

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

ATTENDEES: Jamie Ramsay, Joe Taggart- Vice Chair, James Quinn, Charlie Vars (Alt), Wil Sullivan (Alt) and Sarah Marchant - Community Development Director

J. Taggart took the position of Chairman in the absence of Doug Kirkwood, called the meeting to order at 7:06pm, introduced the board members and explained the ZBA process.

The case was read by J. Ramsay.

Case #PZ 4708 – Variance

Brian & Marta Sullivan, 16 Damon Pond, PIN# 010-053-000, are requesting a variance from the Amherst Zoning Code to allow a relocation of a shed within the 100' buffer of the Public Water Protection Wetlands, in the Residential/Rural Zone.

It was stated by J. Taggart that C. Vars will vote for R. Rowe and W. Sullivan will vote for D. Kirkwood.

B. Sullivan and M. Sullivan took their seats at the table and M. Sullivan began to present their case by addressing the five questions thusly:

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

There is no significant threat to the public health, safety or welfare that would outweigh the applicant's property rights and is therefore not contrary to the public interest. As the courts have stated, to be contrary to the public interest the variance must unduly and to a marked degree conflict with the ordinance such that it violates the ordinance's basic zoning objective. This does not occur because the significant elevation of the shed from the pond creates a unique situation and does not impact the buffer zone in any way. The location of the shed does not negatively affect the intent of the public water protection wetlands buffer.

2. The spirit of the ordinance is observed.

The spirit of the ordinance is to have in place a buffer zone to protect public water from contamination. This shed has been built with the intent to maintain an intact buffer zone. This has been accomplished, the steep incline on which both the house and shed are built is significantly elevated from the pond and all negative environmental impact from these dwellings is negated. The buffer zone is supported naturally by the unusually steep topography of the lot. The character of the neighborhood has not been affected and no public rights have been violated.

3. Substantial justice.

The benefit of the shed and its specific location to the applicant are clearly evident. The topography of this lot and the disability of Brian Sullivan as well as Kinnon Ryan (our son) have been noted (see attached addendums). There has been a prior issuance of a "variance for the handicapped" to allow this shed to be constructed within 100 feet of Damon Pond. Granting this variance now will pose no harm to the general public or other individuals.

4. Diminution of property values.

The shed is in character with the existing house on the property (see photos). It is one of numerous preexisting sheds on Damon Pond. There is no foreseen diminution of surrounding property values as a result of its existence.

5. Denial of variance would result in unnecessary hardship.

The photographs which accompany this packet offer a visual explanation for the location of this shed on the unique lot at 16 Damon Road. The topography is such that the terrain makes most areas inaccessible to Brian Sullivan and Kinnon Ryan. This has left no other location to build a shed. The shed is already in existence and has caused no hardship to the neighbors. It is reasonably located taking the topography and the disability of the owner into consideration.

In summary, there are three key factors which make the issuance of a variance reasonable:

- a. The shed is located at a significant elevation from the pond and thus not affecting the buffer zone in a negative way.
- b. A preexisting variance for the handicapped has been granted for this shed and proves there would be unnecessary hardship if a variance were not granted.
- c. The unique topography of this lot offers no other reasonable place to locate a shed.

When M. Sullivan completed her statement, J. Taggart asked the board members if they had any questions.

J. Ramsay asked for some history of the shed.

M. Sullivan responded that the shed was built years ago. There are neighbors with similar sheds so they didn't realize there was an issue. It was later brought to their attention that it was in the 100' buffer zone and when they applied for the variance, they applied for the handicapped variance at that time because they were concentrating on the health issues. The shed is used for storage and B. Sullivan has disabilities and can't climb the grade any longer. They are currently seeking the permanent variance.

89 J. Ramsay asked if the shed was preexisting. Yes, it was.

90 C. Vars asked how long it's been since they applied for the handicapped variance. It has been 2.5
91 years.

92 J. Quinn asked if the shed has ever been moved, or if it has always been in the same spot. It has
93 always been in the same spot.

94 J. Quinn asked S. Marchant what the difference is between the variance they have and the
95 variance they are seeking. S. Marchant responded that the handicapped variance runs only with
96 the owners, but the regular variance stays with the land. Also, there is no hardship question
97 required for the handicapped variance.

98

99 W. Sullivan asked if the shed will interfere with the water flow along the grade. J. Taggart
100 showed a photo that was submitted and confirmed that it will not. J. Taggart asked S. Marchant if
101 the 100' buffer is measured in horizontal measurement. She confirmed that it is. J. Taggart
102 pointed out that since the grade is about 45 degrees, (which was confirmed by the homeowner),
103 the water is probably travelling close to 100' even though it's only measured around 65' on the
104 map. Due to the rise and run, the length of the hypotenuse is longer than the two-dimensional
105 distance on the map.

106

107 DELIBERATIONS

108 J. Ramsay moved to go into deliberations. W. Sullivan seconded. Vote Unanimous

109 J. Ramsay moved no regional impact. C. Vars seconded.

110

111 DISCUSSION

112 J. Taggart pointed out that the shed only touches 2" of ground.

113 C. Vars mentioned that there is no kitchen or bathroom in the shed that would interfere with the
114 wetlands.

115 J. Taggart also mentioned that the shed is set even further back than the house.

116

117 J. Taggart stated, for the record, that although the physical handicap was mentioned in the
118 application, for voting purposes, he is going to focus on the hardship issue.

119

120 Conclusions [RSA 674:33, I (b)]:

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

122 C. Vars - not a threat to health and safety. J. Ramsay agrees for the same reason. W. Sullivan –
123 agree. J. Quinn agrees with Charlie. The building is further back than the house and is not going to
124 create a problem.

125 5 True

126

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

128 J. Quinn- the spirit of Ordinance is observed. The shed is further back and it's a steep lot. W.
129 Sullivan agrees. J. Ramsay agrees. C. Vars agrees and it's on 1/3 of an acre rather than a 2 acre lot
130 on which the ordinance was based.

131 5 True

132

133 3. Substantial justice is done. Discussion:

134 J. Ramsay - yes because they will be able to use their property to their full enjoyment. They are

135 asking for a variance that will stay with the property and we won't be revisiting the question

136 again. J. Taggart –they are currently operating under variance for handicap, true. W. Sullivan true.

137 J. Quinn true- there are no abutters here to complain, so there must not be an issue. C. Vars true

138 - agree with J. Quinn.

139 5 True

140

141 4. The values of surrounding properties will not be diminished. Discussion:

142 W. Sullivan – yes, this use wouldn't affect value. For these issues, usually the abutters are the

143 ones discussing diminution and there are none here and that speaks volumes. All agree.

144 5 True

145

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

147 hardship. Discussion:

148 W. Sullivan - what's unique is the topography. J. Quinn agrees. C. Vars – they have proven there is

149 an unnecessary hardship with both the land and the situation.

150 5 true.

151

152 J. Taggart stated there is no need for test B.

153 Having passed the 5 tests, it is the decision of the board to grant the variance with no conditions.

154 C. Vars moved to come out of deliberations. J. Ramsay seconded. Vote Unanimous.

155 The minutes on the agenda were deferred since the chair was not present.

156 Other business:

157 S. Marchant reported that the TV Company that has been filming the town meetings has run out

158 of volunteers. Therefore, the meetings will not be broadcast for the foreseeable future.

159 C. Vars gave S. Marchant two corrections from the previous minutes so they may be amended

160 prior to the next meeting.

161 C. Vars moved to adjourn at 7:40pm. J. Ramsay seconded. Vote Unanimous.

162 Respectfully submitted,

163 Jessica Marchant

