

**Town of Amherst
Zoning Board of Adjustment
Tuesday June 18, 2019**

In attendance: D. Kirkwood – Chair, R. Rowe – Vice Chair, J. Ramsay – Secretary/Treasurer, C. Vars, and D. Pray.

D. Kirkwood called the meeting to order at 7:04 pm. He explained the ZBA process and introduced the Board members.

NEW BUSINESS:

1. CASE #: PZ11352-051819 – VARIANCE

Adrian Menig (Owner & Applicant) – 27 Middle Street – PIN #: 017-105-000 – Request for relief from Article A, Section 3.15, Paragraph C1 to increase the maximum allowable area dedicated to home occupation from 1000 S.F. to 1400 S.F. *Property is in the Historic District.*

R. Rowe explained to the applicant that his application is very limited and contains flaws that might dictate the Board turn it down. If the Board does deny the application, the applicant cannot return to the Board for a period of 12 months. He recommended the applicant withdraw the application at research the laws regarding the three classes of home occupation.

R. Rowe also explained that these classes of home occupation have requirements regarding hours of operation and driveway parking that the current application will be in violation of, and thus may not be approved.

Mr. Menig stated that he believed a bed & breakfast would be an approved use, per the town's ordinance, for the home occupation. He hopes to receive information on how to have the home occupancy use approved for a bed & breakfast.

Mr. Ramsay explained that he would like to see the full contemplation of the applicant's intentions for the property. Mr. Vars agreed and added that he would like to see more regarding the unnecessary hardship piece in a future application.

Mr. Menig agreed to withdraw his application at this time, and resubmit it at a later date.

**J. Ramsay moved to enter deliberations. C. Vars seconded.
All in favor.**

CASE PZ11352-051819

**R. Rowe moved to allow the application to be withdrawn, without prejudice, at this time and resubmitted at a later date. J. Ramsay seconded.
All in favor.**

**C. Vars moved to exit deliberations. R. Rowe seconded.
All in favor.**

2. CASE #: PZ11353-051819 & PZ11236-042219 – VARIANCE

Kevin Bevis (Owner & Applicant) – 45 Embankment Road, PIN #:008-118-000 & Robert Boissonneault (Owner & Applicant) – 8 Red Gate Lane, PIN #: 008-119-000 – Request for relief from Article 4.3, Section D, Paragraph 1&3 for a setback requirement for a Lot Line Adjustment to accommodate a replacement septic system. Setback decreases on Lot 8-119 from 21.6 feet to 19.3 feet and on Lot 8-118 from 25 feet to 18.5 feet. Zoned Residential/Rural.

Susan LeBel, co-applicant and resident of 45 Embankment Road presented the case. Kevin Bevis, owner of 45 Embankment Road and Robert Boissonneault, owner of 8 Red Gate Lane also present.

Ms. LeBel explained that the two properties abut each other and both have awkward lot lines. The Boissonneault's property on Red Gate Lane has a failing septic system that they would like to replace with a state-of-the-art one; however there is not enough space behind their home to do so. The two owners would like to do a land swap of approximately 650 S.F. which would solve the odd curvature in the lot line, allow both owners to utilize more of the land near their homes, and also allow the Boissonneault's to install a new septic system.

Ms. LeBel addressed the five tests:

1. The variance will actually be in the best interest of the public interest as the applicants support the neighbors, the Boissonneaults, as they want to replace an old septic tank with a new septic system. By granting the lot line adjustment, the Boissonneaults will be able to install their septic system further away from the lake, further away from their well and further away from the applicant's well at 45 Embankment Road. Thereby granting this variance will make the two properties more compliant with the current ordinance. There is no adverse effect on abutters.

2. The ordinance will be observed by granting the variance as it will benefit the applicants, the abutters, and the Baboosic Lake watershed.

3. Substantial justice will be done as no one will be harmed by the variance. In fact, without this variance, the applicants – both the Boissonneaults and Bevis/LeBel will continue to suffer from the failed septic system during high water from Baboosic Lake due to pollution from the leach field. With a variance, there is no adverse effect on abutters or the public.

4. The property values will increase with a septic system improvement at 8 Red Gate Lane. The present system was installed decades ago and is no longer in compliance with current laws. When the Baboosic Lake watershed level rises during flooding, the system is not only underwater, but the leach field contaminates the lake and the applicant's property, including being in closer proximity to the applicant's well, which is less than 75 feet. The variance will allow the Boissonneaults to install a new septic system that will protect property values as well as the quality of the lake. For example, the lake in front of 8 Red Gate Lane is heavily vegetated with weeds, causing harm to the quality of the lake. The failed septic system may be suspect. If the lake becomes polluted, property values would decrease.

5. The applicant's current lot line adversely affects the main house at 45 Embankment Road, as the Boissonneault's property line is only 12 feet from the house making it already non-compliant with current laws. Because this home's property lines were drawn up decades ago, the current owners, Bevis/LeBel, suffer a hardship by having the Boissonneault's property too close to their home. Currently, Bevis mows, irrigates, and maintains the lawn next to his house, which belongs to the Boissonneaults. That portion of land is separated by trees and because of the odd configuration of the current lot line, the Boissonneaults are reluctant to use their portion of their property, as it is so close to the applicant's residence.

In addition, the applicants, Bevis/LeBel, suffer a hardship with the lot line currently in place between the main house at 8 Red Gate Lane and the garage belonging to 45 Embankment Road. Decades ago, when the lot lines were drawn up, an inexplicable error occurred in the design. Between the house at 8 Red Gate Lane and the garage, the property line is curved. It is not a straight line. The curve is approximately 100 feet long. Currently Bevis/LeBel cannot enjoy a portion of their property. The curvature also extends into the area where the Boissonneaults need to install the new septic system and leach field. Simply put, the curved lot line is prohibitive. There is no way for a surveyor to even place a surveyor's marker properly along the curvature. A curved lot line should never exist for that reason alone. We believe the curved lot line was a mistake. It was wrong the day the lots were originally drawn up. Granting the variance will correct this wrong. In addition, the parking area for 8 Red Gate Lane is limited. Even at this time, the owners have difficulty with maneuvering their vehicles. By increasing their lot in this particular area, the Boissonneaults would have more parking on their lot.

In response to a question from Chairman Kirkwood, Mr. Bevis explained that considering a chambered septic system would be a monetary hardship on Mr. Boissonneault and still has the potential to fail.

In response to a question from C. Vars, Ms. LeBel explained that the fence on the property will be removed if the land swap is approved.

In response to a question from C. Vars, Mr. Boissonneault stated that he has submitted his septic system application to the state and it has been approved.

3. CASE #: PZ11354-051819 – VARIANCE

Michael & Deborah Duggan (Owners & Applicants) – 2 Melody Lane, PIN #: 002-173-020 – Request for relief from Article 4.3, Section D, Paragraph 1 to install a pool 15 feet from the lot line where 50 feet is required. Zoned Residential/Rural.

Chairman Kirkwood recused himself from the case as a neighbor to the applicant. He explained that this leaves the Board with only four members voting. Three votes in favor will be needed for this case for a variance to be granted. If the vote ends in a tie, the variance will be denied. The applicant was given the option to move forward tonight or to present at a later date. The applicant chose to proceed.

Mr. Duggan presented the case. The proposal is to install a small pool (16'x28', 50" deep) 15 feet from the lot line, abutting Woodbine Lane. The pool would be approximately 20-25 feet

from the road. The area is already fenced at the lot line and the pool would sit inside this fenced area.

Mr. Duggan addressed the five tests.

1. The variance request will have virtually no impact on the public, as the installation of the pool will occur behind an existing fenced area and will not disturb any of the abutter's properties. Furthermore, the variance would not threaten the public health, safety, or welfare as the pool will be well secured within a fenced area that will not be accessible or visible to the public without accessing the area through private property.

2. The granting of the variance will still provide for a reasonable amount of offset, so as to not encroach on Woodbine Lane (~25' from the road), or any of the abutter's property, allowing for the spirit of the ordinance to be respected and observed as intended.

3. The general public or other individuals should not be impacted in any way, let alone harmed by the variance, as the installation of the pool will occur inside of an already fenced-in area that cannot be seen by the public or the abutters at this time.

4. The value of surrounding properties will not be diminished. In fact, the value of surrounding properties should benefit from the installation of the pool, as we intend to further improve the appearance of the property by adding professional decorative landscaping, both inside the pool area and around the exterior of the fencing and home. Furthermore, the pool will be installed inside a securely enclosed area that should not be visible to surrounding properties. This project should be considered an improvement in the overall appearance of the property and the neighborhood, providing for increased values for all properties.

5. There will still be approximately 25' between the general public area (Woodbine Lane) and the installed pool. In order for the general public to be impacted, someone would have to enter through a fenced-in area of the private property.

The proposed use will have virtually no impact on the existing area, as the fence along Woodline Lane currently exists, and the pool will be approximately 15' from the non-public facing side of the fence and approximately 25' from the edge of the road.

If the property were to be used in strict conformance of the ordinance, this would leave too little to no room (~10') for the use of the land for anything meaningful, as the space between the lot line and the house is not wide enough. Therefore, a hardship would exist, and a variance would be required to add any meaningful outdoor structures or features that improve the aesthetics of the property, and also allow for the intended use of outdoor enjoyment.

In response to a question from D. Pray, Mr. Duggan explained that the other side of the driveway is very wet, as water runs down it.

In response to a question from C. Vars, Mr. Duggan stated that the pool could be rotated 90 degrees, but that a variance will still be needed. The topography there is difficult and there is also a giant boulder that sticks partially out of the ground about 8' away from the site of the proposed pool.

In response to a question from C. Vars, Mr. Duggan stated that he is comfortable with the proposed depth of the pool, as the foundation line is deeper than it.

C. Vars suggested the applicant look into the distance between the end of the leach field in the backyard to the pool.

In response to a question from D. Pray, Mr. Duggan stated that 16'x28' is correct for the pool size (incorrectly stated as 18'x28' on the drawing presented).

Darby Dyer, 6 Woodbine Lane, expressed concern regarding the trees bordering the back of the applicant's property and hers. She does not want to have liability if those trees happen to fall towards the pool. Mr. Duggan explained that those trees are mostly on his property and shouldn't reach the pool, even if they fall.

**R. Rowe moved to enter deliberations. D. Pray seconded.
All in favor.**

CASE PZ11353-051819 & PZ11236-042219

**R. Rowe moved no regional impact. C. Vars seconded.
All in favor.**

Discussion

J. Ramsay stated that the Board is not unfamiliar with the sometimes difficult property lines found around Baboosic Lake.

C. Vars stated he believes this proposal to be a practical solution.

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

- C. Vars – true, the proposal is beneficial to both parties. It is an equitable swap. The new septic will meet the correct standards.
- J. Ramsay – true, the proposal is to the public's benefit.
- R. Rowe – true
- D. Pray – true, the setback and septic will improve the community.
- D. Kirkwood – true, this is an equitable arrangement to correct configuration issues and a health problem.

5 True

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

- J. Ramsay – true
- R. Rowe – true
- D. Pray – true
- C. Vars – true, this is a practical solution to a serious problem.
- D. Kirkwood – true

5 True

3. Substantial justice is done.

- R. Rowe – true, the proposed swap is equal in terms of the septic system issue, and it makes very little difference in the lot sizes.
- D. Pray – true, the proposal corrects a lot line curvature which benefits both parties and the town for the future.
- C. Vars – true
- J. Ramsay – true
- D. Kirkwood – true

5 True

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

- D. Pray – true, the more definitive lot lines will benefit property values.
- C. Vars – true
- J. Ramsay – true
- R. Rowe – true, a failing septic will not increase property values.
- D. Kirkwood – true

5 True

5. Literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship.

- C. Vars – true, the proposed lot line adjustment eliminates a number of concerns; to reject it would be a hardship to both parties.
- J. Ramsay – true, there are not many other good solutions to this issue.
- R. Rowe – true.
- D. Pray – true, the shape of the property lines is the real hardship.
- D. Kirkwood – true, this proposal will make the properties easier to deal with in the future and will address the future safety and health of the public with a new septic system.

5 True

The Chair stated that all the tests have been passed and the application is granted as submitted.

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CASE PZ11354-051819

**J. Ramsay moved no regional impact. D. Pray seconded.
All in favor.**

Discussion

C. Vars stated that rotating the pool will make no real difference.

D. Pray agreed and noted that rotating it would have an effect on the septic system.

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

- C. Vars – true
- J. Ramsay – true, to change the size or the location of the proposed pool wouldn't substantially change anything.
- D. Pray – true
- R. Rowe – true, concessions have to be made due to the applicant's lot size.

4 True

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

- J. Ramsay – true
- D. Pray – true
- C. Vars – true
- R. Rowe – true

4 True

3. Substantial justice is done.

- D. Pray – true, the proposal has no effect on the character of the neighborhood and the applicants should be allowed to enjoy their property.
- C. Vars – true
- J. Ramsay – true
- R. Rowe – true

4 True

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

- C. Vars – true
- J. Ramsay – true
- D. Pray – true
- R. Rowe – true

4 True

5. Literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship.

- J. Ramsay – true, this is a preexisting, non-conforming condition. The siting and topography of the property is a hardship, in this case.
- D. Pray – true, there is no other area on this property to build a pool.
- C. Vars – true, it would be a hardship to keep the applicants from building a pool.
- R. Rowe – true.

4 True

The Chair stated that all the tests have been passed and the application is granted as submitted.

**J. Ramsay moved to exit deliberations. C. Vars seconded.
All in favor.**

OTHER BUSINESS:

**C. Vars moved to approve Tim Kashmar as an alternate to the Amherst Zoning Board of Adjustment, with a term to expire in 2022. J. Ramsay seconded.
All in favor.**

4. Minutes: May 21, 2019

**D. Pray moved to accept the minutes of May 21, 2019 as submitted. C. Vars seconded.
4-0-1 (R. Rowe abstained). Motion carried.**

Town Administrator Dean Shankle introduced the Board's new minute taker, Kristan Patenaude. He also explained that the new Community Development Director, Nicole Strong, should be starting with the town on July 8th.

**C. Vars moved to adjourn the meeting at 8:57 p.m. J. Ramsay seconded.
All in favor.**

Respectfully submitted,
Kristan Patenaude

Minutes approved: July 16, 2019