

Town of Amherst  
Zoning Board of Adjustment  
Tuesday October 17, 2017

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

**NEW BUSINESS:**

**Non-Public session: William Drescher, Esq. – Discussion on Statutory Variance Tests.**

The Chair called the meeting to order at 8:15pm, introduced the board members and stated R. Panasiti will vote for R. Rowe.

**OLD 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.** Continued from September 19, 2017.

**K. Shea moved to un-table the case. C. Vars seconded. All in favor**

This applicant withdrew their application prior to the meeting.

**R. Panasiti moved to dismiss the case. K. Shea seconded. All in favor**

**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.** Continued from September 19, 2017.

**K. Shea moved and R. Panasiti seconded to un-table the case. All in favor**

**C. Vars moved and R. Panasiti seconded to come out of deliberations for the purpose of obtaining additional information from the applicant. All in favor**

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.

Michael Klass, Attorney, presented the case. Dan Morin from Morin Contracting was also present. The applicant is seeking a use variance to allow an existing structure on the property to be used as an accessory apartment.

M. Klass reviewed previous information given at the original hearing last month.

The owner purchased this property in 2012. He took down the old home and built a new home in the same footprint. M. Klass explained and described the maps and photos he brought with him.

If the garage was attached, the accessory apartment would be allowed. However, it is detached which is why they need the variance. There is no space to add an apartment onto the house due to the water, the ledge and the wetlands buffer. Also, adding onto the home would detract from the architecture as well as potentially decrease the value of the home because of that.

K. Shea asked about the accessory structure's utility needs: heat, septic, etc. M. Klass stated a condition of this approval is that septic has to be approved.

D. Morin said there is an existing electrical panel and pole for that building. Plumbing would require an additional septic tank. They will most likely add a new well, but that hasn't been decided. Heating and cooling hasn't been decided. Possibly electric, though there is a propane tank right outside the garage that could possibly be used.

R. Panasiti asked about the square footage. It would be less than or equal to the allowed square footage for an accessory structure. (1100 sq. ft.)

D. Morin determined the apartment will be 900 sq. ft. The exterior will change- siding/ remove garage doors/ add human door and windows.

R. Panasiti asked if the use stays when this owner sells. Yes, once the use is allowed, it runs with the land.

C. Vars noted the Town of Amherst does not give a list of criteria as other towns do.

G. Leedy stated there were old rules that are no longer in practice due to state statute changes such as the apartment being within the building and have a connecting door. There is also no longer a rule that a family member has to live in the accessory structure.

C. Vars clarified that the only issue we are dealing with tonight is the fact that the proposed accessory dwelling is detached rather than attached.

M. Klass summarized his previous statements regarding the five tests and addressed the first two tests together.

1,2. The purpose of the provision is to provide additional and flexible housing opportunities. The purpose of the attached provision is to encourage creation of lots that are integrated with the existing property while minimizing construction.

This applicant is seeking to provide independent housing for his mother in a supportive family environment. This option avoids new construction, enlarging the building envelope and blemishing the existing design of the house with an addition.

They understand they have to obtain state septic approval before building permit can be pulled.

3. Substantial Justice: He doesn't see any gain to the general public by not allowing this use given it would be allowed if it was connected. Health, safety and welfare are not threatened since they are using an existing structure which will require DES approval.

Denial of the variance will result in substantial loss to the applicant. It would deny safe and reasonable use of the existing structure, requiring new construction closer to the lake and decreasing views and other aesthetics of the existing home.

96 4. Values

97 This request will not diminish character of the neighborhood, will utilize the existing structure and will  
98 require additional septic permits. This will not cause significant traffic, noise or odor impacts to the area.  
99

100 5. Hardship

101 This is a unique property due to shape, amount of shore land, location next to the lake, placement of  
102 home on the property, expansive views, ledge on three sides and limited access. There is no reasonable  
103 option for an addition on the existing house.

104 The purpose is to provide housing opportunities. The purpose of attachment is integration to the  
105 existing property.

106 The proposed accessory apartment will be on the existing structure. Other than being detached, it  
107 would be allowed. The style will complement the style of the house. No reasonable place to attach a  
108 structure due to the location of the house, utilities, ledge and lake.

109 Requiring strict compliance runs contrary to the aesthetic goal of visual integration. It would require  
110 significant redesign, engineering and reconstruction of a fairly new home.  
111

112 There is no substantial relationship between the general public purpose of the ordinance and its  
113 application to this piece of property. This use is reasonable. Building A already exists. This won't expand  
114 building envelopes.  
115

116 He then addressed some questions from the last meeting:

117 Hardship: The test is not whether the variance is necessary for reasonable use, it's if there is a fair and  
118 substantial relationship between the purpose of the ordinance we are seeking relief from and its  
119 application to this piece of property.  
120

121 He mentioned the Harborside case in Portsmouth which was about the sign size on an oversized  
122 building. He read from the document handed out to the board about the case. This is a reasonable use  
123 of the property given its special conditions.

124 There's no provision in the ordinance that limits one dwelling on a lot.  
125

126 D. Kirkwood had issues with the special conditions of the property.

127 M. Klass said this is an extremely unique piece of property due to the water frontage and the granite  
128 outcrops with the house situated like a saddle among the rock.  
129

130 K. Shea stated he visited the property and finds it to be unique. It is well off the beaten path and no one  
131 would be affected by the property other than the one abutter.  
132

133 R. Panasiti stated the abutter is a friend of his so he is familiar with the property and it is unique.  
134

135 C. Vars referenced a map and stated the property is very private. The house and garage cannot be seen  
136 from the road.  
137

138 **C. Vars moved and K. Shea seconded to enter deliberations. All in favor**

139 Regional impact was determined not to be an issue at the last meeting.  
140  
141  
142  
143

144 Discussion:

145 K. Shea had concerns for what this property could be in the future and how many people will be living

146 there but that is off the table because the state has ruled these accessory apartments are allowed and

147 there is no limitation to who can live there.

148 The board is not here to design or engineer a plan for the homeowner. We are here to approve or deny

149 this request. D. Kirkwood said it is part of the process to determine if there are other options available

150 to determine hardship.

151 K. Shea said we'd be asking them to:

152 -Forfeit part of the existing structure

153 -Or create a lengthy connection from the house to the garage.

154 The board agreed the latter would be an unreasonable request.

155

156 K. Shea said the garage will have to be completely renovated and all of the utilities brought up to code

157 and that will be a significant cost. If the owner is willing to go through all that cost rather than just bump

158 out the house as their best option, then we know it will be done well.

159

160 **CASE #: PZ9016-082417 – Variance**

161

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

163 C. Vars yes this proposed use poses nothing detrimental to the public

164 J. Ramsay agree changing the garage to a dwelling will be noticeable only to the owners

165 K. Shea agree nothing violates public interest

166 R. Panasiti agree does not change character of the neighborhood or threaten health, safety or welfare

167 D. Kirkwood true

168 5 True

169

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

171 J. Ramsay yes the change proposed will not impact surrounding properties. Using an existing structure

172 on property rather than new construction which is a significant benefit to the neighborhood

173 K. Shea this option lessens the impact to the property and neighbors and this uses an existing structure

174 out of view. No one on the lake will see this structure. It is secluded.

175 R. Panasiti spirit will be observed. Supports family environment

176 C. Vars agree with Kevin. Won't substantially change character of neighborhood

177 D. Kirkwood true

178 5 True

179

180 3. Substantial justice is done.

181 K. Shea yes no significant gain to public interest by enforcing this that would outweigh benefit to

182 applicant

183 R. Panasiti agree

184 C. Vars yes a balancing act and the substantial justice of allowing it outweighs any negative impact

185 J. Ramsay allows owner enjoyment of his property with no loss to the public

186 D. Kirkwood true

187 5 True

188

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

190 R. Panasiti believe values will not be diminished

191 C. Vars amount of capital needed to make this work, it should increase property values-not decrease

192 J. Ramsay nothing proposed will diminish abutting properties  
 193 K. Shea agree won't be able to see this by land or by sea.  
 194 D. Kirkwood didn't hear any evidence to suggest the remodeling of the structure would have any impact  
 195 on the neighbor. Based on his own experience in that area, doesn't think there will be diminished values  
 196 5 True  
 197  
 198 5. Literal enforcement of the provisions of the Ordinance would result an unnecessary hardship.  
 199 C. Vars owing to special conditions: ledge, distance septic has to be from water, this is a reasonable  
 200 option. Unrealistic for the board to require a covered walkway to attach it. It is appropriate to allow it.  
 201 J. Ramsay agree. To attach it would be architecturally unrealistic. This is a unique property as are many  
 202 down on Baboosic Lake.  
 203 K. Shea yes, it is a special condition: secluded, shape, ledge, water and structure of house has 3 sides  
 204 with views/ decks that make adding to the structure difficult. There's no gain to the public that's going  
 205 to be obtained here by forcing the attachment.  
 206 This allows the homeowner the opportunity to use the state's permission to have an accessory  
 207 apartment on the property with the resources he has available on the property with space and existing  
 208 structures. To not allow that would impose the hardship. The walkway would be an eyesore, and a  
 209 significant cost.  
 210 R. Panasiti agree  
 211 D. Kirkwood had concerns about the special conditions. Rockiness and vegetation isn't any different  
 212 than what is in that area. The special item is that the only logical place for accessory use is where the  
 213 current detached garage is located. Existing dwelling distance to the garage is so long that having to  
 214 connect that is an unreasonable request. That is the special condition. To require that is imposing a  
 215 hardship. The general public will not be affected.  
 216 5 True  
 217  
 218 The Chair stated having passed the tests, the request for variance was granted.  
 219  
 220 **C. Vars moved to exit deliberations. K. Shea seconded. All in favor**  
 221  
 222 OTHER BUSINESS:  
 223 Minutes: September 19, 2017  
 224 **J. Ramsay moved and C. Vars seconded to approve the minutes of September 19, 2017 as submitted.**  
 225 **All in favor with R. Panasiti abstaining**  
 226  
 227 **R. Panasiti moved to adjourn at 9:48pm. C. Vars seconded. All in favor**  
 228  
 229 Respectfully submitted,  
 230 Jessica Marchant