

**Town of Amherst
Zoning Board of Adjustment
Tuesday September 19, 2017**

ATTENDEES: D. Kirkwood- Chair, R. Rowe, C. Vars, J. Ramsay, Staff G. Leedy

The Chair called the meeting to order at 7:10pm and explained the ZBA does not have a full board present tonight. There are only four members so if any deliberation of a case results in a tie, the variance will be denied.

After some discussion both applicants decided to move forward with presenting their cases tonight.

The Chair then explained the ZBA meeting process and introduced the board members and staff.

NEW BUSINESS:

CASE # PZ8961-081117 - Variance SGA Design Group (Applicant) & Walmart Real Estate (Owner) – Walmart #1796 On Line Grocery Pick Up – 85 State Route 101A, PIN #: 002-066-001 – Request for approval to construct a canopy to serve the On Line Grocery Service area and relief from the provisions of Article III, Section 3.4, Paragraph L(3) for the addition of the wall sign for Pick Up service. Zoned Commercial.

The property (PIN# 002-066-001) is located at 85 State Route 101A in the Commercial District. The lot is approximately 31.8 acres. The property is the site of the existing Walmart Supercenter.

The applicant seeks to construct an accessory structure beside the northerly end of the existing building, across the existing access drive to provide a covered carport-type facility for grocery pick up for a new service Walmart wishes to provide - on-line grocery ordering and pick up. The canopy is located beside the service drive to the northerly side of the building, and does not require any significant changes to site circulation or existing paved areas. Space for 6 vehicles will be provided, and there will be additional signage and pavement markings proposed.

The requested relief is for a reduction in the side yard setback from the required 20' for an accessory structure to 17.48'. This is a *de minimus* request for relief, and will likely be imperceptible to the general public. If the pavement alone were requested (without the canopy), this facility would not require relief.

The applicant has also requested relief for an additional wall sign and identification signage in excess of the previously approved sign master plan signage totaling 500 SF. There is an additional 66.76 SF of building signage proposed. The pavement markings and stall designation signs will be considered directional signage and are allowed in addition to the building signage and the free-standing sign near the street.

Sunday Bougher, architectural consultant for Walmart presented the case.

Originally two requests for variances were applied for, but she is only looking for one variance tonight for a setback waiver to construct a canopy for the online grocery pick-up. Walmart will seek the sign variance at a later date if they choose.

The proposed location of the canopy is the most logical place for it. It encroaches in the setback area approximately three feet.

She described the online grocery process.

Walmart is expanding in this way because they are trying to meet the public's need.

She began addressing the tests.

1. The online grocery process and therefore the canopy need is in the best interest of the busy public. Online shopping is causing physical stores to go out of business. The grocery pick-up still brings consumers out into the town where they may visit other stores because they won't have to spend as much time walking the large Walmart store for their items.

2. She said the spirit of the ordinance is to serve the public.

R. Rowe stopped her presentation to mention that she should address the setback issue rather than the use.

Ms. Bougher stated the location that was established is based on the configuration of the store and the efficiency of the service. It is in line with public and employee safety. The traffic pattern is already established for that store.

She showed a map to the board members which explains the location of the proposed canopy.

D. Kirkwood asked if the canopy could be a few feet shorter. She stated Walmart researched the demographics of this area and prefers this size canopy which includes eight parking spaces.

She continued with the tests:

2. Location of the canopy is based on the configuration of the store and the efficiency of the service. It is in line with public and employee safety. The traffic pattern is already established for that store. There are utility lines to work around as well which prevents moving it down further.

3. She addressed substantial justice by stating the location serves a life safety concern for customers and employees.

4. Surrounding properties- They are staying current with the marketing trends. This will not hurt surrounding properties. It should help by continuing to bring consumers to the area.

5. Hardship

This is the best location on the site for the canopy based on safety of the customers and employees and efficiency for the program to run smoothly.

C. Vars said there is inconsistency between the two documents shown. One has six spaces and one has eight spaces. If they only wanted the six spaces, it may even be small enough that they wouldn't need a variance. He suggested coming back next month with the proper documents squared away.

R. Rowe said Walmart is a great citizen and he thinks this proposal a great use. However, the board has to vote on the five standards of the law.

D. Kirkwood explained what is meant by the hardship test.

The options available to the applicant are: table the case tonight and present the case again next month, do a smaller canopy that doesn't require a variance, or withdraw the application and come back again if/when ready to make another proposal.

Public comment

None

CASE # PZ9016-082417 – Variance George de Laire (Applicant & Owner) – 21 Clark Island Road, PIN #: 008- 099-000 – Request for approval to convert an existing barn/garage (defined as “Building A” on the plans) into a detached accessory apartment. Zoned Residential Rural.

The property (PIN # 008-099-000) is located at 21 Clark Island Road in the Rural Residential district. The lot is approximately 1.9 acres. The property is the site of an existing single- family home, with a 2-story attached garage, a detached, covered boat storage structure, and a detached 2-story garage/barn building.

The applicant seeks to construct an accessory apartment in the existing barn building (Building A on the submitted plan), which is detached from the principal building on the site. Section 9.1 of the Amherst Zoning Ordinance defines accessory apartments as an apartment no more than 1,100 SF in area, containing no more than two bedrooms, and "incorporated within an existing or proposed single family home which is structurally integrated with direct access between it and the main living unit." As a result of a change in the state statute, accessory apartments are allowed as of right in any zoning district. Any added bedrooms on the site require an amendment to the septic disposal permit from NHDES.

This application is to allow a detached accessory apartment in an existing garage/barn on the property. There is an existing playroom on the second floor of the existing building. The existing building conforms to setbacks and its exterior will not be appreciably modified as a result of this requested action.

Michael Klass, Attorney presented the case. Tom Carr from Meridian was also present as was Dan Morin from Morin Contracting and the property owner Georges De Laire.

M. Klass stated building A on the plan is the existing structure they would like to turn into the accessory structure. This land is a unique property- it is a peninsula in Baboosic Lake. The restrictions for accessory apartments would all be adhered to except it will be detached rather than attached to the home. The building envelope would not change. The plan is to convert the two garage doors into an egress door. They will re-side the building to be consistent with the house materials. The existing barn is a garage with storage above rather than the playroom that is described in the staff report. Some of the town records for the property are not accurate. The owner’s wish is to provide a space for his elderly mother to live. Utilizing an existing structure prevents the need for new construction. The house is very close to the lake and any additions would make the home even closer to the lake encroaching into buffers that building A is not subject to.

He addressed the tests as follows:

1. As the courts have said, to be contrary to the public interest, the variance must unduly and in a marked degree conflict with the Ordinance such that it violates the Ordinance's basic zoning objectives. Amherst requires that accessory apartments be attached. He read from a pamphlet from the Office of Energy and Planning regarding the purpose of the ADU law- one of which being for adult children to provide semi-independent living arrangements for aging parents.

He continued his case by stating the primary purpose of accessory dwelling units is to provide additional and flexible housing opportunities for residents. The implicit purpose of requiring attached accessory dwellings is to encourage the creation of such dwelling units while minimizing new construction and in a manner that integrates the housing into the existing neighborhood.

Here, the Applicant seeks to provide an independent living space for his mother while providing a supporting family environment. Clearly, this proposed use is consistent with the overarching goal of accessory dwelling units.

R. Rowe mentioned it is irrelevant who will use the structure.

M. Klass stated the purpose is relevant in this case, but otherwise, yes, legally anyone would be able to live there.

M. Klass continued, in using an existing structure on the Property, the Applicant provides such housing in a manner that will not increase the existing building envelopes on the Property. Finally, before a building permit can be issued for the proposed use, the Applicant must obtain state septic approval. Such review under the building code and applicable septic rules and regulations will protect the public's health, safety, and general welfare with respect to the proposed use. Finally, keeping development away from wetland resources is a well-accepted planning principle.

In light of the above, the requested variance does not conflict with the purpose of the Ordinance or its basic objectives and granting the requested relief will not be contrary to the public interest.

2. This analysis is similar to the above, and, again, the rationale for attached accessory dwelling units is to provide additional housing in a manner that limits the need for new construction.

Here, the proposed use will not only provide the type of flexible dwelling space that is envisioned through accessory dwelling unit rules, it will do so utilizing an existing structure on the Property. So, while it will not be connected to the main house, the proposed use will not require the construction of a new building or expansion of the existing building footprint. Moreover, the proposed use will not change the rural character of the neighborhood.

As such, the spirit of the ordinance is observed in the requested variance.

3. Substantial justice is done when the loss of denying a variance exceeds the gain to the general public in strictly enforcing the ordinance.

In this case, denying the requested variances will not result in an appreciable gain to the general public given that the proposed accessory apartment will be designed and permitted to ensure its safe and appropriate use. Other than the fact that this proposed dwelling is not attached, such use would be allowed by right. Furthermore, the proposed lots will not threaten public health, safety, or welfare. On the other hand, denying this application will result in a substantial loss to the applicant by preventing a safe and reasonable use of his property and, more particular, of an existing structure on the Property. In light of the above, the loss of denying the variance greatly exceeds any public gain and warrants granting this application.

4. The requested variance will not diminish the character of the neighborhood. There is one abutter with a structure towards the north and west and one other abutter with a vacant land lot.

The proposed accessory apartment will utilize an existing garage and will require additional building and septic permits which will serve to protect the surrounding properties.

Moreover, the proposed use should not produce different or significant traffic, noise, or odors or other detrimental impacts to the surrounding area. As such, the values of the surrounding properties will not be diminished.

5. In this case, the property at issue is special and unique from other properties in the area given its isolated location next to, and essentially surrounded by, Baboosic Lake. The Property is further unique in the existence and orientation of the main house and Building A.

As stated above, the primary purpose of accessory dwelling units is to provide additional and flexible housing opportunities, and the implicit purpose of requiring attached accessory dwellings is to

encourage the creation of such dwelling units in a manner that minimizes new construction and integrates the housing into the existing neighborhood.

Here, the Applicant seeks to create an accessory apartment on the Property in an existing structure. Other than being detached from the main house, such use is permitted under the Ordinance in this zoning district. The public's health, safety, and general welfare are further protected by the fact that the proposed apartment's septic design must be approved by the state (NH DES) prior to the issuance of a Town building permit. The fact that the Applicant proposes to use an existing structure protects against additional construction to the main house, which is positioned closer to the lake. Finally, the Applicant intends to marry the style of the proposed apartment with the style of the existing house to ensure aesthetic consistency.

In light of the above, there is no substantial relationship between the general public purpose of the Ordinance's requirement for an attached accessory apartment and its application to the Property.

The proposed use is reasonable because it contemplates a use (accessory apartment) that would be allowed by right but for the detached nature of the request. Because Building A already exists on the Property, converting such structure into an accessory apartment will not require expanding the Property's building footprints. Furthermore, prior to using Building A as an accessory apartment, the Applicant will have to obtain state septic approval and Town approval for a building permit. Thus, under the facts of this case, allowing for a detached accessory apartment on the Property in Building A is reasonable.

D. Kirkwood wondered about uniqueness. All of the properties out in that area have the water and unique property shapes. But the uniqueness of this property is that there is an existing structure so far away from the main structure.

M. Klass said the amount of lakefront property this parcel has is more than the rest in the area.

J. Ramsay asked if the two structures are of similar age. M. Klass stated the current owner purchased the property in 2012 and took the old home down and rebuilt a new home in 2013. The barn structure is from the 1990s.

J. Ramsay also noted building A encroaches into the setback and asked if the property has come before the ZBA for variance before.

Gordon stated, yes, there have been some applications in the past, though the information is not completely clear. Some applications were received, but the projects were never done. He does know it is a conforming structure and has been granted for setback.

J. Ramsay also asked if the accessory apartment will be tied into the current septic system. Tom said when the new home was built, the septic wasn't replaced because it didn't fail. There were permits to show it would support the new 5-bedroom home. There is still an active shore land permit as part of the construction of the home. The permit is valid, but will have to be addressed in some way whether it's an amendment or a permit to tie into the revised septic plan.

J. Ramsay clarified they will be adding a septic tank to service the apartment and tying into some leach field which will either be an expansion or replacement of the current one. Tom said it will depend if they can find all of the original approvals or not. The design has not yet been planned out.

D. Kirkwood asked what the elevations are on the property and that was discussed.

237 C. Vars asked about story height. M. Klass said the proposal will use the second floor of the garage,
 238 however the overhang on the right would not be converted to living space.
 239 Dan Morin said it will be built on a concrete slab. The garage doors will be replaced with a single
 240 doorway and likely a window.
 241
 242 Public comment:
 243 None
 244
 245 **J. Ramsay moved and C. Vars seconded to enter deliberations. All in favor**
 246 **J. Ramsay moved and R. Rowe seconded no regional impact. All in favor**
 247
 248 **CASE #: PZ8961-081117 - Variance**
 249 D. Kirkwood said the applicant has asked to table the case.
 250 **R. Rowe moved and J. Ramsay seconded to table the case to the October ZBA meeting. All in favor**
 251
 252 **C. Vars moved and J. Ramsay seconded no regional impact. All in favor**
 253 **CASE #: PZ9016-082417 – Variance**
 254 Discussion
 255 R. Rowe said this is a 1.9- acre lot and he is having trouble with finding its uniqueness. This is a request
 256 for a second dwelling that could be rented to a third party. He thinks it's contrary to the ordinance. He
 257 doesn't see the uniqueness to the property that would allow a detached apartment. It's not in the public
 258 interest and doesn't meet the goals of the ordinance. It is convenient for the owner.
 259
 260 C. Vars asked him if it would be better to add a breezeway and add another building attached to the
 261 home. R. Rowe said, yes, it would be legal.
 262 D. Kirkwood wondered if they could restrict the variance to the lifetime of the desired occupant, but
 263 that can't be done.
 264 J. Ramsay said the only restriction this proposal doesn't meet is the distance. If future applicants want to
 265 do this, they would each have to come before the board and each would have their own hardship
 266 arguments.
 267 D. Kirkwood has issues with the hardship- the uniqueness of the property. He doesn't see anything
 268 characteristic of that property that makes it unique. If they wanted to put in a new building and attach it
 269 and the area around the house does not lend itself for that because of the way the land is configured,
 270 that could be unique but he's not seeing evidence of that. It makes perfect sense to him to want to do it,
 271 but he agrees with Bob.
 272 J. Ramsay said they haven't seen evidence of other options such as adding on and if that would work or
 273 not.
 274 C. Vars said the building is unique. To make it attached, they'd have to move either the house, the
 275 garage or build a long connector at astronomical cost.
 276 D. Kirkwood said they could table the case so Town Counsel could be consulted. This is a piece of
 277 property that doesn't seem to have unique status. He wondered if they could include the structures that
 278 exist on the land as the unique status.
 279
 280 **R. Rowe moved to table the case to the October ZBA meeting. J. Ramsay seconded. All in favor**
 281 **C. Vars moved and J. Ramsay seconded to exit deliberations at 8:42pm. All in favor**
 282
 283 D. Kirkwood said he spoke to Bill Drescher about coming to the October meeting to discuss variance
 284 standards and he said he will be there.

285 G. Leedy asked the board members to think if they have any proposals they want to put forward to the
286 Planning Board for zoning changes.
287
288 C. Vars mentioned residents are having trouble hearing the meetings that are televised. Even with the
289 volume all the way up, the sound is not coming through.
290
291 OTHER BUSINESS:
292 **Minutes: August 15, 2017**
293 **C. Vars moved and J. Ramsay seconded to approve the minutes of August 15, 2017 as amended.**
294 **All in favor**
295 Line 132 to read: ... It is modification of parts
296 Line 253 to read: result in a reduction of groundwater availability...
297
298 **C. Vars moved to adjourn at 9:00pm. J. Ramsay seconded. All in favor**
299
300 Respectfully submitted,
301 Jessica Marchant