

**Town of Amherst  
Zoning Board of Adjustment  
Tuesday November 21, 2017**

ATTENDEES: D. Kirkwood- Chair, R. Rowe, C. Vars, J. Ramsay, K. Shea, S. Giarrusso and Staff G. Leedy  
The Chair called the meeting to order at 7:07pm, explained the ZBA process and introduced the board members and staff.

**NEW BUSINESS:**

**1. CASE #: PZ9176-100417 – Variance John Paul Sallet (Applicant & Owner) – 24 Juniper Drive, PIN #: 003-082-018 – Request for approval to construct a 22.2 x 14’ deck off the back of the house which is 13.4’ from the property edge where 25’ is required. Zoned Residential Rural.**

John Paul Sallet (Owner) was in attendance to present the case.

He addressed the tests as follows:

1. The construction of a well-designed deck off the back of the house will increase the tax base and revenue to the Town. Decks are common structures on most homes and are accepted by the general public. The construction will be done with approved building material. There won't be any issue with public health or safety.

2. This is a reasonable request given the unusual shape of the lot. Granting this request will allow the owners to have access to a secure deck for their three young children.

There is significant distance from the property line to the next structure and there are woods between as well.

The board asked about neighboring homes and the map was addressed and answered that 3-86 is the condo association and there is significant land and woods between his home and the first condos.

3. We have a licensed contractor who will install the deck. It will be built to codes. It will be a safe structure to be enjoyed by the family and guests. The general public will not see or come in contact with the deck- it will be in the back of the house.

4. This structure will increase the property value therefore not diminishing the value of surrounding properties.

5. A. This would prevent the building of a deck off the back of the house, out of sight from the general public-preventing the use of a back-yard deck.

This lot is shaped like a triangle, unlike most other lots in the area, cutting off each side on the back of the house with the setback lines. This application does not infringe on other properties in the vicinity.

The proposed use is reasonable because it will allow us to have a deck to enjoy with the kids. We believe it won't have a negative impact.

B. A variance for deck is requested due to the unusual lot size-it's not conventional. It's hard to have a reasonable use of that property in the back because of the setback lines and how they cut each side of the property off. A variance is needed to enable a reasonable use.

R. Rowe said the current setback is 25'. The edge of the house is 10.5' and deck is 13.4' from the lot line. The deck will encroach less than the house already does.

R. Rowe asked about the code L.FLD+/- on the plan. It is the leech field location.

J. Ramsay asked how they currently access the back yard from the house. There's a set of steps and a small patio. It's about 3 ft. down from the house to the ground.

C. Vars wondered if the easement at the top of the property is included in the .45 acres. G. Leedy said he believes so, though he is not sure what the easement is for or for whom. C. Vars also wondered about the .7 acres written on the staff report. G. Leedy said he took that number from the assessor maps and they might not be accurate.

C. Vars also asked about the garage and it is a two-car garage accessed from the front.

Public comment:

Bob Petrella- President of Bartlett Common Association- abutting condos  
17 Josiah Bartlett Rd

He wanted to go on the record that the association is ok with this variance. There is a dense amount of woods between their units and the applicant's home. They met as an association and are ok with it, but want to make sure the trees on their side of the boundary stay intact for noise and other reasons.

D. Kirkwood said the deck will be 13.4 ft. from the property line, but the house is actually closer than that.

J. Ramsay read note 4 on the plan: On March 18, 2008 the Amherst Zoning Board of Adjustment granted a variance for the construction of an attached garage within 10.4' of the rear property line.

R. Rowe asked if the right of way serves the condo community. Not that the abutter knows. G. Leedy said it could be a drainage easement and Mr. Sallet confirmed there is a drainage pipe there.

G. Leedy added he received an email from William Maddocks- 23 Juniper Dr. stating as an abutter, he has no issues with the deck. G. Leedy will print the email so it can be added to the Chair's records.

**J. Ramsay moved and K. Shea seconded to enter deliberations. All in favor**

**J. Ramsay moved and C. Vars seconded no regional impact. All in favor**

**CASE #: PZ9176-100417 - Variance**

Discussion - none

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

C. Vars yes, no threat to public health, safety or welfare in this application

J. Ramsay agree

R. Rowe yes

K. Shea agree for same reasons

D. Kirkwood true

5 True

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

J. Ramsay yes in addition to public safety, it's to preserve the aesthetics of the neighborhood. This doesn't impact either of those. It is remote. Spirit is observed

R. Rowe yes

K. Shea yes spirit is observed because of the separation of the properties with dense woods between.

C. Vars agree- with the property in the configuration it is, it's in the spirit to approve

D. Kirkwood true

5 True

97 3. Substantial justice is done.  
 98 R. Rowe yes important use for the land owner and no detrimental effect to abutters. Deck is further  
 99 away from the lot line than the house. No one will see it due to the wooded area.  
 100 K. Shea no harm to public. Homeowners can enjoy back yard and increase value for resale  
 101 C. Vars yes agree for same reasons  
 102 J. Ramsay yes agree. Reasonable application for variance.  
 103 D. Kirkwood looked at the configuration of the lot and when the setbacks are applied, with the amount  
 104 of land they have to work with, just about anything would cross that setback line in back. The justice  
 105 here is allowing the applicant to reasonably use the property he has available. Benefit to the applicant  
 106 outweighs the benefit to the public if this were to be denied.  
 107 5 True  
 108  
 109 4. The values of the surrounding properties will not be diminished.  
 110 K. Shea yes, no diminishment to surrounding properties. 1. Less of an encroachment to an existing non-  
 111 conforming lot. 2. It's a deck which doesn't diminish property values. 3. Won't be able to see it  
 112 C. Vars agree with that  
 113 J. Ramsay yes  
 114 R. Rowe agree  
 115 D. Kirkwood true  
 116 5 True  
 117  
 118 5. Literal enforcement of the provisions of the Ordinance would result an unnecessary hardship.  
 119 C. Vars yes addition of a deck is a reasonable request. Denying it would eliminate good use of the  
 120 property. It's further away from the lot line than the existing variance. No fair and substantial  
 121 relationship that would cause problems with the general public purposes of the ordinance.  
 122 J. Ramsay denying it would be counter intuitive to the variance already granted on the site.  
 123 R. Rowe agree  
 124 K. Shea this test is usually hard to prove special condition. It's a small and triangular lot with the house  
 125 set into the corner. The answer is in the question. He repeated the question and agreed the test was  
 126 met.  
 127 D. Kirkwood the house as it sits now occupies more than the available buildable land of the lot.  
 128  
 129 The Chair stated having passed all the tests, the request for variance is granted.  
 130  
 131 **R. Rowe moved and C. Vars seconded to come out of deliberations. All in favor**  
 132  
 133 The board discussed the process of the five tests.  
 134 D. Kirkwood passed on that because they each give their reasoning, it is beneficial to Town Counsel  
 135 if/when he has to defend their decision.  
 136  
 137 OTHER BUSINESS: Minutes: October 17, 2017  
 138  
 139 **K. Shea moved and S. Giarrusso seconded to approve the minutes of October 17<sup>th</sup> as amended**  
 140 Line 44 change They to The  
 141 Line 64 accessible to accessory  
 142 Line 72 – board decided to have the audio checked and change if necessary  
 143  
 144 **All in favor with R. Rowe and S. Giarrusso abstaining**

145 J. Ramsay mentioned the Baboosic Lake case they discussed last week- opportunity to tighten up the  
146 accessory structure language.

147 R. Rowe said the intent is one residence per lot, with exceptions. It wouldn't hurt to suggest the intent  
148 of one residential structure per lot.

149 J. Ramsay said it was mentioned in the meeting that there is nothing in the ordinance about one  
150 residence per lot. G. Leedy said that's true as long as requirements are met. There's no harm since we  
151 have minimum lot size requirements for residences. If someone has a large lot, they can choose to add  
152 another residence rather than subdivide the lot if they desire.

153

154 G. Leedy said this is how many communities are addressing affordable housing. And that was the state  
155 legislative intent of the ordinance- to provide additional living units at affordable cost. (Accessory  
156 Dwelling Unit provision)

157 Line 124 of the minutes is what Jamey was referring to.

158 D. Kirkwood read from the ordinance about accessory apartments- criteria.

159 K. Shea said they should discuss this issue and perhaps add more criteria to the Amherst ordinance.

160

161 G. Leedy said that discussion should occur very soon about additional criteria- at next Planning Board  
162 meeting- if they are looking to propose any changes at Town Meeting.

163

164 K. Shea doesn't want to rush into any ordinance changes. He would like to be able to add on for an aging  
165 parent, but he wants there to be limitations. To create language that steers the ordinance in the  
166 direction in the way they want it to go.

167 J. Ramsay reminded the board that they can't limit the occupancy to family members.

168

169 S. Giarrusso said the problem is with new developments, rather than existing homes. It's more cost  
170 effective to build multiple units new rather than to add on a unit to an existing home.

171

172 D. Kirkwood said we can send our concerns to the Planning Board and in the meantime, we can have  
173 discussions about it at the end of our meetings.

174

175 C. Vars is working on an accessory apartment in another town which has a checklist that he can share  
176 with the board and the office.

177

178 R. Rowe said we don't have set policies to deal with the complex cases. We may need have an expert.  
179 He is concerned about someone without resources having to go against someone with many experts.  
180 The board discussed the point.

181 D. Kirkwood wants to put this idea to Town Counsel- hiring experts.

182 Does the board agree to seek counsel to discuss where the board's boundaries are? Yes. D. Kirkwood  
183 will ask him.

184

185 **R. Rowe moved to adjourn at 8:30pm. K. Shea seconded. All in favor**

186

187 Respectfully submitted,  
188 Jessica Marchant  
189