

**Town of Amherst  
Zoning Board of Adjustment  
Tuesday, September 16, 2014**

ATTENDEES: D. Kirkwood; Chair, Jamie Ramsay, Rob Rowe, Charlie Vars (Alt), and Colleen Mailloux-Community Development Director

D. Kirkwood called the meeting to order at 7:12pm, explained the ZBA process and introduced the board members.

The first case was read by J. Ramsay.

**1. Continuation of Case #PZ5186-071814 – Special Exception**

**Chris M. Gagnon, 18 Schoolhouse Road, PIN # 008-035-000** – requests a special exception under Section 4.4, E.7 of the Zoning Ordinance to construct an accessory apartment.

C. Vars will vote for J. Quinn

Chris Gagnon presented his case.

He bought 18 Schoolhouse Rd with the intention to renovate and re-sell it. He found that the previous owner hadn't pulled the correct permit for an in-law apartment. He wants to correct it - to make it a legal in-law apartment. The apartment will be 792 sq. ft. He intends to finish the renovations and re-sell the property.

D. Kirkwood stated that there is no scale legend on the plans that were submitted. This is a requirement of the application process.

R. Rowe stated that the zoning board evaluation of the application should be for the six criteria for special exception. The building inspector should be responsible for the measurements. He would also like the drawing to include the scale, but ultimately that's up to the building inspector.

C. Vars commented that the measurements listed on the plan seem to be the same measurements that were given last month which were explained as interior measurements.

Mr. Gagnon stated that these drawings are the ones that were originally submitted for the building permit – that's why he used these plans. He then added the measurements to the plans.

C. Mailloux confirmed for the board that there was information regarding the qualifications for special exception submitted with the original application and included in the board packets last month.

There were no further comments or questions.

The next case was read by J. Ramsay.

**2. Case # PZ5301-082114 – Variance**

**Carol Docos, 6 Milford Street, PIN # 025-072-000** – requests relief from Section 4.3, D.2 of the Zoning Ordinance to construct a building addition within the side and rear property line setback.

Carol Docos (property owner) and Ryan Haggerty (owner's son and project manager) presented the case.

Mr. Haggerty works in construction. He explained that his mother purchased this home last year. The home is in need of some upgrades as it is not fully functional now. There is no full bath in the home. There are two half baths pieced together. The house is inefficient. There is no insulation. New windows are needed. They don't meet the setback requirements to add on to this side of the house. The proposed addition will be along the rear property line.

The property is in the Baboosic lake area. The property lines are such that it is difficult to meet the setbacks in that area. The proposed addition will bring the house toward the back yard area and right of way. Part of the house extends that far but it is in poor condition. There is not any insulation. The owner intends to demo that portion of the home and pour a true foundation.

Other homes in the area have been upgraded. There is a new home across the street. The proposed addition won't cause any negative effect to the neighborhood. In fact, the home is not up to the neighborhood standards now, so renovating it should help the value of the neighborhood.

C. Vars asked if there are plans that include elevations. Yes, Mr. Haggerty has them, but not with him at the meeting. The plans are ready to be submitted to the building inspector.

D. Kirkwood asked if the proposed addition will be a deck.

Mr. Haggerty clarified on the plans what the proposal entails. It will be an enclosed living space for a portion of it and a proposed deck for a portion of it.

Mr. Haggerty addressed the tests as follows:

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

The granting of this variance should not cause objection of the public interest because it does not directly impact the public in any way. There will be no negative impact on the general public.

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

The project will be completed as agreed upon in the variance.

3. Substantial justice is done.

Harm to the general public does not outweigh our benefit in the completion of this project because there will be no harm done to the general public.

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

The value of surrounding properties will not be diminished. They may in fact be increased due to the nature of the work to be done.

The board inquired about question number five.

Mr. Haggerty stated that he didn't realize number five was a question. He was under a 48 hour deadline to submit all of the paperwork and it was overlooked.

D. Kirkwood clarified question five as: if the ordinance were to be applied as written, you would suffer a hardship. Are there distinctive qualities to the property that if the ordinance were applied, would create a hardship?

Mr. Haggerty stated that the home is not up to code as a livable house right now. There is no insulation and no working full bathroom. If the variance is denied, the owner would suffer hardship by paying huge heating costs indefinitely since there is no way to efficiently heat the house as is. There is also no other way to create a full bathroom. The proposed basement and new foundation will give a dry area for storage that doesn't exist now. Currently it is a moldy space where items are not safe from harm.

The proposed use is a reasonable one. The owner wishes to fix the problems and improve the property.

J. Ramsay asked if all abutters have been noticed. Yes.

R. Rowe moved to go into deliberations. C. Vars seconded. Vote: Unanimous

**DELIBERATIONS:**

**2. Case # PZ5301-082114 – Variance**

D. Kirkwood asked for thoughts from the board; should the applicant go back and work with the zoning administrator?

R. Rowe Baboosic Lake is a unique area. He has general public knowledge and notice of buildings in that area and would prefer to go forward with the application. For there to be a more thorough and professional application done, the owner needs to get an attorney and an architect which may be beyond their means. R. Rowe is ok to move forward with the condition that the addition not extend further out than the current home does.

C. Vars has empathy for the applicant yet he has a little problem approving the variance without seeing the full plan. Can the board move forward approving the variance with the condition that it only be built within the confines of the dimensions shown and leave it to the zoning staff to confirm that the plans submitted are code?

D. Kirkwood is concerned that the application is not complete. He asked if there is a way to move forward.

R. Rowe- can't have C. Mailloux help write it- she needs to review it.

D. Kirkwood in the past, the administrators have given guidance without writing it.

J. Ramsay suggested that there are other cases in that lake area that can be used as a reference to generate a complete application. That can be suggested by the board to the applicant.

C. Vars the applications are public record so examples can be supplied to the applicant. The problem is the precedent that the board will be setting by accepting an incomplete application.

R. Rowe the applicant would be better served with this matter being tabled for a month and come back rather than get a possible denial and then have to go through an appeal process which is longer.

J. Ramsay is ok with the plot plan as presented.

D. Kirkwood there is some question on the plan, though, in one area.

D. Kirkwood the board has to decide based on the evidence given.

C. Vars moved to table this case to the next ZBA meeting in order to allow the applicant to provide the information required by law. J. Ramsay seconded.

Vote: Unanimous

J. Ramsay moved to come out of deliberations C. Vars seconded. Vote: Unanimous

The board addressed the applicant to confirm they understand what information is missing from the application.

The applicant understood that the case will be tabled. Unfortunately, she does not wish to begin construction in mid or late October due to the scope of the project along with the weather.

D. Kirkwood suggested that the applicant get with the Community Development Director to see if anything can be done. The property is grandfathered, so it may not need a variance.

C. Mailloux read from the law and explained her interpretation of it and why she was requiring a variance.

R. Rowe explained to the applicant that the board has to follow the state law. The applicant must prove to the board the five tests.

R. Rowe moved to go back into deliberations. J. Ramsay seconded. Vote: Unanimous

D. Kirkwood addressed whether there is a need for a variance for this case. He doesn't see that what's being proposed increases the degree of non-compliance. He then read from Section 3.2A of the ordinance which says that a pre-existing non-conforming use can be continued if it will not substantially change the nature and purpose of the original use and will not have a substantially different impact on the neighborhood. The board discussed their interpretations of the law.

R. Rowe moved to reconsider the prior vote. J. Ramsay seconded.

Discussion:

C. Vars - what ramifications are there if the applicant has been told they need the variance and the ZBA deems that one is not necessary?

R. Rowe confirmed that there is no liability.

D. Kirkwood if the variance passes no problem. If it fails, we can ask if it's necessary.

R. Rowe can table it if we do not believe a variance is needed.

C. Vars can they get a permit in that case? No.

C. Vars if the ZBA is legally ok to decide that no variance is needed, he suggests moving forward.

R. Rowe suggested that whatever decision the ZBA makes for one property is not precedence- setting for other properties.

D. Kirkwood does not believe the applicant needs a variance. The applicant can withdraw it.

C. Mailloux stated that if a variance is not required and the applicant withdraws the application, the applicant can come in for a building permit and move forward with the board's interpretations.

J. Ramsay moved to rescind the initial and reconsidered vote since the variance is not needed. C. Vars seconded. Vote: Unanimous

R. Rowe moved to come out of deliberations. C. Vars seconded. Vote: Unanimous

To the applicant, D. Kirkwood stated that they are not expanding into the setback, so no variance is needed.

C. Docos asked the ZBA to withdraw her application.

R. Rowe moved to go back into deliberations. J. Ramsay seconded. Vote: Unanimous

### **1. Continuation of Case #PZ5186-071814 – Special Exception**

J. Ramsay moved no regional impact. C. Vars seconded. Vote: Unanimous

D. Kirkwood the ZBA can approve the request with the condition that a properly scaled plan be submitted.

R. Rowe reviewed the minutes from the last meeting and the six conditions for a special exception were not addressed in the minutes, but he thought they were addressed in the applicant's remarks.

C. Vars agreed.

R. Rowe is comfortable moving forward with D. Kirkwood's suggestion that if the applicant submits a plan that meets the requirements, they can move forward.

Upon review, the plan submitted tonight was very different than the one submitted last month and neither one included a scale, which is required. A stamped architectural plan is needed.

All of these being the case, C. Vars moved that the application be tabled until the next regularly scheduled meeting to allow the applicant to submit a proper plan which conforms to the requirements of the ordinance. J. Ramsay seconded. Vote: Unanimous

C. Vars moved to come out of deliberations. J. Ramsay seconded. Vote: Unanimous

#### **Other Business:**

##### **3. Vacant Alternate Position**

Reed Panasiti is interested in the open ZBA position. He was in attendance.

R. Rowe moved to accept Reed Panasiti's application to be an alternate on the ZBA. C. Vars seconded. Vote: Unanimous

##### **4. Minutes:**

June 17, 2014

J. Ramsay moved to accept the minutes of June 17<sup>th</sup> as submitted. C. Vars seconded.

Discussion: none.

Vote: 3 in favor. R. Rowe abstained.

August 19, 2014

C. Vars moved to accept the minutes of August 19<sup>th</sup> as submitted. J. Ramsay seconded.

Discussion:

C. Mailloux read some requests for changes to the minutes she received from an applicant from that meeting.

C. Vars moved to accept the minutes of August 19<sup>th</sup> as amended. J. Ramsay seconded. Vote: Unanimous

#### **New Business:**

R. Rowe suggested that the ZBA changes its policy with regards to letting applicants continue cases forward time after time.

D. Kirkwood the RSA states that it's the applicant's prerogative to wait or move forward.

C. Mailloux spoke to Town Counsel as requested about this issue and stated that an applicant can request extensions and boards can put restrictions on the extensions. Some communities will force an applicant to move forward, but this policy seems to be the exception- not the rule.

D. Kirkwood doesn't agree with forcing the applicant to move forward. He also has a problem with putting an applicant at a disadvantage because of scheduling issues caused by the board members.

R. Rowe moved to adjourn at 9:15pm. C. Vars seconded. Vote: Unanimous.

Respectfully submitted,  
Jessica Marchant