

Town of Amherst  
Zoning Board of Adjustment  
Tuesday December 15, 2015

ATTENDEES: D. Kirkwood, R. Rowe, C. Vars, R. Panasiti (Alt), K. Shea, A. Buchanan (Alt) and C. Mailloux-Community Development Director

D. Kirkwood called the meeting to order at 7:05pm, explained the ZBA process and introduced the board members.

**New Business:**

**Case #: PZ6808 – Appeal of Administrative Decision Kevin J. Grasset (Owner) – Requesting an Appeal of an Administrative Decision made by the Zoning Administrator on August 28, 2015 regarding the expansion of a pre-existing non-conforming use. 75 Merrimack Road, PIN# 004-024-000, Zoned Rural Residential.**

In a letter dated August 28, 2015, C. Mailloux determined that Kevin J. Grasset Excavation, LLC is a pre-existing non-conforming use allowed under Section 3.2 of the Zoning Ordinance. However, the recent use of the property as a staging area for vehicles and equipment other than those owned by Grasset Excavation is an expansion of the pre-existing use that does have a substantially different impact on the residential neighborhood due to the volume of truck traffic and material storage on the site for that use.

The ZBA asked C. Mailloux to present the timeline of events. She stated in June 2015 her department received a complaint about the expansion of commercial activity at 75 Merrimack Rd. She reached out to the owner to inform him of the complaint and ask him to provide documentation of the existing business on the property.

She had done some research and found earth removal permits from the 1970s and 1980s as well as gravel pit documents. There weren't any documents evidencing commercial use on the property. Mr. Grasset provided historical documents back to 1949 showing the Town was paying Oliver Merrill for services leading to the determination that the property is a preexisting non-conforming property for commercial use. Preexisting non-conforming uses can continue to exist and can even expand. However, the zoning ordinance states the proposed change will have no substantial impact to the neighborhood and after discussions with the parties involved, she determined the staging and stockpiling areas used by Continental Paving and other third parties on the site has had a substantial impact on the neighborhood so that is how she made her determination.

There are no good documents in the town files. Mr. Grasset may have more information to provide tonight, but she based her decision on the information she could find at the time.

R. Panasiti asked for clarification of what was going on there in 1949. C. Mailloux stated the applicant provided town reports from 1949, 1950 and 1952 that showed the Town was paying Oliver Merrill for services such as tractor and loader rentals while he was operating from that location. This was determined to be commercial use by C. Mailloux. There were no documents providing the volume or scale of that use at the time. The gravel pit is separate from the use. That is permitted use by the BOS.

48 Silas Little is representing Mr. Grasset in the matter.

49 He stated Oliver Merrill bought the property in 1946. Mr. Grasset bought it from Geneva Merrill in  
50 1998. Oliver Merrill was Mr. Grasset's great uncle and Mr. Grasset has grown up in Amherst and at the  
51 property his whole life.

52 Zoning was adopted in 1963. The property was used as a gravel pit and staging area prior to that time.  
53 The property is intermittently used for staging when projects are going on to store materials and trucks  
54 so they don't need to be driven back to Londonderry each day. He showed the board photos of where  
55 people generally park and store materials on the site.

56  
57 Mr. Little stated the problem is the evidence is anecdotal. Mr. Grasset believes this has been happening  
58 on the property since prior to 1963. His uncle was a contractor and excavator. In 1998 Mr. Grasset  
59 bought the property for the purpose of running the business.

60 The business is intermittent in use. People could park there for a year or a week depending on the job.  
61 He listed a number of companies that have used the space for staging- including the Town of Amherst.  
62 There's no documentation, but that is the nature of this type of business. This has been going on for  
63 many years at that location.

64 What happened there this year is no different than what has always happened since Oliver Merrill  
65 owned the property when Mr. Grasset was growing up. The Zoning Administrator's determination  
66 about the expansion is incorrect.

67  
68 K. Shea stated he has read some of the minutes and asked how long the operation was permitted for in  
69 1976. Two weeks. What was the permit granted for? Earth removal granted by the BOS. There is no  
70 current permit for that at the site.

71  
72 D. Kirkwood stated they are looking for factual written information that can be located proving what  
73 was permitted on the property.

74  
75 Mr. Little stated they're not going to find documentation for expansion of a nonconforming use  
76 especially for a business like this. This has been ongoing for more than 50 years. There aren't  
77 documents- the information will come from people recollecting what they can.

78  
79 A. Buchanan asked if there is any evidence prior to 1963 that there was material owned by others on the  
80 site. They are trying to determine what was going on at that property prior to 1963. The only evidence is  
81 Mr. Grasset's testimony.

82  
83 Public Comment

84 Bob Baker 91 Merrimack Rd- abutter

85 He has lived there 35 years. He knew Oliver Merrill and is not the person who complained. He  
86 understands the issue is whether the use of the land has changed or not.

87 He listed recent activities on the site:

88 Continental Pavement-town paving- large vehicles

89 The sound echoes down behind his own property

90 Sifting – assuming to get the stones out

91 Bags of loam visible from the road

92 Operations from 7am-5 or 6pm -loaders , excavators

93 Recently- increase of very big trucks on Merrimack rd. and increase of noise.

In Mr. Grasset's favor, he does things for the town such as letting the fire department use the pond for training. Mr. Baker has never had any problems with Mr. Grasset- he is a decent citizen. In the past few years, piles have increased on the property and the noise has increased, but maybe there's an agreement that can be made between the owner and the abutters to make everyone happy.

D. Kirkwood stated the ZBA has a limited role in tonight's ruling. They are not here to discuss granting permits or uses, they are here to decide if the Community Development Director misinterpreted the ordinance. Yes, there might be reason for the abutters to talk with Mr. Grasset at a separate time and place, but the ZBA doesn't have any authority over that at this time.

83 Merrimack Rd

The noise has changed over the last few years. Rock sifting is loud and in their back yard.

16 Pine Acres Rd

The type of work on the property hasn't changed since Oliver Merrill, but the scope has changed. She is the closest abutter. The neighbors would prefer to have the hours and days of operation limited. She realizes that is not what this forum is for.

The operation has exceeded the size of the land and it is an environmentally important piece of land.

Mr. Baker

The administrator is correct. There needs to be a variance for these activities. There is activity that is going on now that wasn't going on back when Oliver Merrill was running it -or even when Mr. Grasset was running it prior to about five years ago. It is far beyond that.

J. Ramsay arrived at this time.

#### **DELIBERATIONS:**

**A. Buchanan moved and C. Vars seconded to go into deliberations. Vote Unanimous**

**R. Rowe moved no regional impact. K. Shea seconded. Vote Unanimous**

#### **DISCUSSION**

K. Shea stated it's an enforcement issue. The non-conforming small operation with responsible and respectful use has expired. The operation is too big at this point. He supports the zoning administrator's decision.

R. Rowe the biggest change is the residential that has come up around it. Mr. Grasset has a right to continue his non-conforming use as well as a reasonable expansion under the law. But it has gone too far. Zoning administrator was right- it's well past a reasonable expansion.

D. Kirkwood has noticed in the last three years the use seems to have expanded quite a bit. The question is, is it too much of an expansion. That's arguable. Did the administrator misinterpret the ordinance? Based on what we've heard, and given the information that was and is available, she didn't make a mistake.

R. Panasiti asked about the zoning of 1963 and if the residential zone was put there with no consideration of the business. D. Kirkwood stated there wasn't much to that zoning.

A. Buchanan stated the zoning took effect from that point forward.

D. Kirkwood stated the test is: Did the Applicant demonstrate that there was an error in the interpretation of the ordinance by the Community Development Director?

D. Kirkwood stated A. Buchanan will vote for J. Ramsay.

A. Buchanan believes the administrator made the proper decision based on evidence.

R. Rowe it was the correct decision based on the records

K. Shea agrees. No evidence presented tonight to overturn the decision

C. Vars is reluctant to move against a business that's been going on for a long time, but doesn't think evidence was provided to overturn the decision

D. Kirkwood based on information she had available to her, the zoning administrator made the correct decision

0 True 5 Not True

D. Kirkwood stated the application failed the test and the application is denied.

**A. Buchanan moved and R. Panasiti seconded to come out of deliberations. Vote Unanimous**

Other Business:

**Minutes: November 17, 2015**

Throughout change *Mobile* to *Mobil*

**A. Buchanan moved and C. Vars seconded to accept the minutes of November 17<sup>th</sup> as amended.**

**Vote: all in favor with D. Kirkwood and J. Ramsay abstaining.**

A. Buchanan asked if there is something the applicant can apply for to obtain approval for short term projects. C. Mailloux said if the use is to be expanded; it would require a variance from the ZBA. If the use is changed, a site plan goes to the Planning Board. If the use is not an expansion and it is intermittent and is consistent with the preexisting use on the property, it could be possible to obtain some sort of short term permission.

R. Rowe asked if the applicant can remove the piles that have been stored there without an earth removal permit. C. Mailloux will look at that to see if earth removal applies only to earth removed from that location or if it includes earth that has been brought in.

**A. Buchanan moved to adjourn at 8:00pm. J. Ramsay seconded. Vote Unanimous**

Respectfully submitted,

Jessica Marchant