

1                                   Town of Amherst, New Hampshire  
2                                   **Zoning Board of Adjustment**  
3                                   **Minutes**  
4                                   **May 19, 2015**

5  
6 The Amherst Zoning Board of Adjustment met on **Tuesday, May 19, 2015 at 7:00 pm** in the Barbara  
7 Landry Meeting Room in Amherst Town Hall.

8  
9 In attendance were Robert Rowe; Jamie Ramsay, Kevin Shea, Charles Vars, *Alternate*; Alex Buchanan  
10 as well as Colleen Mailloux, *Community Development Director*.

11  
12 In the absence of Chairman Doug Kirkwood, Robert Rowe served as Acting Chair for the meeting and  
13 called the meeting to order at 7:00 pm.

14  
15 **New Business:**

16 Case #: PZ6056-041515-Variance

17 Kathleen MacKinnon, 2 Limbo Lane, PIN #: 006-059-000, Zoned General Office – Requests a variance  
18 from Section 4.6D of the Zoning Ordinance to construct a two-car garage set back 26 feet from the  
19 property line where 50 feet is required.

20  
21 Present: Dwayne Andreasen on behalf of the property owner Kathleen MacKinnon.

22  
23 Acting Chair Rowe introduced each member of the Zoning Board of Adjustment to Mr. Andreasen and  
24 stated that the Board consisted of (5) individuals. He stated that state statute allows the Board to rule  
25 on requests for variances under the building ordinance. He stated that if the applicant is not successful  
26 in their application, they had 30 days to request an appeal stating the reasons for the appeal. He  
27 stated that if the appeal is granted, a rehearing is given otherwise the appeal would need to go to  
28 Superior Court.

29  
30 *Member Jamie Ramsay read the application into the record; however, for the record, he recused*  
31 *himself from discussion as he is an abutter.*

32  
33 Mr. Rowe stated that with Member Ramsay recusing himself, there would be only (4) members  
34 remaining to rule on the case. He questioned whether Mr. Andreasen wanted to continue. Mr.  
35 Andreasen asked whether three affirmative votes were needed for approval of the variance. Mr. Rowe  
36 stated “yes”.

37  
38 Discussion followed regarding the process for the appeal period and the upcoming schedule for  
39 meetings if the applicant chose to delay the hearing until a full Board was present. Mr. Rowe assured  
40 the applicant that the members who are present were experienced with the zoning ordinance. Mr.  
41 Andreasen stated that he wished to pursue the hearing based on the merits of the application and  
42 because of the timeframe for the building season.

43

44 Mr. Andreasen began by stating that 2 Limbo Lane is a 1.13 acre parcel located within the General  
45 Office zone. He stated that the triangular shaped lot is bounded to the east by Limbo Lane, to the west  
46 by Manchester Road and to the south by an abutting property situated at the intersection of Limbo  
47 Lane and Narragansett Road. He stated that the property was purchased by its current owner in 2014  
48 for occupancy as her primary residence and would remain living there through her retirement. He  
49 reported that she wished to add a detached 28'x24' garage to her home. He said that the house  
50 currently does not have any outside storage and only a small driveway where cars can be parked. He  
51 said that the property was within the wellhead protection district and the only option of placing the  
52 garage was on the right side of the house. He stated that the house was an anomaly in that while  
53 traveling north, there was a business on the right side, a church on the right and down the street were  
54 two residences. He stated that further down the street, where the house intersects with Manchester  
55 Road, there are a couple of houses visible in the winter, however, when trees are present, the property  
56 cannot be seen.

57

58 Mr. Andreasen read the following comments from the applicant into the record:

- 59 1. Granting of Variance as requested will not be contrary to the public interest: Zoning Ordinance  
60 exits to maintain an environment that is protective of public health, safety and welfare, and to  
61 preclude imposition of unreasonable burden, by an individual property owner, on abutting  
62 properties and/or the community. Specifically in this instance, benefit to the Applicant is not  
63 outweighed by implications of injury to public interest. Construction of the garage as/where  
64 proposed, at minimal lesser distance to the Limbo Lane public way, does not imply a situation  
65 of the proposed structure in such way as might impede vehicular or pedestrian travel, or as  
66 might otherwise pose threat to public health, safety, and welfare.
- 67 2. The spirit of the ordinance is observed:  
68 In furtherance to public safety and general welfare of the public, Zoning Ordinance as adopted  
69 by the Town of Amherst serves to maintain and preserve existing characteristics of zoning  
70 districts and/or neighborhoods within the Community. Construction of the proposed garage  
71 addition presents reasonable and practical solution to considerations of personal safety in  
72 entering into and exiting from the Applicant's home. As a functional and architectural  
73 enhancement to the property, the proposed garage will not alter the aesthetic character of its  
74 neighborhood surroundings and, as incident to construction, additional clearing of trees from  
75 the property is not required.
- 76 3. Substantial justice is done:  
77 Granting of this variance will allow for construction of a structure that is compliant within life  
78 safety and building codes, provides for safe and appropriate entrance to the home, and realizes  
79 full enjoyment of property by the Applicant. Addition of suitable utility and storage space to the  
80 existing residence serves to best functions of daily convenience and comfort for the Applicant  
81 by providing areas of safe interior storage for automobiles and other personal property, and  
82 also precludes views to stored personal property by abutters and the general public. Relief as  
83 sought by the Applicant is reasonable.
- 84 4. The value of surrounding properties will not be diminished:  
85 For all good reasons of personal safety, functional utility, and architectural enhancement,  
86 addition of the proposed garage shall realize tangible increase to valuation of the Applicant's

property. As such, there is strong argument to suggest that thoughtful and appropriate improvement of individual properties within a neighborhood serves to the collateral benefit of the neighborhood in its entirety.

5. Literal enforcement of the provisions of the Ordinance would result in unnecessary hardship: The property in question is subject to physical constraints that preclude construction of an attached two-car garage in any location on the property than as/where proposed. The lot and structure thereon were created prior to adoption of current Zoning Ordinance, and exist as non-compliant within restrictions of the same. The property in question is unique in consideration of its occupancy as a residence within a General Office zone, and literal enforcement of current Zoning Ordinance imposes unnecessary hardship in the Applicant's desire to realize a common reasonable expansion in full enjoyment of her property. There exists but one location...and one only.... construction of a garage. As attached to the Applicant's home, construction of a garage, as/where proposed, and as considerable in any reasonable manner, poses neither a threat to public safety nor in any other manner as might be deemed injurious to the rights of others.

Mr. Rowe asked the applicant if he would answer questions from the Board. Mr. Andreasen said he would be happy to.

Mr. Buchanan asked what was the existing square footage of the home is. Mr. Andreasen stated it is 800 square feet. Mr. Buchanan asked about the current asphalt in the area. Mr. Andreasen stated that there is currently a straight, small two car pavement (approximately 20x20' wide) that pulls straight in where the garage is being proposed. He stated that the asphalt driveway was from the previous use but is now currently grass.

Mr. Vars stated that his question relates to the garage and asked if this was just a precursive to another variance to increase the residential aspect or is it only for storage. Mr. Andreasen replied it was "only for storage". Mr. Rowe questioned whether the property use for the building was for a two bedroom. Ms. Mailloux stated that she wasn't sure if it was specified for two bedrooms from a prior variance but thinks it is for residential use. She stated that the parcel is a pre-existing non-conforming lot and that previously a portion was approved in 2012-2013 for 100% residential but didn't have the square footage.

Mr. Shea stated that he had no questions. Mr. Rowe asked Mr. Andreasen whether there was anything further to add to the presentation before the Board voted to enter into deliberations. Mr. Andreasen stated that the variance to add a two-car garage was a vast improvement in the neighborhood and very prominent. He stated that it would provide safety in the area because cars would not be sitting directly on Limbo Lane.

**MOTION: Mr. Buchanan motioned to enter into deliberations for the purpose of discussing Case #: PZ6056-041515, Mr. Vars 2<sup>ND</sup> the motion. VOTE: All in favor.**

**Mr. Buchanan moved that there was no regional impact for this case, Mr. Vars 2<sup>nd</sup> the motion. VOTE: All in favor.**

For purposes of voting members for the tests, Mr. Rowe requested that Mr. Buchanan vote in place of Mr. Ramsay and for Mr. Vars to vote in place of Mr. Quinn who is not in attendance.

**DELIBERATIONS:**

1. Case #: PZ6056-041515-Variance

The variance will not be contrary to the public interest:

Mr. Buchanan stated that the variance would not be contrary to the public interest. Mr. Vars stated his interest was with the increase only.

*VOTE: 4 True – 0 Not True*

2. The spirit of the Ordinance is observed:

*VOTE: 4-True – 0 Not True*

3. Substantial justice is done:

Mr. Buchanan felt that the spirit of the ordinance was substantial and believed that the design meets the architecture of the area. Mr. Vars was in agreement with Mr. Buchanan.

*VOTE: 4-True – 0 Not True*

4. The values of surrounding properties are not diminished:

Mr. Vars stated that the area would not be diminished by the approval of this variance. He stated it would actually enhance it.

*VOTE: 4-True – 0 Not True*

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

Mr. Buchanan stated that the property has unique circumstances. Mr. Vars stated that there are special conditions that apply in regards to the 100 foot right of way and the reduction of the existing 50 foot ROW. He stated that it made a huge difference but was in agreement with the application.

*VOTE: 4-True – 0 Not True*

Mr. Rowe reported that the request was granted. Mr. Vars moved to come out of deliberations, motion 2<sup>nd</sup> by Mr. Buchanan. *VOTE: All in favor.*

**Other Business:**

**Minutes – April 21, 2015**

The Board tabled the minutes of April 21, 2015 to the June meeting.

**Election of Officers**

Mr. Shea recommended postponing the election of officers to June, however, he expressed concern because this was the third time the Board delayed this. Mr. Rowe stated that Mr. Kirkwood would be returning in June and suggested that the Board delay this until he returns. He stated that “please beg everyone to attend the June meeting for the purpose of electing officers because if you don’t come, you will be nominated”.

**Adjournment**

Mr. Buchanan motioned to adjourn the meeting at 7:45pm, Mr. Vars 2<sup>nd</sup>. *VOTE: All in favor.*

Respectfully submitted,  
Debra A. Butcher