

**Town of Amherst
Zoning Board of Adjustment
Tuesday August 30, 2016**

This meeting includes the deliberative session that was tabled from the August 16th ZBA meeting and involves two cases for variance from the same applicant. The case numbers are: **PZ7676-071516** and **PZ7677-071516**.

ATTENDEES: R. Rowe, C. Vars, R. Panasiti (Alt), J. Ramsay, K. Shea and D. Kirkwood- Chair

D. Kirkwood called the meeting to order at 7:02pm, explained that at the last meeting, the public hearing portion of the meeting was ended and any new evidence or documents that were received after that were not entered into the record.

J. Ramsay moved to un-table the deliberations. R. Rowe seconded. All in favor

Discussion

R. Rowe explained the standards which the Amherst ZBA follows. The ZBA has to answer five specific questions for each case they hear. Each question must receive a majority vote to pass and all questions have to pass in order for the variance to be granted. These are state guidelines.

D. Kirkwood said upon review it occurred to him that there are two separate issues. One is to create a small hotel and office building from the existing buildings and the other is to create a new facility, a distillery, which would be considered an expansion of a non-conforming use. Because of that, he asked the board if they would agree to bifurcate the application for variance.

R. Rowe thought that was reasonable and he would support it. They could move forward with the variance for the inn and office. There were issues brought up about the water use of the distillery and they did not receive specific water use information regarding the proposed distillery and how the water use would or would not affect the surrounding properties.

R. Rowe moved to bifurcate the application for variance. J. Ramsay seconded.

Discussion

J. Ramsay said he didn't understand why the water use would be a concern for the Board of Adjustment. This issue is more in the purview of the Planning Board. The ZBA is the first hurdle the applicant will have to go through. If it goes through, water usage will be considered by the Planning Board.

D. Kirkwood said if we can allow a use to take place that strains and drains the resources, we can consider that issue.

R. Rowe disagreed with J. Ramsay. It can affect the values of surrounding properties. If the wells of surrounding properties are drained, that lowers their value. We set the legal standard for the criteria for variance.

K. Shea thought what the ZBA approves is still subject to Planning Board approval. R. Rowe said no, anything we say is mandatory to the Planning Board. They can't vary our determination. He cited a new authority in the law that lets the ZBA overrule the Planning Board.

R. Panasiti agreed with J. Ramsay that it is a Planning Board issue. Also, water can be supplied multiple ways.

R. Rowe said we can put a condition. He doesn't know if the water use is significant or insignificant, but let's find out.

To K. Shea, D. Kirkwood clarified we can only determine what comes before us. The only time something comes before us is when what's desired to be done goes against the standards for zoning requirements. If we allow a transgression of the ordinance to carry on, we can put conditions which are binding to the Planning Board. If the Planning Board doesn't think the plans have merit, they can still turn it down.

K. Shea confirmed that is what he understood. The Planning Board still has the opportunity to intervene if the application passes the five tests and the Planning Board doesn't think the plan is feasible, or best for the Town.

J. Ramsay said we can direct, as a condition, that information on availability of water to the site is something the applicant has to submit.

R. Rowe is concerned that one use is industrial and the other an inn and office. He would hate to have this board be desirous of one and not the other and therefore have the whole project fail. If there is an issue, we should get a report done so the residents know the results as to whether the water use is great or minimal to make them more comfortable.

D. Kirkwood clarified if we bifurcate the variance we have two considerations and can approve one and not the other. Then the part that's denied has the right to a rehearing. Other options are to withhold final judgement on the second part which is a different use from the first part. Or we could seek more information and open consideration for additional requested input.

The ZBA has standards to follow. We have to be fair to both sides and we heard a lot of citizen input. A number of concerns were expressed. It's important to be fair as we are here as representatives of the town of Amherst. We need to be mindful of the best interest of the Town. Is industrial use in a transitional/ rural zone an appropriate use? Is it reasonable given the goals stated in the master plan? A lot of things can come under 'public interest' which is one of the tests. He reviewed a case from the 1970s. The master plan says to preserve the rural character of the town. The development of the town should proceed in a way the town can live with and wants.

C. Vars said the wells were what people were concerned with for water usage. He is concerned, though it's a Planning Board issue, with septic systems and leach fields. If we bifurcate, would we vote one tonight and one at another meeting? The Chair said they will have to determine that process.

Vote: 4 in favor- 1 opposed (K. Shea) to bifurcate the variance

R. Rowe moved and C. Vars seconded no regional impact for the inn and office. All in favor

CASE # PZ7677-071516- Use variance for inn and office

Discussion

R. Rowe said he looks at the land under the standards of the court. It's unique. Along the highway it's flat, then it goes up. The value of the land is what is in front. That is unique. He listed many uses that the land is not appropriate for. He listed the uses under special exception. In his view country inns are often found in rural areas. It would fit in nicely in our town.

J. Ramsay agreed in general with the caveat that some expansions of use may be egregious to the town of Amherst. The applicant's proposal is not.

K. Shea said this property is on the edge of a highway that's only going to get larger. The state's plan for this area is a 4-lane divided highway. We don't know when that will happen, but we have to decide how we let that happen. This project will be done tastefully by local people who will keep the character of the neighborhood.

He took some measurements and the edge of Rte. 101 to the closest house on Greenbriar was 2000 ft. His house is 1200 feet from Rte. 101 and he can't hear a thing. He is in favor of this project being on that property rather than some other uses that could go there now without needing a variance.

C. Vars said a few years ago that zone was changed to northern transitional. It's just a change and that's what's happening here. The state is already in the process of turning that into a 4-lane road. This is on the 10-year highway plan, though it is dependent on funding. The traffic count on the Bedford/ Amherst line over the past 14 years has been pretty static, but the plan is for four lanes with a 16' vegetative strip down the center. This is an ideal use of the property.

D. Kirkwood agreed. The area hasn't changed that much over the years. If people are worried about commercial use, it's not in the master plan for now. If we have developments that try to fit in with the surroundings, you can reconcile that as trying to preserve the rural character.

CASE # PZ7677-071516- Use variance for inn and offices

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

K. Shea yes As required in the master plan, it will preserve and protect historic and cultural resources- especially with the plan to save the back 25 acres and develop green ways and trails and to reuse and repurpose the current buildings. The testimony given was one for one pro and con. The letters received were 65% in favor of the project. The project doesn't alter the character of the neighborhood. The 11 acres we're talking about is on Rte. 101 which is commercial, not up near the residences.

J. Ramsay agree When leaving Amherst, you'd be treated to a view of a hilltop inn, office and distillery. As presented to us in the plans, this would not look offensive. In his opinion it would be fitting more so than an old farmhouse that is falling down. When driving into Amherst, you'd have a very remote view of where this is going to be and by the time you're there, you are past it. It fits in the neighborhood. It's not contrary to the public interest. In fact, it's in the best interest of the town.

R. Rowe agreed it's not contrary. The burden is on the Planning Board so that it's attractive. There are many country inns all over the state that look country and this one will too.

C. Vars agree Will also protect the town from worse uses. As you drive out of town and see the winery, this would form bookends on either side. Won't be able to see much of the proposed project due to the topography. It also recognizes number two and number three in the transitional zone. (he read from the ordinance)

R. Panasiti commented that 25 acres behind the 11 acres will have a conservation easement.

D. Kirkwood agreed with everyone. The intensity of the use relates to public interest. It's in the Town's best interest to consider uses which are as minimally intense as possible.

5 True.

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

J. Ramsay yes The spirit of the ordinance is observed in relation to public health, safety and welfare.

R. Rowe agreed The rural and scenic aspect of that access to Amherst can be maintained with this application but the burden will be on the Planning Board for the buildings, landscape and parking.

C. Vars agreed it won't alter the character of the neighborhood. Further, the property could be utilized for uses that aren't in the spirit of the ordinance

K. Shea yes, it is consistent with the spirit of the ordinance because of the proposed plan and how the look and feel will be. The village center feel and that specific architecture maintains the character

D. Kirkwood agree It fits into the character of the area

5 True

144 3. Substantial justice is done.
 145 R. Rowe yes this use is equitable to the owners and the Town. When you consider the hardship of the
 146 land, there's only a one reasonable strip for having a use other than houses. Can't see this use causing
 147 any adverse conditions that would be different than other allowed uses.
 148 C. Vars substantial justice will be done. The land does not lend itself to the current uses. It's far enough
 149 away from the residences. There will at some point be a 4-lane highway which will change the character
 150 of the area. There will be harm to the owner if denied, but no harm to the public if granted.
 151 K. Shea substantial justice will be done for the seller and to the Town. If you consider what else could be
 152 done there, this is in the Town's favor.
 153 J. Ramsay agree
 154 D. Kirkwood agree They could have a project that's not contrary to public interest and not do substantial
 155 justice. This project is doing justice. The town benefit is preserved character.
 156 5 True
 157
 158 4. The values of the surrounding properties will not be diminished.
 159 C. Vars yes He has 42 years of experience in construction and real estate. We hear the uproar against
 160 projects all the time. With the topography, tree line, wetland, buildings in the front near the road, there
 161 should be no diminution of value
 162 K. Shea can't see how any of the surrounding property values will diminish
 163 J. Ramsay agree specific to diminution of immediate surrounding properties- it will have little impact, if
 164 any. The project is so remote. For the town in general, the town is wanting this gathering place. This is
 165 the opportunity for us to get it here.
 166 R. Rowe yes
 167 D. Kirkwood this test is puzzling because value can be subjective. The one across the road does not seem
 168 to have any effect on the neighborhood.
 169 5 True
 170
 171 5. Literal enforcement of the provisions of the Ordinance would result an unnecessary hardship.
 172 K. Shea special conditions: location- proximity to Rte. 101, the major east west throughway. Topography
 173 creates a special condition. Hardship is with the seller. The whole zoning ordinance blocked her into a
 174 situation that leaves the property undesirable for buyers that the town would want to have.
 175 J. Ramsay This property is the definition of hardship. It can only be used for non-practical uses. There's
 176 hardship on the applicant and the Town
 177 R. Rowe agreed the proposed use is reasonable. The impact of an allowed use by special exception
 178 wouldn't be any different than the impact of this project
 179 C. Vars hardship runs with the property- not the owner. It is a reasonable use and he wouldn't want the
 180 other uses.
 181 D. Kirkwood it is a reasonable use. Also how the land has been used was farmland. That land stopped
 182 being farmed a long time ago. It's not supporting a dairy farm use anymore. The ways the land has been
 183 used in the past the atmosphere has grown around it and that use doesn't work anymore. If that use is
 184 no longer viable, to require it to be done is an unnecessary hardship
 185 5 True
 186
 187 D. Kirkwood stated having passed all the tests, the variance has been granted.
 188
 189 R. Rowe noted the conditions of approval can be found in the ZBA minutes of August 16th on lines 571-
 190 603.

191 He further commented that the Planning Board should make every effort to ensure the building,
192 landscaping and parking lots will represent the rural nature of this area so the development enhances
193 the town.

194
195 K. Shea asked the Chair if the board can accept the map into the record since they discussed it in the
196 previous meeting. D. Kirkwood said they can create a condition that the plan is submitted before the
197 variance goes into effect.

198
199 **K. Shea moved and J. Ramsay seconded no regional impact for the distillery. All in favor**
200

201 **CASE # PZ7677-071516- Use variance for distillery**

202 Discussion

203 C. Vars understands the impassioned response from the abutters for the unknown factors. But major
204 exaggerations were made at the public hearing. According to DES, there are only three wells in Holly Hill
205 and they would not be approved by any bank today. He has drilled and understands wells. His
206 assessment is any wells that would be drilled would be down gradient from any wells in the Holly Hill
207 subdivision and a minimum of 1850 ft. away from Holly Hill. They are drilled in bedrock. The well would
208 have to be much closer to have an effect on an adjacent well. Distilleries use much less water than a
209 winery or a brewery. He had a discussion with a distillery owner who was on town water and 800 gallons
210 was their maximum water usage per day. He has no problem with the water usage, but he's ok with
211 postponing the decision if others want to do more research.

212
213 K. Shea said the residents are concerned, but that is not what needs to be taken into account for a use
214 variance. That is a Planning Board issue. He doesn't need any more info before he votes.

215
216 R. Rowe doesn't know about the water use of a distillery. He would like to have an expert come forward
217 and do a report that demonstrates it won't adversely affect the abutters. The ZBA should address the
218 abutters' concerns.

219
220 D. Kirkwood said sometimes one well could affect a well far away from it or there could be separate
221 veins of water close together. He wondered how many artesian wells are there in the area and how
222 many dug wells. His other concern is that he's not comfortable with the water usage at the distillery. He
223 would like to have a better feeling of what the intensity of those uses are to make a decision. The
224 intensity of the use is part of the public interest. This is what we need to know before we support or
225 deny. It's a different use than what's across the road. What is going to be the output? Will they bottle
226 and sell on site or bottle and ship out?

227
228 K. Shea pointed out that the ZBA doesn't know the water usage of other allowed uses on that property
229 either. For example: a nursing home or funeral home. He is concerned about the water, but it will be
230 dealt with at the Planning Board level.

231
232 D. Kirkwood said the law gives us the right to place any conditions we see fit as long as it falls into the
233 property versus person distinction.

234
235 **C. Vars moved to table the use variance for the distillery to the next ZBA meeting September 20th so**
236 **the necessary information can be submitted. R. Rowe seconded.**

237 R. Rowe stated the report should come from an independent source.

238 The information the board seeks includes:

- 239 • resource utilization of the distillery
- 240 • waste disposal
- 241 • intensity of the operation (water use)
- 242 • # of artisanal wells and dug wells

243

244 C. Vars asked who will pay for this report. R. Rowe said it's standard practice for the Planning Board to
245 hire a consultant and have the applicant pay for it. The ZBA has that authority too, though has never
246 used it.

247 **Vote: 4 in favor 1 opposed (K. Shea)**

248

249 **J. Ramsay moved to exit deliberations. R. Rowe seconded. All in favor**

250

251 Attorney Hollis asked the Chair how the board will accept the information and if it will be presented at a
252 hearing or submitted to the board through the town offices.

253 D. Kirkwood said the reports should be submitted to the Community Development office and the board
254 members will receive copies. The report will be available to the general public in the office. At the next
255 meeting, they will un-table consideration of the application and if it's ready, accept that report at the
256 meeting. The board may ask some clarifying questions and then go back into deliberations.

257

258 J. Marchant asked and the Chair clarified that the 'event center for up to 120 guests' is within the
259 variance for the inn and office that was granted.

260

261 **C. Vars moved and R. Rowe seconded to enter back into deliberations. All in favor**

262 **R. Rowe moved no regional impact. J. Ramsay seconded. All in favor**

263

264 **Case # PZ7676-071516- Variance for height restriction**

265 Discussion

266 K. Shea said the height was strictly for aesthetic appeal, correct? Yes, that is the board's understanding.

267 R. Rowe said it's a want, not a need. The building can be done within the restrictions. It's not a hardship
268 under the law.

269 C. Vars said the only issue he sees is if the fire department doesn't approve the plan due to ladder
270 restrictions. But that is under the purview of the Planning Board, not us.

271 R. Rowe said if we allow the extra height and at the Planning Board meeting the fire department says
272 they can't reach, the Planning Board can't change our decision. D. Kirkwood said they can come back to
273 the ZBA for a variance from the variance.

274 D. Kirkwood said one of the buildings has a height that exceeds the height restriction so they'd want to
275 be sure that the ridge- pole lines can be in sync with one another but not allow them to go way above
276 the others.

277

278 D. Kirkwood said we could take their exhibits that they've already submitted with the heights as
279 depicted and permit that. So they can refer to the exterior elevations plan labeled LaBelle Winery A-201
280 and A-202 and grant the heights that are shown on these plans.

281

282 J. Ramsay said the architect, Mr. Biggers stated the height restriction could be worked around, but at
283 what cost to the aesthetics? He weighs that heavily. Our biggest concern is that this building is
284 appropriate and aesthetically pleasing to the property and to the entrance to town.

285

286

Case # PZ7676-071516- Variance for height restriction

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

R. Rowe it is a want, not a need. An adequate design could be done without it. This is the only height variance application he's heard as a ZBA member. It's not in the public interest.

C. Vars believes there was a variance granted for the winery height and the design is magnificent. The 12 feet is not a major issue. It is not contrary to public interest.

K. Shea agrees with Charlie. Not contrary to public interest. Granting the height is in favor of the public interest. It is an aesthetic issue not a use issue.

J. Ramsay agree 12 feet is largely imperceptible from Rte. 101.

D. Kirkwood doesn't know what the building would look like if the height restriction was observed, but the building as presented would serve the public interest with the visual impact when coming into the town. It's not contrary to public interest.

4 True 1 Not True

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

C. Vars yes, it won't alter the character of the neighborhood. No effect on health, safety or welfare. If a church goes there, it would probably have a steeple. It is in the spirit of the ordinance.

K. Shea agree for same reasons

J. Ramsay agree

R. Rowe not true

D. Kirkwood the spirit of the ordinance is focused in this part of town on maintaining rural character. If the intent is to retain that, this is within the spirit of the ordinance. true

4 True- 1 Not True

3. Substantial justice is done.

K. Shea It's not a need, but it is essential to the design and the scale and if we want to keep the character, scale and design should be at the forefront. Yes, substantial justice will be done.

J. Ramsay agree justice will be done. The design is all about aesthetics and how it all fits in. Part of that is an additional 12 feet of height.

R. Rowe not true We are not making a decision on an architectural drawing. Just on an inn that is a certain feet of height. The design may change. He has faith in the architect to meet a rural NH village style without the extra feet. A building that's lower and longer would look great too.

C. Vars the way it is set on the site with walls behind, it will soften the height. Yes, substantial justice will be done.

D. Kirkwood true

4 True 1 Not True

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

K. Shea don't see how surrounding properties would be diminished for 12 feet of architecture

J. Ramsay agree and this building is all about the aesthetics and they are under a hardship to make this building fit in and look right on this property. Not every project would fit so well in there

R. Rowe true

C. Vars true

D. Kirkwood true

5 True

335 5. Literal enforcement of the provisions of the Ordinance would result an unnecessary hardship.
336 R. Rowe not true There are no unnecessary hardships or special conditions that distinguish it from other
337 properties. They can do it without the height
338 J. Ramsay all about the aesthetics. To impose the height restriction would detract from the look of the
339 building and that is the hardship to the applicant.
340 K. Shea anything that goes there will have to fit in with the master plan that is driven by rural character.
341 This is an answer to that hardship
342 C. Vars yes proposed height is reasonable. The way it's set on the property and the tree line and
343 landscape will diminish the effect of the height. It was done at the winery and there are no issues there
344 D. Kirkwood Considering how we apply the test for hardship he voted not true
345 3 True- 2 Not True
346
347 D. Kirkwood stated having passed all the tests, the variance for the height restriction has been granted.
348
349 C. Vars said it should be subject to the Fire Chief's ability to access it with current equipment.
350 D. Kirkwood said during site review that process occurs anyway.
351
352 **K. Shea moved and C. Vars seconded to come out of deliberations at 9:15pm. All in favor**
353
354 **R. Rowe moved to adjourn at 9:18pm. C. Vars seconded. All in favor**
355
356 Respectfully submitted,
357 Jessica Marchant