

Town of Amherst  
Zoning Board of Adjustment  
Tuesday November 17, 2015

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

R. Rowe called the meeting to order at 7:03pm, explained the ZBA process and introduced the board members.

**Old Business:**

**1. CASE # PZ6636 – Variance Salas Realty, LLC (Owner), Jelany Salas (Applicant) – Request for approval of a variance to construct an addition consisting of a 438 square foot vehicle wash bay and a 220 square foot storage area within the side yard setback. 78 Route 101A, PIN# 002-069-000, Zoned Commercial.**

J. Prunier, Attorney representing the owner, presented the case.

The property is located at 78 Amherst St. on the easterly side across from Walmart. The building is ell shaped. Part of the building is residential and has a bakery. The other part is the car dealership. The applicant would like to remove the residential part of the ell and add 658 sq. ft. to include car wash and storage areas onto the back of the remaining building.

They want the addition there because it is away from Amherst St. The proposed sales office will be in the front, the repair shop will be next, and then the car wash and the storage will be on the end. The corner of the building is right up against the property line. The addition will be about 6' from the property line, but still within the setback. This proposed formation will keep the building functioning as it was and the addition placement will keep the building in a straight line. The property is legal nonconforming because it has been in existence for such a long time and approved by the town. It is also nonconforming because of the rear setback for the building.

The focus is to try to keep the activity away from Amherst St. as well as put the building in a straight line which will allow for site development in the rest of the lot. The use is staying the same.

They have tried to meet the spirit of the ordinance by keeping the building in a straight line and away from the property line. The main building is to be redesigned and reconstructed in that area.

R. Rowe asked him to address the tests.

J. Prunier read from the application as follows:

1. The major structure to which the additions are going to be attached to is already constructed. The front part/ house section of the main building is going to be removed. The additions are going to be used as accessory structures to the main building. The attempt is to have a balance between the required setbacks and the aesthetics of the total structure. There is an attempt to meet the requirements of the intent of the ordinance for safety and open space. There will be circulation in the rear of the new structures.

2. The construction is attempting to meet the spirit of the ordinance as the main structure is on the rear setback. The addition will have space in the rear. There will be an area for safety vehicles and personnel to access the rear of the building.

3. The granting of the variance will allow the applicant to use its property for the functions that are already operating as a business. The granting of the variance will allow the applicant to better use his building, operate his business, and serve the general public.

4. The new building will match the material of the main structure. Fencing and landscaping features will also be added. The new construction will not diminish the value of the surrounding properties- in fact it will be improved.

5. The purpose of the two small buildings is to aid the business already existing to better serve the general public. The special condition of the location of the main structure makes it difficult to add the services warranted and demanded by the applicant's customers without locating the buildings in the proposed location. With the buildings in the rear, the addition makes an aesthetically pleasing building. It is a reasonable addition to keep the main building in its present location while at the same time, being able to provide the public with the services that are required of this business.

A. Buchanan asked what will be done with the rest of the site. It will be a car dealership. He asked why the storage and car wash can't go to the east. The answer was that they want to put it in the rear away from the road and the general public.

R. Panasiti asked if there is concrete pad under the building that is being removed.

Stacy from Turnstone addressed the board. The first section, the one being torn down, is the oldest and there is no foundation under it. It is dirt and wood. There is a full basement in the residential section. Regarding drainage, they are working with K. Anderson of Meridian and the plan will have to go before the Planning Board. Yes, there are some trees between it and the neighboring property, which is also commercial.

The board reviewed a photo that was part of the presentation.

C. Vars understands the aesthetics perspective, but how is it a variance requirement when there is plenty of room within the footprint of the building envelope? Where is the hardship they have to deal with on that site? They should move the proposed addition straight east and out of the setback. The new portion can be corner to corner with the repair shop.

No public comment.

**2. CASE # PZ6637 – Variance Energy North Group (Owner), Blackdog Builders (Applicant) – Request for approval of a variance to allow a second free standing sign where only one is permitted. 75 Route 101A, PIN# 002-066-002, Zoned Commercial.**

N. Barrett came forward to represent the owner and present the case for Blackdog Builders. Blackdog is a design built firm that services southern NH and northern MA. They have two offices: Salem NH and Amherst NH.

History: the current masterplan was created in 1992 when there were 3 commercial businesses and 2 buildings on the site. When Blackdog leased one of the buildings in 2009, 2 of the 3 businesses relocated. Therefore, the property should not require a sign masterplan.

The applicant is requesting approval for one freestanding sign located adjacent to Rt. 101A that follows all of the regulations in the design guidelines.

He addressed the tests as follows:

1. The allowance of additional signage will allow the public to better recognize the place of business while simultaneously providing visibility for patrons to easily navigate to the site as it is only directly accessible from Route 101A (eastbound). This will assist in the flow of traffic and at the same time decrease traffic hazards from patrons entering the site from the roadway at the last minute.

2. We feel that the request is consistent with the spirit of the ordinance and in no way is a blatant circumventing of the ordinance.

3. The benefits to both the public and the clients would be greater visibility to both insure safe ingress and egress into the site.

4. The proposed signage will in no way diminish the value of the surrounding properties. We feel that it will only increase the value of the surrounding land and will fit in well with the surrounding business and community.

5. The limited visibility and access of the site reduces Blackdog's ability to fully conduct a successful business. A successful business can only add to the quality of the community.

Numerous clients have pointed out concern that it is not easy to see the business especially when driving eastbound. There are trees there that block the area and the building is on an angle so the sign is not visible from that direction. The road sign is beyond the building and requires customers going in that direction to turn around, or use a separate service road.

R. Rowe asked if there are other businesses there. No, Blackdog has the entire building. He further asked if the Mobile sign could be utilized. N. Barrett stated the Mobile sign has recently changed to a digital sign and he didn't think there was any space below. The landlord is aware of the request for the additional sign and is not against it.

C. Mailloux explained that a sign masterplan was approved by the Planning board for this site. Sign masterplans are usually only used when there are three or more businesses on a site. It is also the only way to get an internally illuminated sign in Amherst. The original sign included Mobile and the other two tenants in the other building. Now, Mobile has their own sign. The Planning board doesn't have a say in the request for a 2<sup>nd</sup> freestanding sign, it is only allowed by variance.

R. Rowe asked if this plan was discussed with the land owner. Yes, and they approve of it and are willing to help in any way. Blackdog doesn't think it is advantageous for them to have additional signage on the Mobile sign because of the location. If a driver sees it on that sign, they are already beyond the direct ingress to the building.

R. Rowe asked if their driveway could only be accessed by travelling east, not west. Yes that is true; it can only be accessed travelling eastbound on 101A or from Airline Rd, the residential road across the street at the intersection.

A. Buchanan asked how large the property is. 3.16 acres

He also asked what the minimum acreage is for those lots in that zone. It is 1 acre.

There is about 150 ft. between the Mobile sign and the proposed Blackdog sign- they will not block each other.

A. Buchanan asked Colleen what would be allowed if that site came in today as a new application. She said it would allow for 1 sign.

K. Shea asked if the new sign Mobile put up cut Blackdog out. N. Barrett said he believes so. It moved from a two- post to a one- post style. It doesn't seem that there is an option of adding a sign there.

K. Shea asked if the intention is to just have the proposed sign. Yes, they just want the one new sign- they won't want to also add onto the Mobile sign.

C. Vars asked if the proposed sign is double sided. Yes, the logo will be on both sides. C. Vars said the proposed sign is in excess of the ordinance. It is 110 sq. ft. which exceeds the sign ordinance. He is concerned about the size and also what that may lead to for other businesses wanting the same.

C. Mailloux said typically a 32 sq. ft. wall sign and one free standing sign on the lot not to exceed 64 sq. ft. are allowed. Because the Planning board approved the existing wall signage for this property it's a unique case.

N. Barrett stated that the applicant intends to follow all of the other sign guidelines and if their sign design needs to change, they would do so. They just want to get the variance for the additional sign.

No public comment

### New Business:

**3. CASE #: PZ6762 - Variance Ellen & Richard Fallon (Owners) – Request for approval of a variance to construct a 24'x28' garage within the 50' front setback and for approval of a variance for a floor area ratio in excess of 15%. 9 Clark Avenue, PIN# 025-048- 000, Zoned Rural Residential.**

E. and R. Fallon presented their case.

They purchased the property in 2002. In 2005 they purchased an adjacent buildable lot. They split that lot hoping they could expand the house one day. They are now proposing to build a garage.

Mr. Fallon addressed the tests as follows:

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

This will not be contrary to the public interest because the garage will have no adverse effects on the health, safety or welfare of our abutters.

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

Because the variance will not affect the abutters or the neighborhood.

3. Substantial justice is done.

Justice will be done because the spirit of the ordinance will not be affected.

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

This will not diminish surrounding properties because the garage will help keep our yard clean from bikes and lawn equipment.

5. Literal enforcement of the provisions of the Ordinance would result an unnecessary hardship. Literal enforcement of this provision would result in a hardship because we have no basement or garage in our home. Storage of our belongings/ car has been very difficult. This will allow for proper storage as opposed to tarps. The aesthetic of the home would be increased.

The owner clarified that the garage will be attached to the home.

C. Vars stated the front left corner of the proposed garage is only 15' from the property line near the road. He wondered if the garage could line up to enter it straight from the road. The applicants explained the extra space they have on the side of the driveway.

R. Rowe asked if the garage could be moved back. No because of the lake and the well is back there.

K. Shea asked about abutters. C. Mailloux stated notices went out, but she hasn't heard anything.

#### **DELIBERATIONS:**

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

R. Rowe stated that R. Panasiti will vote for D. Kirkwood and A. Buchanan will vote for J. Ramsay.

#### **1. Case # PZ6636 – Variance**

**K. Shea moved and C. Vars seconded no regional impact. Vote Unanimous**

Discussion

K. Shea said he's not here to reengineer the applicant's plans. He's here to make sure their plan meets the requirements. The plan is a good one. The hardship is that the existing building is already on the property line. With the type of business they are doing, they want to have the office in the front with sales people dressed appropriately for customers. It is better for car washing to be in the back. That is understandable.

C. Vars said there is a requirement to be within the building envelope and this is outside of it. This exacerbates a situation that was started a long time ago. There is a way to do it without needing a variance.

R. Panasiti agrees with Charlie- there are other ways to do it. He also has vegetation and drainage questions that are under the Planning board's purview.

R. Rowe confirmed with Colleen that if the ZBA grants the variance, the Planning board's site plan review will be based on that approval. They won't have a say in changing that.

A. Buchanan said the present location of the building creates the problem on the lot line. The applicant is not encroaching further than the first part of the building. It is already nonconforming. Had that building not been there, he'd have a problem with it. The question is: is there cause of harm to the next lot owner. The setbacks are for safety and emergency access. The proposed addition is staying further away from the property line than the other portion of the building.

R. Rowe said in the past they have allowed the variance if the addition was not closer than the existing building. However, on this site, there is other land that is available.

237 1. The Variance will not be contrary to the public interest.  
 238 C. Vars true does not encroach further than existing building. His concern is there's plenty of other area  
 239 K. Shea true the lot is overcrowded and tough to navigate. This will improve the lot visually and  
 240 operationally  
 241 R. Panasiti true  
 242 A. Buchanan true don't think it's against the public interest  
 243 R. Rowe true  
 244 5 True  
 245  
 246 2. The Variance is consistent with the spirit and intent of the Ordinance.  
 247 K. Shea true the spirit is observed and the proposed addition is coming in from the property line  
 248 C. Vars no. there is other space available to put this in the lot  
 249 R. Panasiti true by what they presented. Existing building is further into the setback than the addition  
 250 A. Buchanan agrees with Kevin. This is not going against the spirit of the ordinance  
 251 R. Rowe true  
 252 4 True 1 Not True  
 253  
 254 3. Substantial justice is done.  
 255 A. Buchanan said the standard for justice is to balance the benefit to the applicant and the harm to the  
 256 public. true  
 257 R. Panasiti true  
 258 C. Vars true  
 259 K. Shea true  
 260 R. Rowe true  
 261 5 True  
 262  
 263 4. The values of the surrounding properties will not be diminished.  
 264 C. Vars true it will not be diminished on either side.  
 265 K. Shea true with the property improvements shown in the rendering it will be better for property values  
 266 R. Panasiti true  
 267 A. Buchanan true  
 268 R. Rowe true  
 269 5 True  
 270  
 271 5. Literal enforcement of the provisions of the Ordinance would result an unnecessary hardship.  
 272 K. Shea the special condition is that building is already on the property line. There is no fair and  
 273 substantial relationship between the ordinance and the general public because it's in the back of the  
 274 building along Rt. 101A. There's no issue there. It is reasonable. It complements the business.  
 275 C. Vars it's a reasonable use. Not true- there is room to do that building within the envelope  
 276 R. Panasiti true  
 277 A. Buchanan true  
 278 R. Rowe not true  
 279 3 True 2 Not True  
 280  
 281 R. Rowe stated that having passed all of the tests, the request for variance is granted.  
 282  
 283  
 284

285 **2. Case # PZ6637 – Variance**  
 286 **A. Buchanan moved no regional impact. K. Shea seconded. Vote Unanimous**  
 287 1. The Variance will not be contrary to the public interest.  
 288 C. Vars true  
 289 K. Shea true not contrary to public interest  
 290 R. Rowe true  
 291 A. Buchanan true  
 292 R. Panasiti true  
 293 5 True  
 294  
 295 2. The Variance is consistent with the spirit and intent of the Ordinance.  
 296 K. Shea true the spirit is observed. A single lot is being used as two lots. They are meeting the criteria of  
 297 the sign ordinance  
 298 R. Panasiti not true by design it's not in the spirit of the ordinance  
 299 A. Buchanan true  
 300 R. Rowe not true the spirit of the ordinance for 101A is safe travels as well as to give identification to  
 301 buildings, but not to have too many signs which can distract drivers.  
 302 C. Vars not true not within the spirit of the signage square footage.  
 303 2 True 3 Not True  
 304  
 305 3. Substantial justice is done.  
 306 R. Panasiti true  
 307 C. Vars true no harm to public  
 308 K. Shea no, no harm to the public. Regarding visibility and access- by putting the sign in front of the  
 309 building, going eastbound you see it right before the driveway. However if it's on Mobile sign, you can  
 310 still turn. When they see it going westbound, they've missed the chance to turn. If they see it at the  
 311 Mobile at the controlled intersection, they can turn. Not true  
 312 R. Rowe true  
 313 A. Buchanan true  
 314 4 True 1 Not true  
 315  
 316 4. The values of the surrounding properties will not be diminished.  
 317 C. Vars true no negative effect on surrounding properties  
 318 K. Shea agrees true  
 319 R. Rowe true  
 320 A. Buchanan true  
 321 R. Panasiti true  
 322 5 True  
 323  
 324 5. Literal enforcement of the provisions of the Ordinance would result an unnecessary hardship.  
 325 R. Rowe not true I have not heard that the applicant has made any effort with the landlord to make  
 326 changes. Driving west you'd have to make a turn no matter what. You might miss it going east, but you  
 327 can turn at the next street.  
 328 C. Vars agrees with Bob. Not true not distinguished from other properties. This sets precedence for  
 329 others to ask for multiple signs  
 330 K. Shea agrees  
 331 R. Panasiti if no alternatives, it would be true. But there might be other alternatives so not true  
 332 5 Not True

333 5. Part 2:  
334 R. Panasiti hardship doesn't exist. Not a special piece of property. Don't need a sign, there's one there.  
335 Not true  
336 A. Buchanan not true the property is being used- it's not being prevented from use  
337 C. Vars agrees  
338 K. Shea agrees the existing sign is in a good place  
339 R. Rowe not true  
340 5 Not True  
341  
342 R. Rowe stated that having not passed all of the tests, the request for variance is denied.  
343

344 **3. Case #: PZ6762 – Variance**

345 **C. Vars moved and A. Buchanan seconded no regional impact. Vote Unanimous**

346 Floor area ratio:

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

348 A. Buchanan true no problem with the ratio

349 R. Rowe true

350 C. Vars true

351 K. Shea true

352 R. Panasiti true

353 5 true  
354

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

356 C. Vars true

357 K. Shea true

358 R. Rowe true

359 A. Buchanan true

360 R. Panasiti true

361 5 True  
362

363 3. Substantial justice is done.

364 R. Panasiti true

365 C. Vars true

366 K. Shea true

367 R. Rowe true

368 A. Buchanan true

369 5 True  
370

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

372 C. Vars true nobody spoke against it.

373 K. Shea true

374 R. Rowe true

375 A. Buchanan true

376 R. Panasiti true

377 5 True  
378  
379



380 5. Literal enforcement of the provisions of the Ordinance would result an unnecessary hardship.  
381 R. Rowe true considering the size of lots in the area  
382 A. Buchanan true it's a reasonable use  
383 R. Panasiti true  
384 C. Vars true  
385 K. Shea true  
386 5 True  
387  
388 Setback:  
389 1. The Variance will not be contrary to the public interest.  
390 C. Vars true  
391 K. Shea true  
392 R. Rowe true  
393 A. Buchanan true  
394 R. Panasiti true  
395 5 True  
396  
397 2. The Variance is consistent with the spirit and intent of the Ordinance.  
398 K. Shea true  
399 R. Rowe true  
400 A. Buchanan true  
401 R. Panasiti true  
402 C. Vars true  
403 5 True  
404  
405 3. Substantial justice is done.  
406 R. Panasiti true  
407 A. Buchanan true benefit to the applicant far outweighs the harm to the public  
408 C. Vars true  
409 K. Shea true  
410 R. Rowe true  
411 5 True  
412  
413 4. The values of the surrounding properties will not be diminished.  
414 K. Shea true  
415 R. Rowe true  
416 A. Buchanan true  
417 R. Panasiti true  
418 C. Vars true  
419 5 True  
420  
421 5. Literal enforcement of the provisions of the Ordinance would result an unnecessary hardship.  
422 C. Vars true it is distinguished from any other lot- they added the lot and want to put a garage on it  
423 R. Panasiti true it's a reasonable use  
424 K. Shea true  
425 R. Rowe true  
426 A. Buchanan true  
427 5 True

R. Rowe stated that having passed all of the tests, the request for variance is granted.

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

**Other Business:**

**4. Discussion of Potential 2016 Zoning Amendments**

C. Mailloux mentioned the joint meeting tomorrow between the Planning and Zoning board and highlighted the discussion points.

Chair D. Kirkwood arrived at this time. He asked the board members who is planning to attend tomorrow's joint meeting.

**5. Minutes: October 20, 2015**

**R. Rowe moved and C. Vars seconded to accept the minutes of October 20<sup>th</sup> as submitted.**

**Vote: all in favor with A. Buchanan abstaining.**

**6. 2016 ZBA Meeting Schedule**

Copies of the 2016 ZBA Meeting Schedule were distributed to the board.

C. Mailloux told the board that there will be an appeal of an administrative decision on their December agenda.

**K. Shea moved to adjourn at 8:48pm. R. Panasiti seconded. Vote Unanimous**

Respectfully submitted,  
Jessica Marchant