

**Town of Amherst
Zoning Board of Adjustment
Tuesday June 19, 2018**

ATTENDEES: D. Kirkwood- Chair, K. Shea, R. Rowe, C. Vars, J. Ramsay, R. Panasiti (Alt) and Staff G. Leedy

The Chair called the meeting to order at 7:07pm then explained the ZBA process and introduced the board members and staff present.

NEW BUSINESS:

PZ9825-042718 – Equitable Waiver of Dimensional Requirements Lynne & Jack Fedas (Owners) – 1 Douglas Drive, PIN #: 002-163-009 - Request for relief from Article 4, Section 4.3, Paragraph D(3) to obtain an equitable waiver to maintain an existing garage roof height of 24 feet where 22 feet in height or less is required. Zoned Residential Rural.

Greg Michael, Attorney presented the case. Applicants Lynne and Jack Fedas were in attendance. R. Rowe mentioned for the record that he has done business with the Fedas family in the past. He did not recuse himself from the case at this time.

Attorney Michael stated the garage was constructed over 15 years ago. The height is 24 feet rather than the 22 allowed. He described the location and size of the lot.

1.Has the violation existed ten years or more with no enforcement action, including written notice by the Town?

The garage was built over ten years ago, so was their written notice of enforcement or action taken by the Town in those years? No, none of this has occurred. This equitable waiver was put in place to create a method of relief when these types of issues were discovered.

The garage was built and inspected and has been completed for 15 years.

On the application for equitable waiver, step one is the ten years. That criteria has been met so questions B and C don't apply.

The ordinance says the height restriction is 35' for a new structure. He expects an honest mistake was made by the builder at the time.

2.Does the nonconformity cause a nuisance, or diminish value or interfere with future uses of other property in the area?

It does not. There have been no objections or concerns for the past ten years. In this instance the 2' discrepancy doesn't make a difference.

3.Does the cost of correction outweigh the public benefit to be gained? His clients brought in a builder to determine this. The roof and trusses would have to be removed and the pitch would have to be lowered. \$52,000 to do the work. The applicant would be placed in significant economic disadvantage. This clearly falls into equitable waiver status.

C. Vars asked and answered that the plan shown tonight was what was presented to the town boards/staff originally and it is clearly marked.

J. Ramsay asked for the date the building permit was issued. August of 2004 was agreed upon.

K. Shea asked how this issue came to be at this late date. A neighbor discovered it and brought it to the attention of the Town.

Public Comment

1. Marc Boucher 449 Boston Post Rd

He read a prepared statement and referenced permits and plans he brought with him.

He suspects that this was not an innocent mistake. The Town somehow did not receive the engineered plan, just a hand-drawn copy. He does not believe that the mistake was not discovered during all of the different inspections along the building timeline.

The original building cost was \$40,000. He suggested since the estimate to fix the problem is \$52,000, they should demo the structure and reconstruct to the approved building plan. He believes not only the over-height is in violation, but also the footprint. Therefore, the entire structure is in violation of the approved building plan.

He handed out copies of minutes from 2007 for board review as well as a letter stating there was no 'as-built' submitted to the Town.

He declared there is too much conflicting information for the board to grant the equitable waiver. He is requesting a cease and desist order should be enforced on all operations and CO should be voided.

2. Keri Allen 451 Boston Post Rd

She read her letter into the record. She is in support of the Fedas. She is a direct neighbor and their property is always in order and well-maintained. She described photos she attached with her letter. She explained that she is disappointed that the board is even hearing this case.

3. Bruce and Louise Curtis 447 Boston Post Rd

They abut the Fedas property from the back. They have lived there since 1986. Concerned if the property and/or business is sold, does this stay or get removed? There is a business on the property. It started as one truck and no garage. Now there are three large trucks and the building. How did this end up in a residential zone?

The large expansion of the business concerns them. What is right for the neighborhood? The building in question is in the back of the lot which is right next to their property line and Marc's back yard.

Many trees have been cleared, which is their right, but now the building and activity is much more noticeable.

The permit asks for a 2-car detached garage which is a residential use. But this building is much bigger than a residential garage and it's heated. How was that allowed?

She brought up conservation concerns with it's proximity to the wetlands.

What's visible from the street is attractive, but the rest is visible to the neighbors.

Why are the Fedas' before the board now? What is the purpose of this waiver? Is it to exempt what else is going on in that building?

As far as they know, there was no complaint filed with the Town.

Attorney Michael addressed the comments. We are here for the height issue of two feet. Not to discuss the business. The applicant received the permit, the garage was inspected and built. It has remained for more than ten years with no complaints or citations.

Costs have increased over these years. The cost to demo and reconstruct could be more than the cost to fix. He is sensitive to the abutters comments, but they are not relevant here.

4. Sheila Kenez 10 Douglas Dr

She has lived there since 1976. She's never been offended by that property. It's always neat and tidy.

None of the issues mentioned tonight affect her property.

97 5. Marc Boucher claims the height difference is not two feet- it is 4.5 feet.
 98
 99 Public comment was closed.
 100
 101 **K. Shea moved and C. Vars seconded to enter deliberations. All in favor**
 102 **C. Vars moved and K. Shea seconded no regional impact. All in favor**
 103 Discussion
 104 R. Rowe stated the attorney is right. The application is for the height only. Not the business etc.
 105 J. Ramsay agreed with Bob about which question is before the board tonight.
 106 D. Kirkwood agreed there is a specific question before the board tonight regarding an equitable waiver.
 107 If there are other questions regarding the use of the property, there are other avenues of pursuit for
 108 dealing with that issue.
 109 C. Vars referenced the 2007 minutes and couldn't find the decision. G. Leedy stated the decision was to
 110 allow the use as a home occupation. The ordinance was modified, and the decision rendered moot
 111 because the use is allowed under the modified ordinance.
 112
 113 **CASE #: PZ9825-042718 Equitable Waiver**
 114 1a. The violation has existed ten years or more with no enforcement action, including written notice by
 115 the Town
 116 C. Vars yes height is not a nuisance. That differential in height does not diminish the value of that
 117 property or adjacent properties. Cost of correction isn't out of line. Would not be able to build for
 118 \$40,000 today. For roof to be cut down would cost as much and the roof would probably end up flat at
 119 that point which would not look good
 120 J. Ramsay yes more than ten years. Agree with Charlie regarding the costs
 121 K. Shea confusion on the length, but yes ten years or more with no enforcement action. Test is satisfied
 122 R. Rowe agree whether the violation is 2' or 4.5', it's aesthetically pleasing. With trees, hard to notice
 123 the difference. If the roof is flattened, it could become ugly
 124 5 True
 125
 126 1b. The nonconformity was discovered after the structure was substantially completed or after a vacant
 127 lot in violation had been transferred to a bona fide purchaser.
 128 J. Ramsay yes it was substantially completed
 129 K. Shea nonconformity was only recently discovered and/or brought to light after 100% complete
 130 R. Rowe yes
 131 C. Vars 2005 for final inspection which is beyond the ten years
 132 5 True
 133
 134 1c. Did the applicant demonstrate that the violation was not an outcome of ignorance of the law or bad
 135 faith but resulted from a good faith error in measurement or calculation?
 136 K. Shea yes no indication there was ignorance in the law or bad faith.
 137 R. Rowe agreed with that
 138 C. Vars it was approved by the Town
 139 J. Ramsay inspected and approved by the Town. Documented in the as-built. Not a matter of ignorance
 140 5 True
 141
 142 2. Did the applicant explain how the nonconformity does not constitute a nuisance nor diminish the
 143 value or interfere with future uses of other property in the area?

144 R. Rowe no evidence presented that the extra height in feet constituted a nuisance or diminished the
 145 value of surrounding properties
 146 C. Vars yes
 147 J. Ramsay yes
 148 K. Shea that property doesn't stand out as not fitting in with the neighborhood. Use of the property was
 149 mentioned, though not a topic for tonight, all should be courteous of their neighbors. The property
 150 increased in value after the construction
 151 5 True
 152
 153 D. Kirkwood commented that the current building inspector tried to find the as-built and the CO.
 154 G. Leedy said the final inspection is listed as "for CO". Typically, a separate CO is not issued for an
 155 accessory structure.
 156
 157 3. Did the applicant explain how the cost of correction far outweighs any public benefit to be gained?
 158 C. Vars not economically sensible or feasible to remove roof and lower.
 159 J. Ramsay agree
 160 K. Shea the cost of production far outweighs the public benefit. Other things can be done that cost less
 161 to help correct visibility.
 162 R. Rowe yes
 163 5 True
 164
 165 D. Kirkwood mentioned two letters that have been written and submitted. He read them into the
 166 record.
 167
 168 The chair stated that after having passed the tests, the equitable waiver is granted.
 169
 170 **C. Vars moved and J. Ramsay seconded to exit deliberations. All in favor**
 171
 172 **2. PZ9908-051918 – Variance Frank Reynolds (Owner & Applicant) – 52 Spring Road, PIN #: 006-025-**
 173 **002 – Request for a Variance from Article IV, Section 4,3, Paragraph A to build a detached accessory**
 174 **dwelling unit on the second floor of the existing structure.**
 175
 176 **J. Ramsay moved to un-table the case. K. Shea seconded. All in favor**
 177 The applicant has withdrawn the case from this meeting.
 178 **R. Rowe moved to accept the withdrawal. K. Shea seconded. All in favor**
 179
 180 G. Leedy gave some background information regarding the previous case.
 181
 182 OTHER BUSINESS:
 183 **3. Minutes: May 15, 2018**
 184 **K. Shea moved and C. Vars seconded to approve the minutes of May 15 as amended. All in favor with**
 185 **R. Rowe abstaining**
 186
 187 **4. ZBA Rules of Procedures**
 188 Some issues that need to be addressed:
 189 "Reasonable time" needs to be addressed
 190 Time limit to bring an appeal for administrative decision
 191 D. Kirkwood and attorney Drescher will get together to go through all of the rules of procedure

192 C. Vars made some edits to the current copy.
193 G. Leedy will make these changes and resend the draft to D. Kirkwood and attorney Drescher tomorrow
194 for review.
195
196 **K. Shea moved to adjourn at 8:40pm. C. Vars seconded. All in favor**
197
198 Respectfully submitted,
199 Jessica Marchant