

**Town of Amherst
Zoning Board of Adjustment
Tuesday June 20, 2017**

ATTENDEES: D. Kirkwood- Chair, K. Shea, C. Vars, J. Ramsay, S. Giarusso (Alt.), Staff G. Leedy

The Chair called the meeting to order at 7:04pm, explained the ZBA process and introduced the board members and staff present.

C. Vars stepped down from the Board, S. Giarusso was appointed to vote in his absence.

NEW BUSINESS:

CASE #: PZ8593-042817 – Equitable Waiver William & Karla Bouvier – 54 Brook Road, PIN #: 010-013-000 – Request for an Equitable Waiver for a garage built 0.2 feet closer to the road ROW than allowed.

Charlie Vars presented the case. He indicated that the interpretation of the survey offset stake locating the garage foundation was in error, leading to the garage being built 0.2 FT (1 13/16") closer to the road than was previously allowed by variance.

He addressed the tests as follows:

1. a. The nonconformity was discovered after the foundation was poured and the building was framed.
-and-
b. The error was not a result of ignorance of the law or bad faith, rather, it was a result of misinterpretation of the location of the surveyor's offset stake, and miscommunication with the surveyor.
2. The error does not result in a nuisance, nor will it impact the value or use of neighboring properties. The 0.2 FT encroachment will not be observable.
3. The cost of correcting the error would far outweigh any public benefit from correcting the mistake. As mentioned, the error will not be noticeable to the neighbors or to the public travelling Brook Road.

D. Kirkwood asked what would have prevented checking the location of the forms prior to pouring the foundation. C. Vars indicated that in the current construction climate, it is very difficult to get a surveyor to come to the site once, let alone multiple times. He was reasonable sure that he understood the location staking and that the building was sited appropriately. It was only when the plot plan was prepared that the error was apparent.

No public comment

J. Ramsay moved and S. Giarusso seconded to enter deliberations. All in favor

CASE #: PZ8593-042817 - Variance

J. Ramsay moved and K. Shea seconded no regional impact. All in favor

- 1a. The non-conformity was discovered after substantial completion of the structure.

49 K. Shea yes
50 J. Ramsay agree
51 S. Giarusso Yes
52 D. Kirkwood true
53 4 True
54
55 1b. The non-Conformity is not a result of ignorance of the law or bad faith, but resulted from a good
56 faith error of measurement or calculation.
57 K. Shea yes
58 J. Ramsay agree
59 S. Giarusso Yes
60 D. Kirkwood true – the error was actually made by the surveyor in not communicating the staking
61 correctly.
62 4 True
63
64 2. The nonconformity does not constitute a nuisance nor diminish the value or interfere with future uses
65 of other property in the area?
66 K. Shea yes – the non-conformity certainly does not create a nuisance or affect other property.
67 J. Ramsay yes
68 S. Giarusso Yes
69 D. Kirkwood true
70 4 True
71
72 3. The cost of correction far outweighs any public benefit to be gained?
73 K. Shea yes
74 J. Ramsay yes
75 S. Giarusso Yes
76 D. Kirkwood true
77 4 True
78
79 The chair stated that after having passed the tests, the equitable waiver is granted.
80
81 **J. Ramsay moved and K. Shea seconded to exit deliberations. All in favor**
82
83 C. Vars stepped back to the Board.
84
85 **Minutes: May 16, 2017**
86 **C. Vars moved and J. Ramsay seconded to approve the minutes of May 16, 2017 as submitted.**
87
88 D. Kirkwood pointed out an addition to line 201.
89 **All in favor with S. Giarousso abstaining.**
90
91 OTHER BUSINESS:
92 **Board Reorganization**
93 **D. Kirkwood discussed election of officers & suggested Kevin Shea as Vice Chair, noting that at the last**
94 **meeting where the Board reorganized, Kevin was not in attendance, and so was not nominated to**
95 **that position without his assent. K. Shea indicated that he would be honored to serve. C. Vars moved**
96 **to elect K. Shea Vice Chairman by unanimous consent. J. Ramsay seconded. All indicated consent.**

97 **C. Vars moved to adjourn at 7:49 pm. J. Ramsay seconded. All in favor**
98
99 Respectfully submitted,
100 Gordon Leedy