

**Amherst Zoning Board
Tuesday March 17, 2015**

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

D. Kirkwood called the meeting to order at 7:11pm, introduced the board members and explained the ZBA process.

New Business:

Case #PZ 5883-020515- Variance

Daniel A. Breault, Jr., 10 Birch Drive, PIN# 006-038-005 - requests relief from Section 4.3.D.2 of the Zoning Ordinance to allow a building addition located within 8.9 feet of the rear property line where 25' is required, and to allow a garage addition located within 14.96' of the side property line where 25' is required.

Daniel Breault, Jr. presented his case. He is proposing an addition to the left side of the house with a garage underneath and family room above. He proposes to remove the existing deck and add a small play room on the back of the house. He read from his application to address the tests as follows: Granting the variance does not conflict or pose any threat to public health, safety or welfare. It does not infringe on the neighbor's use of their property. Granting the setbacks allows for a garage with a room above to be built. We currently have a portable garage, (which we will be removing) and use the area to park our vehicles. The back set back already has a deck, so we are looking to use this space to extend the living room. This will allow us to continue using the property in accordance with the use permitted by the zone articles. The construction would in no way diminish the abutter's use of their land, the public safety, or welfare.

W. Sullivan asked when the house was built. Mr. Breault replied 1977 or 1978. D. Kirkwood asked C. Mailloux if she had any information. She said the deck was probably original. It's about 10' from the lot line.

R. Rowe asked how far the edge of the house is from the houses to the rear and to the side. There is no house to the rear- just woods. There's about 150-175 feet to the house on the side.

Robert Morel of 8 Birch drive identified himself when asked.

Mr. Breault continued with the tests. The addition of the garage with a room above will be approximately 150 feet from Birch Drive. By the topography and septic location on the east side of the land, we are severely constrained with building location options. The additions will be fully secured by other abutters, both by elevation and dense woods on three sides.

The Morel's and Mr. Riccitelli are the only abutters objectively affected by the requested variance. Substantial justice will be done because the granting of the variance will allow for additions to be put on without a financial burden. As owners, we sought and gained the Morel's and Mr. Riccitelli's approval for the additions.

The areas we are requesting a variance are both practical and will allow continued use of our property without diminishing any use from either of our abutters. There are woods directly behind the requested variance for the back addition and woods and the Morel's directly to the right of the requested side variance. The addition of the garage with a room above will in no way diminish the use of the Morel's land and their approval has already been given.

Literal enforcement of the provisions of the Ordinance would result in unnecessary hardship because:

Denial of the variance would result in unnecessary hardship because of the financial burden in relocating the septic and well, and there is no place to relocate the septic to.

a. For the purpose of this subparagraph, "unnecessary hardship" means that owing to special conditions of the property that distinguish it from other properties in the area:

i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because:

The additions have no impact to the abutters and allows for property owners to continue to use their property with no impact visually or with regards to safety.

ii. The proposed use is a reasonable one because:

The proposed variance is reasonable because of the location of the additions are appropriate locations and will have the least impact from any direction on our abutters and on public welfare.

b. Explain how, if the criteria in subparagraph (a) above are not established, an unnecessary hardship will be deemed to exist, if and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the Ordinance, and a Variance is therefore necessary to enable a reasonable use of it:

The strict conformance with variance would require the additions to be relocated which would be a hardship due to the septic and well locations as well as the design of the house, being an A-frame, which unfortunately doesn't make another location for adding on possible. It's not feasible to acquire land from the abutters, as we have already suggested this to the abutters, but the land is not for sale and gifting the land is also not an option.

D. Kirkwood asked where the septic system and well are located. Mr. Breault clarified and C. Mailloux showed a view of the property on the screen. How far is it between the well and septic? Mr. Breault doesn't know. C. Vars asked if there is a slope. Yes. C. Vars then clarified where the well and septic are. Mr. Breault stated there is a metal shed on the property that will go away with the addition.

Public comment

Tom Grella 15 Manchester rd. -not an abutter.

This property is on a private way. The general public is not affected unless they drive down that private rd.

Mike Riccitelli Greenway dr. -closest abutter.

This project is not a want- it's a need. Mr. Breault has some young kids and they will need more space. He has no problems with it.

Bob Morel- 8 Birch dr. -next door abutter

He is fine with the variance- even ok with the addition being even closer to the property line 8'-10'. He just wants to make sure that everything is written down properly and all measurements are accurate. He will sell his property in the coming years and doesn't want any issues with the title company. Both parties have the survey and they are in agreement with the lot lines.

D. Kirkwood stated that on the map given to them, there is a marker on the southwest corner of the lot and surveyors will work from that info. If there is a map on record at town hall with a surveyor seal, that is the best the town can do.

C. Mailloux stated with the building permit application process, they require the surveyor to go back out and give a final approval of the measurement of the foundation to the lot lines before construction continues.

K. Shea stated that the distance of 14.96' is what is voted on tonight. If that distance changes through the building permit process, the applicant will come back to the ZBA? C. Mailloux yes, if it gets approved at one distance and then the distance actually becomes closer, yes, they will come back.

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

D. Kirkwood stated that W. Sullivan will vote in this case.

J. Ramsay moved and K. Shea seconded that there is no regional impact. Vote: unanimous.

J. Ramsay moved and W. Sullivan seconded to approve the request for variance. Vote: unanimous.

DELIBERATIONS:

1. Case # PZ 5883-020515 – Variance

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

W. Sullivan yes public interest is to create distance between buildings and there's no structure in back of the property and the abutters don't oppose

R. Rowe true

J. Ramsay true

K. Shea true he's looking to increase the value of his home

D. Kirkwood true

5 True

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

R. Rowe yes considering the uniqueness of the property and how far back the house is set and the openness on either side, the spirit of the ordinance is observed – it is certainly not contrary

K. Shea there are no neighbors to the north or west or east. The only neighbor is to the south and he has no objection to it.

J. Ramsay agrees for the same reasons

W. Sullivan true

D. Kirkwood true

5 True

3. Substantial justice is done.

K. Shea yes this is something he needs to grow his family and to deny the variance would not allow full advantage of the property to the homeowner

J. Ramsay agree- the homeowner is not negatively affecting anybody

R. Rowe true

W. Sullivan true

D. Kirkwood the proposal would improve the value and also have public benefit to the surrounding properties

5 True

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

J. Ramsay yes improvement to the property and the neighborhood

R. Rowe true

W. Sullivan true

K. Shea agree -same reasons

D. Kirkwood true

5 True

143 5. Literal enforcement of the provisions of the Ordinance would result an unnecessary hardship.
144 W. Sullivan yes reasonable -being used for residential. And public purpose is for distance between
145 buildings and this has been there for decades and is tucked away and there's ample room.
146 J. Ramsay true
147 K. Shea true
148 R. Rowe true
149 D. Kirkwood true
150 5 True

151
152 D. Kirkwood stated that having passed all of the tests, the request for variance is granted.
153

154 **Other Business:**

155 **Case #PZ 5757-121914 – Request for Rehearing Arboleda Realty, LLC., 345 Route 101, PIN#**
156 **008-057-000 – Request for a rehearing of variance application denied on January 20, 2015.**
157

158 J. Ramsay recused himself from the case. D. Kirkwood stated that C. Vars will vote in J. Ramsay's
159 place and confirmed that all board members received the letter submitted by Attorney Hollis.
160

161 R. Rowe commented as follows: He stated that it's unfortunate that someone from Mr. Hollis'
162 office is not in attendance to hear the discussion. He hopes that they will read what was said
163 and that C. Mailloux will impart what is said to them. Amherst has spent a great deal of money
164 trying to have the access from 101A be open and rural. LaBelle has done a very good job on the
165 outside adhering to that. There are grapes planted, the architecture is nice and attractive and in
166 keeping with the ordinance. However, they made an application to have a restaurant inside of
167 the building, but we know there are tables outside of the building. The application doesn't have
168 any standards at all- whether it's to be a breakfast bar or a nightclub with bands and such. He
169 would like to make a decision based on a request by them but they've got to be specific about
170 what they want. It's got to be in the best interest of the town. He doesn't think a restaurant in a
171 winery is a natural expansion. He has read the Hollis letter. The purpose of the letter is to
172 prejudice the court in his behalf. R. Rowe doesn't want the winery to go under because he
173 worries about what might come next. He is willing to accept some form of expanded use but
174 would like to know specifically what it is. Will it expand outside? Will there be fireworks, a
175 dance band, microphones? He would like the applicant to give more thought to the specifics.
176 And in order to give them more time to give specifics, **R. Rowe moved to table the request for**
177 **a rehearing until next month. C. Vars seconded.** Discussion:

178 W. Sullivan stated that it sounds like Bob is in favor of the rehearing, he just wants to give the
179 applicant time to prepare a full set of plans.

180 R. Rowe said yes and no. Maybe not full plans, but a better application that includes specifics is
181 important. More time wouldn't hurt them, because they are still continuing business as they
182 were before. He would like them to have additional time so they can work with the town.

183 W. Sullivan asked about procedure. What would they be coming back with in a month?

184 C. Mailloux stated that procedurally, the board must vote tonight on a rehearing based on what
185 was submitted within the 30 day period. There is no public hearing at this point- the only
186 information needed is if the applicant gave good reasoning for a rehearing. Procedurally, the

187 board doesn't have the ability to table this request because there is no new information to be
 188 submitted. The board is acting on the information that was submitted during the 30 day period.
 189 R. Panasiti read from the application.
 190 D. Kirkwood stated that Bob is laying out things the board would like to see if/ when they come
 191 back for a rehearing-items that C. Mailloux can discuss with the applicant because the board
 192 can't discuss it with the applicant.
 193 C. Mailloux stated that conversation with the applicant doesn't happen until after the board
 194 grants a rehearing in preparation for that rehearing and new application.
 195 K. Shea believes that the Hollis letter did justify a rehearing. To deny a rehearing would be an
 196 injustice to them. He sees a few reasons why a rehearing is necessary. Also it's on the applicant
 197 to come back prepared- the burden is on them. It's not for the board to stand in the way of
 198 justice and tell them they can't come back. The board should allow a rehearing in the time that
 199 the applicant is ready, not when the board says.
 200 D. Kirkwood confirmed that the ZBA can grant a rehearing if just cause is given in the
 201 application for the rehearing. K. Shea believes there is enough just cause for a rehearing and
 202 asked what is the purpose of the 30 day stay? R. Rowe is asking for the request to be tabled for
 203 a month because they will have to do a fair amount of work to come up with something
 204 acceptable. If the rehearing is approved, it could be scheduled for next month.
 205 C. Mailloux clarified that it would be scheduled after they submit their application. If they are
 206 granted a new hearing, they do a new application, and they can take as soon or long as they
 207 want to submit the new application.
 208 The board confirmed that to grant the rehearing they no longer need new information to be
 209 submitted, they just need to look at the request and decide if it's justified.
 210 The board discussed the outdoor area on the map.
 211 W. Sullivan agrees with Kevin- the board should grant a rehearing. The ZBA has a history of
 212 granting rehearings. The board doesn't need to stay the request because the applicant has as
 213 much time as they need to come back with a new application. K. Shea is right- he burden is on
 214 them and they can take as long as they want.
 215 K. Shea stated that this is his first meeting and he doesn't know how the members voted, but
 216 by reading the letter, it looks like there's a bias against this project. By pushing this out further,
 217 it looks from the outside like the board is meddling/interfering with the applicant's due process.
 218 R. Rowe stated the request for a rehearing was written for a judge. There is a great deal of
 219 misinformation in the letter.
 220 C. Mailloux confirmed that the applicant cannot come back with new information until a
 221 rehearing is granted. There will not be any new information in 30 days if this is tabled. They
 222 can't, under the RSA, come back with new information.
 223 **Vote In Favor: R. Rowe. Vote opposed: C. Vars, K. Shea, W. Sullivan. Motion denied.**
 224 **W. Sullivan moved to grant a rehearing. K. Shea seconded.** Discussion:
 225 D. Kirkwood not sure there is a bias. Do find that there are items in the letter that are not true.
 226 Item three on the first page is one of them. The law Hollis is referring to talks about recusal and
 227 the RSA leaves the burden to the individual. It's not up to the board to make that decision. The
 228 board can suggest only.
 229 W. Sullivan said the law is pretty clear. If an applicant feels a board member shouldn't sit for a
 230 hearing, they need to bring that to the attention of the board member before the vote.

D. Kirkwood stated it's clear that Hollis is not happy with J. Quinn. R. Rowe doesn't think J. Quinn tainted the board as noted on page three. D. Kirkwood stated the substance doesn't come until the last two pages of the letter. He agrees with Bob that this was written not for the board, but for future happenings, should they occur. The ZBA has granted rehearings in the past. C. Vars clarified his perspective with items on pages five and seven. K. Shea again stated he would like to have it reheard. Granting the request shows the applicant that the board is willing to hear their case again, but the burden is on them to convince the board to vote in their favor while giving them every opportunity to present their case. R. Rowe said they should show the board specifically what is in the best interest of them and the town under the ordinance. D. Kirkwood is curious about the plan submitted with the rehearing request. Different plans were submitted to the ZBA and to the Planning Board. The ZBA granted a variance based on one plan. The plan in front of him now says conceptual and shows areas for tasting and for café. He doesn't know if the Planning board received this plan, or if it is a new plan. When they made their first presentation, it included food in conjunction with wine tastings and the ZBA voted based on that. He's confused about the multiple plans. K. Shea stated it's good for the ZBA members to go to the sites they will be hearing cases on and said that he went to LaBelle once. D. Kirkwood stated that this board has to make its decisions based primarily on the case as presented at the hearing. The board discussed that they can't go to sites as a group. C. Mailloux confirmed that they can go it as a board – it just has to be posted as a meeting in advance. C. Vars has been to LaBelle three times – for an open house, a tasting and to have lunch. His only concern with the plan is that it is not as built. He suggests they submit accurate plans.
Vote: unanimous in favor.

Minutes- December 16, 2014

The minutes were discussed and revised as necessary.

W. Sullivan moved and J. Ramsay seconded to approve the minutes of December 16, 2014 as amended. Vote: all in favor with K. Shea and C. Vars abstaining because they were not there.

Minutes- January 20, 2015

C. Vars moved and J. Ramsay seconded to approve the minutes of January 20, 2015 as presented. Vote: all in favor with K. Shea abstaining because he was not there.

Elections:

There is an opening for an alternate position. J. Ramsay wondered if J. Taggart might be interested in that role. D. Kirkwood has already asked him and J. Taggart answered that he will consider the position.

D. Kirkwood stated that neither the town ordinance nor the RSA restrict R. Panasiti from being an alternate on the ZBA while being a member of the Selectmen. It's not an elected position- alternates are appointed.

R. Panasiti moved and C. Vars seconded to adjourn at 8:33pm. Vote unanimous.

Respectfully submitted,
Jessica Marchant