

**Town of Amherst
Zoning Board of Adjustment
Tuesday, April 15, 2014**

ATTENDEES: Doug Kirkwood- Chair, Joe Taggart- Vice Chair, James Quinn, Jamie Ramsay, Alex Buchanan (Alt), Rob Rowe, Sarah Marchant - Community Development Director

D. Kirkwood called the meeting to order at 7:10pm, explained the ZBA process and introduced the board members.

The cases were read by J. Ramsay.

1. Case #PZ4855-031414 – Variance

Karen Tuthill, 123 Hollis Road, PIN# 001-015-003, requests a relief from §IV, 3, D.3 of the Zoning Ordinance to allow a shed within the side/rear setback in the Rural/Residential Zone.

2. Case #PZ4856-031414 – Variance

Karen Tuthill, 123 Hollis Road, PIN# 001-015-003, requests a relief from §IV, 11, F-1A of the Zoning Ordinance to allow a shed within the side/rear setback in the Wetland & Watershed Conservation District.

K. Tuthill came forward to explain the cases.

She wants to keep the shed where it already is. The front yard is very wet and there's nowhere else for the shed to go. The shed currently sits 9.4 ft. into the setback.

She presented her case by addressing the tests as follows:

1. *Granting the Variance would not conflict with the explicit or implicit purpose the Ordinance or threaten public health, safety or welfare because the storage shed has been in the same location for about eight years. The placement of the shed has not impacted any of our neighbors in a negative way. It is approximately 85 feet from the pond (which we believe to be man-made). The shed was placed in its current location for the elevation due to water in most of our yard. There is a culvert that runs through our yard for drainage. Placement anywhere else would cause the shed to flood and the yard equipment would be destroyed. There is no run-off or storage of hazardous material in the storage shed. There are no utilities hooked up to the shed; no electricity or gas. There has been no degradation of any of the surroundings.*
2. *The Variance is consistent with the spirit and intent of the Ordinance in that there isn't any hazardous material, liquids, utilities, i.e. gas or electricity stored/hooked up to the shed. There is no run-off of any liquid or solid. There has been no degradation to any of the surroundings.*
3. *Unfortunately our yard is not "dry". The yard floods as there is a culvert that runs through it for water drainage and would destroy our yard equipment and rot the shed. There is no other place to put the shed. The placement is out of sight and safely tucked away into a corner which borders the woods and stone wall. Any other placement in the yard would cause damage to our shed, its contents and a certain violation.*
4. *The surrounding properties are woods, a stone wall and no one's yard. The value of the woods and the stone wall shall not be affected by diminished value. Our home is*

approximately 700 feet from Hollis Road and set back (see plot plan attached). Our immediate neighbors are approximately two acres away from the shed and abutters are even further. The shed isn't in their view.

5. *Literal Enforcement:*

(A) *Unnecessary Hardship*; our yard becomes flooded during rain and spring melt. It is difficult to mow the lawn during the summer months as it rarely dries. There is a culvert that runs through our yard for drainage; however, there is so much water. The yard is always wet. The placement of the shed was specifically chosen because of the elevation and it being dry.

(i) *No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because there aren't any neighbors or homes in close proximity.*

(ii) *The proposed use is a reasonable one because it doesn't interfere, harm, cause loss of value to any other property or create a hardship to our neighbors or abutters. There is no run off of liquid or solid; no degradation of surrounding land, foliage or the existing man-made pond. The storage shed is basically out of sight. The location of the storage shed allows us to store our yard equipment without risk of being destroyed by sitting out in the elements or rotting the shed from sitting in water. The storage shed cannot be used in any other place due to flooding, is kept out of sight as to not disturb our neighbors. There is no other suitable or viable placement on our property that would not be in violation of the ordinance.*

D. Kirkwood asked when the house was built. 1999

D. Kirkwood asked, did you have a permit originally? Yes, well, maybe not for the first location, but when we had to move it out of the side setback 8-10 years ago, yes.

D. Kirkwood asked what the foundation of the shed is. Rail road ties

D. Kirkwood asked if she can move it 15' north. It sits on a plateau that goes down on all sides and in violation to the back.

J. Quinn asked if it is the same neighbor complaining now that was complaining back then. Yes.

John Tranquilli of 6 Town Farm Rd is an abutter, was present at the meeting and the 9.4' violation is to his property. He has no problem with the shed in its current location.

K. Tuthill addressed the tests for the other case as follows:

1. *The storage shed has been in the same location for approximately eight years. We didn't place it in its current location with deliberate knowledge that one corner was in a setback violation. For all intent and purpose, it's in the woods. None of our neighbors/abutters have complained or objected to its placement. The storage shed is tucked in a corner and out of the way. There is nothing around it except stonewall and woods on three sides. Granting this variance would have no threat to public health, safety or welfare to anyone. There is no run-*

off, electricity, gas or any utilities hooked up. Storage is for yard equipment only. The shed used to be in the woods, but we've cut trees down around it.

2. The storage shed is only 9.4 feet from the rear corner of the property boundary which is a stone wall and woods. There isn't a home anywhere near the shed. There has never been a complaint or objection from any of our neighbors. The shed was not placed in its current location with knowledge of the 9.4 foot violation. Unfortunately, there is no other place to put it.

3. Substantial Justice: Unfortunately, our yard is not "dry". The yard floods during the spring melt and whenever it rains. The placement of the shed was chosen specifically because it is at a higher elevation and away from our neighbors; out of sight. Moving it would create a hardship for us for many reasons; the saturation of the yard would cause destruction to the shed and its contents; it would have to be moved by a flatbed trailer. When we placed it in its current location, we had to use a flatbed trailer. The surrounding properties are woods, a stone wall and no one's yard. The value of the woods and the stone wall shall not be affected by diminished value. Our home is approximately 700 feet from Hollis Road and set back (see plot plan attached). Our immediate neighbors are approximately two acres away from the shed and abutters are even further. The shed isn't in their view.

4. Literal Enforcement:

(A) Unnecessary Hardship; our yard becomes flooded during rain and spring melt. It is difficult to mow the lawn during the summer months as it rarely dries. There is a culvert that runs through our yard for drainage; however, there is so much water. The yard is always wet. The placement of the shed was specifically chosen because of the elevation and it being dry.

(i) No Fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because there aren't any neighbors or homes in close proximity.

(ii) The proposed use is a reasonable one because it doesn't interfere, harm, cause loss of value to any other property or create a hardship to our neighbors or abutters. The storage shed is basically out of sight. The location of the storage shed allows us to store our yard equipment without risk of being destroyed by sitting out in the elements. It provides a safe place for storage. The storage shed cannot be used in any other place due to flooding and also keeps it out of sight as to not disturb our neighbors. There is no other viable or suitable placement on our property that would not be in violation of the ordinance.

D. Kirkwood said that she didn't address the test regarding diminishing value to surrounding properties.

K. Tuthill reread from her notes to address the issue.

She further described that when they bought the land the water wasn't flowing through, but someone put cement in the drain and then was ordered to take it out and ever since, the lawn has standing water at certain times of the year.

J. Ramsay asked S. Marchant if there is a permit on record for the shed. Yes, there is no plot plan with the location denoted, but there is a permit from when the shed was moved out of the side setback.

134
135 J. Ramsay moved to go into deliberations. J. Taggart seconded. Vote Unanimous.
136
137 **DELIBERATIONS:**
138 J. Ramsay moved that Case #PZ4855-031414 has no regional impact. J. Taggart seconded.
139 Vote Unanimous
140
141 **1. Case #PZ4855-031414 – Variance**
142 1. The Variance will not be contrary to the public interest.
143 J. Quinn yes it doesn't affect health safety or welfare
144 J. Taggart agree
145 J. Ramsay agree
146 R. Rowe true
147 5 true
148
149 2. The Variance is consistent with the spirit and intent of the Ordinance.
150 R. Rowe true the shed is off in the corner of the property. It's a rural community and sheds are in the
151 spirit and intent of the ordinance.
152 J. Ramsay agree and no threat of public safety. Also, no contest from abutters.
153 J. Taggart true
154 J. Quinn true
155 5 true
156
157 3. Substantial justice is done.
158 J. Ramsay yes she is allowed enjoyment of her property and being able to keep the shed in a dry area
159 which is limited on her property is part of that.
160 R. Rowe true
161 J. Quinn true the abutter is not against it.
162 J. Taggart true doesn't see it being outweighed by any loss to the community.
163 5 true
164
165 4. The values of the surrounding properties will not be diminished.
166 J. Taggart true no evidence presented in either direction, but if you review by aerial photography, most
167 homes in the area have a shed and it's similar in character and it's off in the corner.
168 J. Ramsay true
169 R. Rowe true
170 5 true
171
172 5. Literal enforcement of the provisions of the Ordinance would result an unnecessary hardship.
173 J. Quinn the shed is located in the most beneficial spot on the lot. Leave it where it is.
174 J. Taggart true There's no direct relationship. It's a reasonable use of the property.
175 J. Ramsay true It's a reasonable use of the property and a practical location for the shed.
176 R. Rowe true
177 D. Kirkwood regarding special condition, most of the land is under water for a good part of the year so
178 the location is not easily changed.
179 5 true
180
181 D. Kirkwood stated that having passed the tests, the variance is granted.

182
183 **2. Case #PZ4856-031414 – Variance**
184 J. Ramsay moved that Case #PZ4856-031414 has no regional impact. J. Taggart seconded.
185 Vote Unanimous.
186
187 1. The Variance will not be contrary to the public interest.
188 R. Rowe true for the same reasons given on the prior application.
189 J. Ramsay true
190 J. Taggart true
191 J. Quinn true
192 5 true
193
194 2. The Variance is consistent with the spirit and intent of the Ordinance.
195 J. Ramsay yes no issue with public safety and there's no impact due to location. True
196 R. Rowe true
197 J. Quinn true
198 J. Taggart true. Regarding the variance for water protection for setback – it's possible that the shed
199 could be outside the setback and have a bigger threat. If this is the highest point, that's the best
200 location.
201 D. Kirkwood there might be fertilizers stored in it and since the lot often floods, being elevated prevents
202 possible contamination issues.
203 R. Rowe it's only 10' within the 100' setback.
204 D. Kirkwood explained the ordinances follow the soil types. That's how the distance is determined.
205 5 true
206
207 3. Substantial justice is done.
208 J. Quinn true nothing to be gained by moving it. It's out of sight.
209 R. Rowe yes shed is a ways back and presents no harm. true
210 J. Ramsay true
211 J. Taggart true
212 5 true
213
214 4. The values of the surrounding properties will not be diminished.
215 J. Ramsay true low impact structure and difficult to see from the road after being there himself to look.
216 J. Taggart encroaching into the wetlands or neighboring wells have diminishing value and I don't see that
217 happening so true
218 J. Quinn true – neighbor has no objections
219 R. Rowe true
220 5 true
221
222 5. Literal enforcement of the provisions of the Ordinance would result an unnecessary hardship.
223 R. Rowe most of the lot is wet. This is in a dry area in the corner. The property is unique in that way and
224 it's a reasonable use.
225 J. Ramsay true if soils of this property were dry; it would not be located here. If the applicant had to
226 move it within, it would present hardship
227 J. Taggart true
228 J. Quinn true
229 5 true

D. Kirkwood stated that having passed all of the tests, the request for variance is granted.

J. Ramsay moved to come out of deliberations. J. Taggart seconded. All in favor.

D. Kirkwood mentioned that this was S. Marchant's last meeting with the Amherst ZBA. He recognized that although only in Amherst for two years, she has made a significant difference in Amherst. She has demonstrated an ability to think clearly, completely and with logic and sensitivity to the applicants, town and boards. It is a gift that should be recognized.

Old Business:

1. Minutes: March 18, 2014.

A. Buchanan moved to accept the minutes of March 18th as presented. R. Rowe seconded.
Vote Unanimous

2. Alternates: Charlie Vars and Alex Buchanan (reappointment), potential new alternates

D. Kirkwood stated that C. Vars' term is up.

R. Rowe moved to reappoint C. Vars for an additional term. J. Taggart seconded. All in favor.

D. Kirkwood stated that A. Buchanan's term is up.

R. Rowe moved to reappoint A. Buchanan for an additional term. J. Taggart seconded. All in favor.

R. Rowe invited D. Clark to tonight's meeting because there is another vacancy to the board. If D. Clark is interested, R. Rowe would move to appoint him to the board for a three year term. He understands the zoning ordinance and has lived in town for 30 years.

D. Clark stated that he will attend more meetings and think about if he would like to join the board.

3. Elections: Appointment of a Chair, Vice Chair, and Secretary

D. Kirkwood asked S. Marchant to conduct the elections.

J. Taggart nominated D. Kirkwood for chair. J. Ramsay seconded. Vote Unanimous.

J. Quinn nominated J. Taggart for vice chair. J. Ramsay seconded. Vote Unanimous.

D. Kirkwood nominated J. Ramsay for secretary. R. Rowe seconded. Vote Unanimous.

D. Kirkwood asked the board to schedule a nonpublic session. The meeting will be posted for next Tuesday.

R. Rowe moved to adjourn at 8:15pm. J. Taggart seconded. Vote unanimous.

Respectfully submitted,
Jessica Marchant