determined that the property and house are in conformance and he doesn't see any issues with  
 282 the Master Plan.  
 283 J. Quinn true  
 284 R. Rowe true  
 285 J. Taggart true agree with Charlie  
 286 D. Kirkwood true

287 5 True  
 288  
 289 3. Is there a safe pedestrian and vehicular access?  
 290 R. Rowe true  
 291 J. Quinn true  
 292 J. Taggart true and testimony was given that there has been an improvement over the previous access  
 293 that was used  
 294 C. Vars true  
 295 D. Kirkwood true  
 296 5 True  
 297  
 298 4. Will there be no significant adverse impacts resulting from the proposed use on safety and general  
 299 welfare of the neighborhood and the town?  
 300 J. Quinn true abutter testified they were unaware the apartment was there and is not against it  
 301 J. Taggart true  
 302 C. Vars true  
 303 R. Rowe true  
 304 D. Kirkwood true testimony from abutters that the renovations that are going on now have improved  
 305 the overall neighborhood.  
 306 5 True  
 307  
 308 5. Will the use be more objectionable to nearby properties by reason of noise, fumes, or inappropriate  
 309 lighting than is existing now?  
 310 J. Taggart true unique circumstance – accessory apartment is there now although nonconforming.  
 311 Circumstance will be no more objectionable than before  
 312 C. Vars agree with Joe  
 313 R. Rowe no more objectionable than a single family house with multiple cars  
 314 J. Quinn true  
 315 D. Kirkwood true  
 316 5 True  
 317  
 318 6. Does the plan submitted accurately depict the use and physical dimensions of the property?  
 319 C. Vars checked the plan for scale and accurate dimensions and it is satisfactory  
 320 R. Rowe true  
 321 J. Quinn true  
 322 J. Taggart true  
 323 D. Kirkwood true  
 324 5 True  
 325  
 326 7. Will the use adversely affect the ground water?  
 327 J. Taggart showed on the plan that an additional tank was added to the sewage system. True  
 328 J. Quinn true  
 329 C. Vars true nothing there that would affect the groundwater any different than it has been  
 330 R. Rowe true  
 331 D. Kirkwood true no change to the topography of the lot that would change the water flow  
 332 5 True  
 333  
 334

335 J. Quinn asked if the board wanted to put conditions on the approval regarding rental of the apartment.  
 336 R. Rowe stated he's not sure it can be restricted.  
 337 D. Kirkwood mentioned the intent was stated to not be a rental.  
 338 J. Taggart one of the requirements for accessory apartment is that it be accessible to the main home and  
 339 that can limit the rental possibility.  
 340  
 341 D. Kirkwood stated that having passed all of the tests, the request for special exception is granted.  
 342  
 343 **3. Case #PZ5312-082514 –Equitable Waiver**  
 344 J. Taggart moved no regional impact. C. Vars seconded. Vote: All in favor  
 345 Discussion:  
 346 J. Taggart asked how the board will proceed procedurally. The board discussed the RSA and concluded  
 347 that the applicant needs to prove they meet I(c), I(d) and II of the 674:33-a Equitable Waiver of  
 348 Dimensional Requirement.  
 349  
 350 Requirement 1- Section II: the violation has existed for 10 years or more, and that no enforcement  
 351 action, including written notice of violation, has been commenced against the violation during that time  
 352 by the municipality or any person directly affected.  
 353 R. Rowe yes been in existence over 10 years with no municipal enforcement, just a neighbor complaint  
 354 so true.  
 355 J. Quinn true  
 356 C. Vars true  
 357 J. Taggart true  
 358 D. Kirkwood the complaint was recently filed – after the 10 years were up.  
 359 5 True  
 360  
 361 Requirement 2- Section I(c): the physical or dimensional violation does not constitute a public or private  
 362 nuisance, nor diminish the value of other property in the area, nor interfere with or adversely affect any  
 363 present or permissible future uses of any such property.  
 364 J. Quinn true the pool has been an asset to the neighborhood and all abutters here tonight spoke highly  
 365 of it and there were no complaints  
 366 C. Vars true  
 367 R. Rowe true  
 368 J. Taggart true  
 369 D. Kirkwood provides recreational activity for the neighborhood which proves it's not a public nuisance.  
 370 5 True  
 371  
 372 Requirement 3-Section I(d): due to the degree of past construction or investment made in ignorance of  
 373 the facts constituting the violation, the cost of correction so far outweighs any public benefit to be  
 374 gained, that it would be inequitable to require the violation to be corrected.  
 375 J. Taggart true costs would be significant as testified by the applicant. Don't see any harm to the public  
 376 in general by keeping it where it is  
 377 C. Vars true there will be no different outcome of noise, or children's enjoyment if moved and it is  
 378 behind the house and not visible.  
 379 R. Rowe true and the applicant did not intentionally put it there to be in violation  
 380 J. Quinn true  
 381 D. Kirkwood true  
 382 5 True



383 After passing the tests, the chair declared that the application has been approved.  
 384 C. Mailloux will draft the document and the board members can come into the office to sign it.  
 385  
 386 C. Vars moved to come out of deliberations. J. Taggart seconded. Vote: All in favor  
 387  
 388 **Other Business:**

389 **1. Minutes: September 16, 2014**  
 390 R. Rowe moved to accept the minutes of September 16<sup>th</sup> as submitted. J. Taggart seconded.  
 391 D. Kirkwood made two alterations.  
 392 Vote: 4 in favor to accept the altered minutes. J. Taggart abstained  
 393  
 394 D. Kirkwood proposed a topic for discussion.  
 395 The board policy is that plans should be submitted with a scale and stamped by an engineer. If a case  
 396 presents itself where the scale is not necessary, does the board exempt them from providing it?  
 397 R. Rowe hates to make the applicant spend the money, but in order for the board to function, there  
 398 needs to be a scale drawing.  
 399 D. Kirkwood prefers to err on the side of requiring it and then make exceptions as necessary.  
 400 J. Taggart asked if the board would then have to meet to approve that an applicant does not need to  
 401 provide a scale drawing.  
 402 C. Mailloux would like the board to clarify their policy and she will advise applicants based on that. She  
 403 can explain that providing a scale drawing is policy, and if they don't want to do it that is up to them. If  
 404 they want to be approved in one meeting, it's best to have it. Otherwise, their case may be tabled to  
 405 provide more information.  
 406  
 407 C. Vars wanted to clarify the terminology of the scale. Engineering plans have scales. It's not standard  
 408 practice to put one on a house plan (architectural plan). The board discussed the terminologies and  
 409 what they want to require.  
 410 C. Mailloux suggested that not allowing reduced copies may solve the issue. Some copies may be  
 411 reduced for the board member packets, but originals need to be submitted with the application.  
 412 D. Kirkwood said if the ZBA requires the stamped scaled dimensional drawing, one of four results will  
 413 occur:  
 414 1.The applicant will come with all proper documents.  
 415 2.The applicant will come without all proper documents and possibly get declined by either C. Mailloux  
 416 or the ZBA.  
 417 3.The applicant will come without all proper documents and after hearing the case the board will deem  
 418 the documents are not necessary  
 419 4.The applicant will petition the board ahead of time to except them from having to provide the scaled  
 420 documents  
 421 R. Panasiti asked the job requirements of the zoning board: do the ZBA members need to be able to  
 422 read these drawings and confirm they are accurate?  
 423 D. Kirkwood answered if the drawing is submitted as evidence, the ZBA needs to be able to read it and  
 424 ask questions as needed. The ZBA needs to be able to evaluate it. If they feel it's beyond the board's  
 425 expertise to evaluate it, they can bring in an expert.  
 426  
 427  
 428

429 J. Taggart has enough confidence in the community development director to enforce the rules and  
430 procedures of this board and to properly advise the applicants that in certain cases the ZBA has granted  
431 applications without the required documents, but the applicant should know that the case may not be  
432 granted or may be tabled until more information can be provided.  
433  
434 R. Rowe mentioned that the ZBA doesn't ask for topographical maps, but sometimes they are needed.  
435 D. Kirkwood replied that the board can request that information if needed.  
436  
437 D. Kirkwood summed that the ZBA prefers to have plans with an engineer stamp and scale and the ZBA  
438 has the ability to waive the requirement. J. Taggart clarified that C. Mailloux won't reject an application  
439 if the document is not included, but she can advise the applicant as to what the ZBA will be looking for  
440 from the applicant and what results may come of each option.  
441 R. Panasiti asked if Amherst is similar to other communities in what they require of an applicant. C.  
442 Mailloux said yes. Some communities require a stamped plan in order to come before the board, and  
443 some waive the requirement in certain instances.  
444  
445 C. Mailloux stated that the next meeting on November 18<sup>th</sup> will need to be in another meeting space.  
446 She is working with the school to see if it can be there.  
447  
448 R. Rowe moved to adjourn at 9:48pm. C. Vars seconded. Vote: All in favor.  
449  
450 Respectfully submitted,  
451 Jessica Marchant