

**Town of Amherst
Zoning Board of Adjustment
Tuesday April 17, 2018**

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

The Chair called the meeting to order at 7:05pm then explained the ZBA process and introduced the board members and staff present. There were only four board members in attendance, so the Chair explained that the applicants could choose to table their case to another month or they can go forward. If the board's decision ends in a tie, the application is denied.

NEW BUSINESS:

1. CASE #: PZ9676-031618 – Variance David Symonds & Luigina Stanco (Applicants & Owners) – 56 Broadway, PIN #: 025-085-000 – Request for relief from Article IV, Section 4.3, Paragraph D (1)(3)(4) to build a 10'x20' storage shed 8 feet from the property line. Zoned Residential Rural.

David Symonds & Luigina Stanco presented their case.

They want to put a shed in the back corner of the lot. It is the most level area to put the shed since the topography goes up. They went through the tests as follows:

1. The proposed outbuilding does not conflict with the purpose of the ordinance providing adequate and consistent setback from the public and will not threaten public health, safety and welfare.

2. Spirit of the ordinance will not have any adverse effects on public safety and will not alter essential character of the neighborhood.

3. There is no harm to general public, public view or any other impact to town and general area.

4. Granting the variance will not have any diminution of value to any abutting or surrounding properties.

5A. Lot 25-085 cannot follow setbacks. Lot is similar size to proposed twenty-foot setback.

5B. Said structure will provide a constant visual appearance. This is a reasonable request. We would like a place to store property other than outside on the grounds.

They also added that they are asking for the shed for safety reasons. Right now, the owner uses a temporary cover with a zipper entrance. With young kids around the neighborhood, they don't want anyone going in and getting hurt.

K. Shea received clarification on the location of the property and asked if any of the other sheds on the property will go away if this variance is granted. Yes. One.

C. Vars asked if the applicants own both lots. Yes, they are combined.

What is the size of the back lot? 40x60

What is the reason for putting the shed in the corner? It's the most level part of the property and the most out-of-site from the neighbors.

Public Comment

None

2. CASE # PZ9677-031618 – Variance Pathway Homes, Inc. (Owner) & Cronin, Bisson & Zalinsky, P.C. (Applicant) – 16 Deerwood Drive, PIN #: 004-045-007 - Request for relief from Article 4, Section 3, Paragraph A & C to build a two-family home on a 1.5 acre lot where 2 acres is required for a single family home. Zoned Residential Rural.

Attorney, Laura Carlier and owner Kevin Allard of Pathway homes presented the case.

Mr. Allard bought the lot which was a vacant lot in a cul-de-sac neighborhood. The neighborhood has single family and two-family homes- about 50/50 split. Someone at the Town told him it's not a buildable lot because it's only 1.5 acres where the ordinance requires 2 acres, but that putting in a two-family house shouldn't be too difficult because of the neighborhood. They are requesting two variances: one to build on the 1.5 acre lot and one for use to build a two-family home where it is not permitted.

Attorney Carlier addressed the tests.

She addressed tests 1 and 2 together as follows:

Building a two-family home where other two-family homes exist will not alter the essential character of the neighborhood and would not threaten the health, safety or general welfare of the public in any way.

3. In this case, substantial justice will be done by granting the variance because as-is, Mr. Allard cannot build anything at all and all he's trying to do is keep and build in conformance with the cul-de-sac that he bought a property on. The public will gain nothing by strict enforcement of the ordinance as is.

4. The value of surrounding properties will not be diminished by granting the variance because Mr. Allard plans on building in conformity with the neighborhood on the cul-de-sac in which he bought.

5. Literal enforcement of the provisions of the ordinance would result in unnecessary hardship because as is, he has an unbuildable lot. He bought it believing he could build on it- either a single-family or two-family home in order to get a return on the property. He was told he would be able to do that. As is, no one is going to buy a lot he can't build on.

She handed out plans of what Mr. Allard proposes to build as well as septic plans.

The board members reviewed the plans handed out.

C. Vars questioned the reason for a variance due to lot size. The lot is an existing lot of record and it may be occupied. He wondered why the applicant is seeking variance to build.

The attorney stated it's a better-safe-than-sorry situation. C. Vars maintained there is no prohibition to building on that lot. They have a right to build on it.

C. Vars said it's very clear under article 4 of the zoning regulation- 4.2

The board discussed it and preferred the applicant withdraw that variance. They did withdraw the application for variance for building on the lot and the board will now only be voting on whether they are allowed to build a two-family home.

K. Shea said the address is confusing and doesn't seem to match the neighboring homes. The lot and block are correct. A new address will be assigned when needed.

J. Ramsay asked about the houses around this lot. On the cul-de-sac there's about a 50/50 split between single family and two-family homes.

G. Leedy said there's one single family home and the rest of the abutting properties are two-family homes. There are single family homes in the back on the other road.

Public comment

1. Matt Goddard-23 Cricket Hill

He had questions about the hardship. Was it caused by a Town authority? When did it occur? At the time of purchase, the zoning laws were already in place. It seems the hardship was brought on by the owner himself.

G. Leedy stated he would never tell anyone it's easy to get a variance.

J. Ramsay said it's not unusual for the ZBA to hear this type of case.

D. Kirkwood stated zoning laws continue to change after properties are established.

Mr. Goddard said he would agree if this was still the previous owner. But the zoning laws had already changed prior to this owner buying the property.

D. Kirkwood said if a lot becomes substandard by additional ordinances, that can't be held against the owner of that property. This property was established before, when that lot size was legal.

The attorney agreed, he did buy the lot recently. The hardship would still be the same even if it was the previous owner. He would have had to go through all of these same steps. Mr. Allard's hardship is that he bought this land that when it was created was zoned acceptable to build a two-family home. He is here to get those rights. When he bought it, it was understood that he would be able to do that because the lot was grand-fathered in. Prohibiting him from getting a variance to build a two-family home which he would have been allowed to do in the 1960s or 1970s is the hardship.

2. Mike Caso- 19 Cricket Hill

When a lot is sold, does the grandfather-ship go with it? Or is a new owner held to new standards?

J. Ramsay gave an example of another property by Baboosic Lake.

G. Leedy said use restrictions are not grandfathered. The dimensional restrictions are not grandfathered, but for lot size. Our ordinance says if you have an existing lot, you can build on it- but only to the extent that it's allowed in our ordinance and that you meet the setbacks.

He asked the owner if the intent is to own it and rent it or to sell it.

It won't be a rental property. He will sell each unit individually.

C. Vars wondered, what is the hardship? They are allowed to build a single-family home by ordinance. What is the hardship to build a two-family unit?

The attorney responded that the owner would build the home almost the same way if it was a single-family home or a two-family home. If he builds a single-family home, he won't make any money. If he builds a two-family home, he can make a profit.

C. Vars said financials cannot be included in the case for hardship.

Ms. Carlier said his building envelope is already pretty restrictive for what he can do there. In order for the lot to be worth anything, he has to build the duplex. Strict enforcement of the ordinance creates hardship because he cannot sell it as is. It is a gamble when you choose to purchase real estate, but he thought he could develop it with a two-family home when he purchased it.

D. Kirkwood asked if the owner explored development possibilities before he purchased the property? Yes.

He looked at the whole street and saw 50% were two-family homes.

144 3. Jay St Onge
 145 He is the direct abutter and his well is on that side of his property. How will his well be affected?
 146 He's been there about a year and was told that lot was unbuildable as a two-family. Based on the plans,
 147 the proposed structure looks very large and unlike other homes on the street.
 148
 149 The applicant described where the house would be on the lot – all the way on the right on the high
 150 ground -and that the well would be on the side of the abutter (#14)
 151
 152 4. Matt Goddard asked how the size of the proposed house compares to the red house on the street.
 153 The applicant said it will be similar in size to the house currently across the street from the lot.
 154
 155 **J. Ramsay moved and C. Vars seconded to enter deliberations. All in favor**
 156 **C. Vars moved and K. Shea seconded no regional impact. All in favor**
 157 Discussion
 158 None
 159
 160 **CASE #: PZ9676-031618 - Variance**
 161 1. The Variance will not be contrary to the public interest.
 162 C. Vars yes placing a building on that small lot won't change much even if moved 10 feet for health,
 163 safety and welfare
 164 J. Ramsay agree with Charlie. No impact to abutters or general health, safety and welfare
 165 K. Shea he has proven it and best location for the shed is in the far corner of lot
 166 D. Kirkwood true
 167 4 True
 168
 169 2. The Variance is consistent with the spirit and intent of the Ordinance.
 170 J. Ramsay yes spirit of the ordinance is observed. Good opportunity to get some outdoor storage indoors
 171 for safety and to clean up
 172 K. Shea yes shed in center of property is not reasonable
 173 C. Vars yes
 174 D. Kirkwood True
 175 4 True
 176
 177 3. Substantial justice is done.
 178 K. Shea yes no harm to general public and added value of safety and to securely store property
 179 C. Vars agree
 180 J. Ramsay agree
 181 D. Kirkwood True
 182 4 True
 183
 184 4. The values of the surrounding properties will not be diminished.
 185 C. Vars yes a minimal sized structure which will be solid- not temporary
 186 J. Ramsay true better than the temporary ones that are around the neighborhood. Will have positive
 187 impact
 188 K. Shea yes
 189 D. Kirkwood True
 190 4 True
 191

192 5. Literal enforcement of the provisions of the Ordinance would result an unnecessary hardship.
 193 J. Ramsay this lot and all lots down there require a variance because they cannot meet setbacks. This is
 194 the definition of a property requiring variance
 195 K. Shea agree
 196 C. Vars agree can't put anything on that property without a variance
 197 D. Kirkwood True
 198 4 True
 199
 200 The chair stated that after having passed the tests, the variance is granted.
 201
 202 **CASE #: PZ9677-031618 - Variance**
 203 **J. Ramsay moved no regional impact. K. Shea seconded. All in favor**
 204 Discussion
 205 J. Ramsay said it's an unusual neighborhood. Preexisting conditions for types of homes in this location.
 206 Single family homes and duplexes. No variance is needed to make it a buildable lot. It's buildable
 207 It's about the style of the house- duplex or single family. There's both in that neighborhood 50% each.
 208
 209 C. Vars has difficulty in finding the hardship for the site. No problem with anything else.
 210
 211 K. Shea drove through the neighborhood. The first thing you see driving in is duplexes. You go through
 212 for a while before coming to single family homes. Finance is not a hardship. For him, he wouldn't want a
 213 single-family home in a neighborhood full of duplexes. Also, a single-family home wouldn't sell for as
 214 much as it would in a neighborhood of only single-family homes.
 215
 216 D. Kirkwood if we consider hardship, where is the hardship? A single-family home is already permitted.
 217 Population is about equal between single-family homes and two-family homes.
 218
 219 1. The Variance will not be contrary to the public interest.
 220 K. Shea yes no harm to public interest. Already similar properties no threat to health, safety and welfare
 221 C. Vars agree
 222 J. Ramsay agree won't change neighborhood
 223 D. Kirkwood true
 224 4 true
 225
 226 2. The Variance is consistent with the spirit and intent of the Ordinance.
 227 C. Vars yes the ordinance allowed both at one time and it won't change the character of the area
 228 J. Ramsay agree
 229 K. Shea yes spirit and character remain the same. First homes you see in that neighborhood are two-
 230 family homes
 231 D. Kirkwood true
 232 4 true
 233
 234 3. Substantial justice is done.
 235 J. Ramsay yes applicant will be able to enjoy his property by improving it within the constraints of the
 236 zoning ordinance
 237 K. Shea no harm to public or individuals. Would give owner use of property and similar to neighboring
 238 properties
 239 C. Vars aesthetically will enhance. No damage

240 D. Kirkwood true
 241 4 true
 242
 243 4. The values of the surrounding properties will not be diminished.
 244 K. Shea yes value won't diminish by the improvement of new and similar construction
 245 C. Vars yes no damage to property values. With plans we've seen, no damage
 246 J. Ramsay agree
 247 D. Kirkwood true
 248 4 true
 249
 250 5. Literal enforcement of the provisions of the Ordinance would result an unnecessary hardship.
 251 C. Vars yes no fair relationship to prevent them from doing what's already been done numerous times in
 252 the neighborhood. Also, wouldn't want to be in a single-family home between two two-family homes
 253 J. Ramsay agree preexisting nonconforming but at the time these were conforming. Within the
 254 subdivision, choices were made to build single-family homes and/ or two-family homes. Half and half. To
 255 restrict the type of improvement on this lot that is in character with this neighborhood is a hardship
 256 K. Shea well said by Jaime. Don't believe return on investment satisfies hardship but believes imposing
 257 strict enforcement of the ordinance as it stands now imposes a hardship that the property will not be
 258 able to be used in a similar fashion to the surrounding properties. Also, not wanting to be the single-
 259 family home surrounded by two-family homes limits the options of the owner.
 260 D. Kirkwood opposing voice- hardship is whether special conditions of the property which distinguish it
 261 from other properties in the area exist and they don't. There is a mix of single-family homes and two-
 262 family homes. They could easily satisfy the ordinance by building a single-family home there which
 263 doesn't require a variance. Nothing that sets this property apart from others in the area. It's a 50/50
 264 split. No unusual condition applies. Application does not meet the last test
 265 3 True
 266 1 Not True
 267
 268 The chair stated that after having passed the tests, the variance is granted without condition.
 269
 270 **C. Vars moved and J. Ramsay seconded to exit deliberations. All in favor**
 271
 272 OTHER BUSINESS:
 273 **3. Minutes: December 19, 2017**
 274 C. Vars line 108 from
 275
 276 **J. Ramsay moved and C. Vars seconded to approve the minutes of December 19th, 2017 as amended.**
 277 **All in favor**
 278
 279 **4. ZBA Rules of Procedures – Discussion**
 280 D. Kirkwood wants the members to read the procedures supplied for discussion about any possible
 281 changes at the next meeting.
 282 G. Leedy reminded the board that the board needs to be reconstituted when five members are present.
 283
 284 D. Kirkwood discussed alternate Sam stating he travels a lot for work, but Doug prefers he remain on the
 285 board as an alternate.
 286

287 G. Leedy asked if anyone wants to attend the planning conference April 28th to let him know. It's in
288 Concord.

289
290 A copy of the 2017 report is available for anyone who wants it.

291
292 **K. Shea moved to adjourn at 8:40pm. C. Vars seconded. All in favor**

293
294 Respectfully submitted,
295 Jessica Marchant