

**Amherst Zoning Board
Tuesday April 21, 2015**

Attendees: D. Kirkwood; Chair, K. Shea, R. Rowe, J. Ramsay, A. Buchanan (Alt), and C. Mailloux-Community Development Director

D. Kirkwood called the meeting to order at 7:07pm, introduced the board members and explained the ZBA process.

New Business:

Case # PZ5976-032015-Variance & Special Exception

Gary Geiger, 11 Nathaniel Drive, PIN#: 008-016-021 -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 2.3 acres and 243 feet of frontage where 5 acres and 300 feet of frontage is required.

Gary Geiger, 11 Nathaniel Drive, PIN #: 008-016-021 - requests a special exception under Section 4.5(C)(7) of the Zoning Ordinance to construct an accessory apartment.

G. Geiger has been a resident of the town of Amherst for 40 years. He lives on Nathaniel Drive in the Northern rural zone. He constructed an addition to his house about 30 years ago and would like to convert the addition into a legal in-law accessory apartment. Family members have been living in that space for many years, but he would like to legalize it to make it official and gain the appropriate variances/ special exception.

The subdivision was approved many years ago. He has only 243 ft. of frontage and less than five acres of land. He cannot increase his lot size because there are abutters on either side of his lot. His frontage and acreage are restricted due to that subdivision. (1970's) He is restricted by the physical limitations which is why he needs a variance for the frontage and acreage. It is a current residence that is already established. Nothing new will be constructed.

D. Kirkwood asked about the spirit of the ordinance.

Longevity. It has been there for a long time. There's nothing he can do to physically change the lot size. It has been existing and complying for the period of time he has owned it. There are no abutters here to object to the application. He has spoken with his abutters about this.

K. Shea asked that since the home is on the market and under contract, why not put this burden on the buyer to come before the ZBA?

Mr. Geiger has been approached several times over the past year by buyers who would prefer the accessory apartment to be legal before putting in an offer. Most of the buyers were interested in using the space as an in-law apartment, not necessarily as an accessory apartment.

A. Buchanan asked C. Mailloux when the five acre requirement was added to the zoning. It was after the subdivision. So the reason he needs the variance is because the zoning was changed to five acres. Yes. So now his lot doesn't qualify due to acreage and frontage only-there are no wetlands issues. C. Mailloux confirmed that is correct. This home is in the Northern rural zone. If it was in a residential/rural zone, it would meet the requirements and he would only have needed the special exception. True. The board discussed dates and clarified that the five acre requirement came about four years after the subdivision.

R. Rowe clarified that when this was constructed there wasn't an accessory apartment option/terminology in the law, just an in-law apartment. Now it's called an accessory apartment and there's no

48 restriction on who lives there- there's just a size restriction. (800sq.ft.) it can turn a single family home
 49 into a duplex.

50 D. Kirkwood asked the applicant about substantial justice.

51 Mr. Geiger stated he has no control over the dimensional situation. He can't change that. He believes
 52 the ZBA granted a variance a few months ago on a similar property on Schoolhouse Rd. It has been the
 53 same situation for 40 years with the driveway entrance and physical dimensions. Nothing has changed
 54 structurally.

55 D. Kirkwood stated in essence, this use has been in existence for over 30 years. Yes- not legally.

56 R. Rowe stated the use is changing. Now there could be two different families living in it so the use will
 57 change from what it has been for the past 30 years (with a family member using it.) This makes it a fully
 58 separate living space- a duplex.

59 A. Buchanan stated special exception is allowable in certain zones. (For one bedroom.)
 60

61 D. Kirkwood asked the applicant to address test five.

62 Fair use of the property is number one. ...Transfer of ownerships... and it's been existing for 30 years
 63 without any problems to date.

64 D. Kirkwood asked if special conditions exist that create the hardship because of applying the zoning
 65 ordinance.

66 It's fair use of the property that's been established for a long time. Contributing factor to the _____
 67 property. D. Kirkwood asked the applicant what makes his property different from the surrounding
 68 properties. He thinks he is the only one with the capacity to have the accessory apartment.

69 A. Buchanan stated that you have to look at that lot requirement under 5A from other properties in the
 70 area. He asked what the area is. If it's defined by the zone, then it has special conditions. It's a prior non-
 71 conforming lot to other five acre lots in the zone. The board discussed the type of area and how to
 72 define it. A. Buchanan described results of defining area in one way or another. It could go two ways.
 73 One is the Town made a mistake to not update the rural zone in five acres to include prior non -
 74 conforming lots so his lot or others in that subdivision aren't prejudice and they can do what other two
 75 acre lots in town can do. Or, did the planning board consciously make that decision because they didn't
 76 want "duplexes" on any two acre lots in the northern rural zone.

77 R. Rowe stated there is a very large house in a five acre zone with 243 ft. of frontage that will be a
 78 change of use based upon current conditions.

79 D. Kirkwood suggested maybe the area could be defined as the subdivision rather than the entire zone.

80 A. Buchanan stated that it can be defined in any way that they choose to define it.
 81

82 **J. Ramsay moved and R. Rowe seconded to go into deliberations. Vote: unanimous.**

83 **A. Buchanan moved and J. Ramsay seconded that there is no regional impact. Vote: unanimous.**

84 Discussion

85 K. Shea has no problem with how the applicant has used the property in the past. Once this is approved
 86 as an accessory apartment, we've essentially made it a duplex. Anyone can live in that property now
 87 that it's on the market. One couple could rent it to another couple and it's a nice neighborhood. He feels
 88 we are addressing the wrong person and that the buyer should be before the board.

89 A. Buchanan stated that issue doesn't concern him. The problem he is having is that this lot was created
 90 under the ordinance in two acres and if we're saying that there aren't special circumstances to this
 91 property that allows it to the use that he wishes to have because it's going to be another family on that
 92 two acre lot in a subdivision of other two acre lots, that's going to be a detriment to those neighbors
 93 because it doesn't have special circumstances such that it outweighs that harm to those neighbors. In
 94 isolation, he's ok with it, but if these circumstances were in another subdivision without the five acre
 95 restriction, the applicant wouldn't even need to come for a variance. The consistency for the rationale is

different in the different zones. If we didn't allow that in other zones of two acre lots, I can come up with a rationale that this is not special circumstances, but it seems that there's something amiss here. I can understand the neighbors not wanting two families on a two acre lot due to the density, but, they bought a two acre lot and that can happen on a regular two acre lot.

D. Kirkwood has some of the same issue with the special conditions. Some of these conditions were changed- the requirements for accessory apartment were changed. However, to answer Kevin's concerns, even if we talk to the buyer, we can't know what the next owner after that will do. We have to think of it as it will achieve its maximum use.

A. Buchanan explained that the variance carries forward with the property. The ZBA doesn't look at who the applicant is; it's the property the board looks at.

D. Kirkwood said the RSA states that the special conditions of the property have to be unique.

DELIBERATIONS:

1. Case # PZ5976-032015– Variance

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

R. Rowe no individuality of the subdivision- all small all single family homes. As a duplex it can be against the ordinance in a residential zone

K. Shea not in the public interest. But past 30 years shows it hasn't been against public interest. True

A. Buchanan true demonstrated it won't conflict with purposes of the ordinances. No threat to public health, safety or welfare

J. Ramsay agrees with Alec. This was noticed to abutters and no one is here.

D. Kirkwood not true because it's been in existence but not as a duplex. If granted, that is a possibility.

3 True 2 Not True

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

K. Shea no. A two- family on this lot is not in the spirit

A. Buchanan yes it is within the spirit

J. Ramsay in the spirit if he had been precluded by change of zoning ordinance. This is something that would otherwise be permitted in a residential rural or other two acre zone. It would even be permissible in an earlier subdivision of the 1960s- you can add an accessory apartment

R. Rowe not true converting a large residence into a duplex. No evidence was given regarding cars (parking) or public safety issues

The ZBA discussed putting conditions on an approval.

D. Kirkwood true the ordinance as currently constituted would permit. Spirit is supported

3 True 2 Not True

3. Substantial justice is done.

A. Buchanan don't think the general public is harmed by a larger home, but the other individuals in the general area could be. no sufficient evidence to prove that's not the case.

J. Ramsay substantial justice would be done for the applicant to be permitted to legalize this use- a use that has been in place for 30 odd years

R. Rowe no concerned with converting a large house into a duplex. More benefit to the applicant than the general public

K. Shea no. no substantial justice to applicant by allowing this

D. Kirkwood no balance between impact of neighbors vs benefit to the applicant

4 Not True 1 True

144 4. The values of the surrounding properties will not be diminished.
145 R. Rowe it is a quality built house that the applicant has taken care of. No evidence given one way or the
146 other. But converting a house to a duplex cannot help surrounding property values
147 K. Shea not convinced the properties won't be diminished
148 A. Buchanan agree
149 J. Ramsay same not true
150 D. Kirkwood not true
151 5 Not True
152
153 5. Literal enforcement of the provisions of the Ordinance would result an unnecessary hardship.
154 K. Shea doesn't see that there is an unnecessary hardship. No. the uniqueness of the property is that it is
155 larger in size. Most properties on that street are similar
156 A. Buchanan size may set it apart, don't think it overcomes the strict application- granting a variance on
157 a hardship. He meets A, I don't see that he meets B
158 J. Ramsay if he has a hardship, it is not unique. It would be for all of the properties in the subdivision
159 R. Rowe no
160 D. Kirkwood not true no special conditions that would set it apart
161 5 Not True
162
163 D. Kirkwood stated that having passed two of the five of the tests, the request for variance is denied.
164
165 **J. Ramsay moved and A. Buchanan seconded to come out of deliberations. Vote: unanimous**
166
167 The board discussed the term duplex.
168 C. Mailloux clarified the ordinance states an accessory is limited by square footage and has to have
169 access to the main house. It could have a separate entrance, but should not, from the outside, look like
170 two houses.
171
172 The board discussed how to clarify the ordinance with regard to living space / size requirement of an
173 accessory apartment.
174
175 **Other Business:**
176 **Minutes- March 17, 2015**
177 The minutes were tabled.
178 **Elections:**
179 Elections were tabled.
180
181 K. Shea expressed his desire to have the ZBA meetings begin on time.
182
183 **R. Rowe moved and K. Shea seconded to adjourn at 8:04pm. Vote unanimous.**
184
185 Respectfully submitted,
186 Jessica Marchant