

TOWN OF AMHERST
Zoning Board of Adjustment

June 16, 2020

APPROVED

1 In attendance: Doug Kirkwood – Chair, Robert Rowe – Vice Chair, Jamie Ramsay –
2 Secretary/Treasurer, Charlie Vars, Danielle Pray, and Tim Kachmar (Alternate).
3 Staff present: Nic Strong, Community Development Director, Natasha Kypfer, Town Planner,
4 and Kristan Patenaude, Minute Taker.

5
6 Doug Kirkwood called the meeting to order at 7:08 p.m., with the following statement. As
7 Chair of the Amherst Zoning Board of Adjustment, I find that due to the State of Emergency
8 declared by the Governor as a result of the COVID-19 pandemic and in accordance with the
9 Governor’s Emergency Order #12 pursuant to Executive Order 2020-04, this public body is
10 authorized to meet electronically.

11 Please note that there is no physical location to observe and listen contemporaneously to this
12 meeting, which was authorized pursuant to the Governor’s Emergency Order.

13 However, in accordance with the Emergency Order, I am confirming that we are:
14 Providing public access to the meeting by telephone, with additional access possibilities by
15 video or other electronic means:

16 We are utilizing Zoom for this electronic meeting.

17
18 All members of the Board have the ability to communicate contemporaneously during this
19 meeting through this platform, and the public has access to contemporaneously listen and, if
20 necessary, participate in this meeting through dialing the following phone #312-626-6799
21 and password 867 6891 3592, or by clicking on the following website address:
22 <https://zoom.us/j/86768913592> that was included in the public notice of this meeting.

23
24 Providing public notice of the necessary information for accessing the meeting:
25 We previously gave notice to the public of the necessary information for accessing the
26 meeting, including how to access the meeting using Zoom or telephonically. Instructions
27 have also been provided on the website of the Zoning Board of Adjustment at:
28 www.amherstnh.gov.

29
30 Providing a mechanism for the public to alert the public body during the meeting if there are
31 problems with access: If anybody has a problem, please call 603-440-8248.

32
33 Adjourning the meeting if the public is unable to access the meeting:
34 In the event the public is unable to access the meeting, the meeting will be adjourned and
35 rescheduled.

36
37 Please note that all votes that are taken during this meeting shall be done by roll call vote.

38
39 Let’s start the meeting by taking a roll call attendance. When each member states their
40 presence, please also state whether there is anyone in the room with you during this meeting,
41 which is required under the Right-to- Know law.

42

June 16, 2020

APPROVED

43 **Roll call attendance: Danielle Pray – husband and children are in the home with**
44 **her; Jamie Ramsay – alone; Bob Rowe – alone; Tim Kachmar – wife in the house**
45 **with him; Charlie Vars – alone; and Doug Kirkwood - alone.**
46

47 Doug Kirkwood explained that Jamie Ramsay, Secretary, will read and open each case and then
48 the applicant will have a chance to speak to it. The ZBA will then carry out its business for each
49 case.
50

51 NEW BUSINESS:
52

53 **1. CASE #: PZ12444-032020 – VARIANCE**
54 **Sarah Gallo & Allister Glenny (Applicants) & Michael Spyridakis (Owner) – 292**
55 **Route 101, Unit #7, PIN #: 008-044-003 – Request for relief from Article IV, Section**
56 **4.8, Paragraph 8 to allow operation of a preschool program (ages 3-5) licensed by**
57 **the Department of Health & Human Services Child Care Licensing Unit. Zoned**
58 ***Limited Commercial.***
59

60 Jamie Ramsay read and opened the case.
61

62 Sarah Gallo and Allister Glenny presented the application. Sarah Gallo explained that her
63 intention is to open a preschool program (ages 3-5) that will operate for three hours per day,
64 Monday – Friday, at an open unit in Salzburg Square. She does not believe that any harm will be
65 done to the community in allowing relief from the restriction in this case. She explained that
66 Salzburg Square is a mixed use area, already containing businesses such as a hair salon, yoga
67 study, restaurant, and karate studio for children. She believes that the preschool program would
68 be an added benefit to the commercial complex and town. She stated that she will work with the
69 Department of Health & Human Services to obtain the correct licensing necessary for the
70 business, but first this variance must be obtained.
71

72 Sarah Gallo explained that there are currently wait lists for all of the other preschool programs in
73 town, demonstrating a need for this business. She explained that the Little Einsteins preschool
74 program, located in the Meeting Place Plaza, will be closing this year. She hopes that the
75 proposed preschool program will help existing families in the area.
76

77 Sarah Gallo explained that the zoning restriction in this area does not specifically list preschool
78 programs, but also does not negate them as a potential business type. She noted that family
79 daycare homes are permitted in this zone and that a preschool program is a very similar type of
80 business.
81

82 Allister Glenny stated that the staff report mentions concerns with outdoor access and traffic to
83 the area. He explained that there will be no outdoor play access allowed for the Salzburg Square
84 preschool, so all activities for gross motor skills and other similar skills will be located inside the
85 center. This proposed unit is located in the middle of Salzburg Square and has a rear entrance
86 that can be used in order to cut down on traffic in front of the buildings. He agreed with the note

June 16, 2020

APPROVED

87 in the staff report that relief is being sought from Article IV, Section 4.8, and Paragraph A – not
88 Paragraph 8.

89
90 Allister Glenny noted that there will be no negative impacts to the abutters, as this particular unit
91 is not visible from the road at all. He believes that the business will add value to Salzburg Square
92 as it will be an additional tenant and thus increase the value of the property. He stated that the
93 preschool program will be expecting approximately 12 students at any one time, and thus the
94 traffic flow will be increased by about 24 additional car trips to/from Salzburg Square in a day.
95 There are multiple entrances and exits into Salzburg Square, so this business will not conflict
96 with the rest of the use of the property. He believes the proposed business will bring more
97 benefits than potential drawbacks to the community.

98
99 Sarah Gallo addressed the five tests:

- 100 1) The variance will not be contrary to the public interest because the variance being
101 requested is to lease unit 7 in the Salzburg Square commercial complex for the
102 purposes of opening a preschool program, licensed under the NH DHHS Child Care
103 Licensing Unit from 9am-1pm Monday – Friday. Currently there are waitlists for all
104 Amherst preschool programs for fall 2020, with the expected closure of Little
105 Einsteins in June 2020. We are aiming to serve families in Amherst, as well as the
106 surrounding towns, in need of preschool programming for their 3-5 year old children.
- 107 2) The variance is consistent with the spirit and intent of the Ordinance because the
108 spirit of the ordinance is to serve the limited commercial needs of various
109 neighborhoods in the area. Offering a program for Amherst families with preschool
110 age children would, by all accounts, ensure the spirit of the ordinance is served.
111 Salzburg Square is also a mixed use commercial complex, with other family uses
112 currently within it, such as the karate studio.
- 113 3) Substantial justice will be done because there is no harm to the general public by
114 granting this variance. In fact, it offers more benefits to the community than any
115 potential drawbacks.
- 116 4) The values of the surrounding properties will not be diminished. The preschool
117 business would be located in the heart of Salzburg Square. This building, in
118 particular, is not visible from nearby residences, as it is in the interior of the complex.
119 Since it would increase the occupancy rate of the property, it would add value as the
120 occupancy rate is a measure of the overall value. The proposed business will bring
121 more daily foot traffic into Salzburg Square, thus becoming a boon to the other
122 surrounding businesses.
- 123 5) Literal enforcement of the provisions of the Ordinance would result in an unnecessary
124 hardship because:
- 125 A) The preschool is intended to serve the community as preschool programs in
126 the town are highly sought and not readily available due to demand.
- 127 B) The unit in Salzburg Square fits the requirements (location, size, affordability)
128 for our potential preschool program. We prefer to have our business reside in
129 Amherst, as we reside in the town and want to serve our neighbors and
130 surrounding community. In addition, it is along Route 101, close to the current

TOWN OF AMHERST
Zoning Board of Adjustment

June 16, 2020

APPROVED

131 location of Little Einsteins, which is closing in June 2020, making it a convenient
132 option for families seeking preschool programs for fall 2020. It should be noted
133 that Little Einsteins was granted a variance upon opening a preschool program in
134 2005. We did seek to lease in the existing location of Little Einsteins, but
135 unfortunately, Hirsch Leasing Co. had an informal agreement in place with
136 another tenant looking to expand. Lastly, we hoped to bring attention to language
137 included in Section 4.8.A.1 of the zoning ordinance, which states “the foregoing
138 shall include, but not necessarily be limited to” the types listed. We would further
139 assert that the permitted uses were established in 1976, before the popularity of,
140 and need for, education-based child care programs grew.

141
142 Bob Rowe noted that the variance will not be given to the applicants themselves, but rather will
143 run with the property. The applicants have authorization from the owner of the property to seek
144 this variance. Bob Rowe noted, however, that if the variance is granted and the property owner
145 decides to evict the applicants tomorrow, the owner could then bring in other tenants to have a
146 preschool program in the same space. The applicants acknowledged this statement.

147
148 In response to a question from Charlie Vars, Allister Glenny stated that the entrance to the
149 building will more than likely be on the lower level in the back of the building.

150
151 Charlie Vars noted that the parking spaces in that section of Salzburg Square run parallel in one
152 direction. The applicants acknowledged this fact.

153
154 In response to a question from Danielle Pray regarding a discrepancy between the application
155 which noted that the preschool program would be for three hours a day and separately that it
156 would be open from 9 am - 1pm, Sarah Gallo explained that the preschool intends to operate
157 from 9am-12pm, Monday – Friday, with a possible extension of the day through lunchtime, until
158 1pm, as many preschool programs in the area offer something similar.

159
160 Public Comment:

161 In response to a question from Ellen Grudzien, 18 Buckridge Drive, Sarah Gallo explained that
162 the preschool is aiming to service about 8-10 preschoolers on any one day, with a cap at 12.

163
164 Craig Kelly, 10 Blueberry Hill Road, spoke in support of the proposed preschool. He stated that
165 he has heard the in-depth plan for the business and believes that it will add value to the
166 community. He’s glad that the applicants are dedicated to keep this preschool business in
167 Amherst, as it adds to a sense of community for the town.

168
169 Tiffany Remy, 3 Ravine Road, spoke in support of the proposed preschool. She stated that there
170 are waitlists at many of the other preschool programs in town and she is used to experiencing
171 trying to navigate those. She believes the proposed business will bring a special type of
172 educational experience to the community.

173

June 16, 2020

APPROVED

174 In response to a question from Jamie Ramsay, Sarah Gallo stated that Little Einsteins came
175 before the ZBA 15 years ago to apply for the same variance to run their preschool out of Meeting
176 Place Plaza.

177

178 **Charlie Vars moved to enter deliberations. Danielle Pray seconded.**

179 **Roll call vote: Danielle Pray – aye; Jamie Ramsay – aye; Bob Rowe – aye; Charlie**
180 **Vars – aye; and Doug Kirkwood – aye. Motion carried unanimously.**

181

182 **CASE #: PZ12444–032020:**

183 **Jamie Ramsay moved no regional impact. Charlie Vars seconded.**

184 **Roll call vote: Danielle Pray – aye; Jamie Ramsay – aye; Bob Rowe – aye; Charlie**
185 **Vars – aye; and Doug Kirkwood – aye. Motion carried unanimously.**

186

187 **Discussion:**

188

189 Jamie Ramsay explained that, in 1976 when the zoning ordinance was adopted, the ZBA
190 probably didn't contemplate preschool programs as a specific use because they simply
191 weren't on the radar. This type of business is not specifically included or excluded in the
192 zoning ordinance. An alteration of the ordinance to include this type of business could be
193 considered on a case-by-case basis. He is, in general, agreeable to the variance, if this
194 type of business is agreeable to the owner, as it seems to serve the town of Amherst.

195

196 Bob Rowe noted that, in the permitted uses section of the ordinance, #6 includes interior
197 recreational establishments. He doesn't believe there is much difference between that
198 permitted use and an interior learning establishment, as is being proposed. He believes
199 this type of use (preschool program) will cause no significant changes to the abutters or
200 public, compared to the permitted uses in this area.

201

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

203 • D. Pray – true, the applicant has satisfied this test in that there will be no significant
204 change to the character of the neighborhood or commercial property by granting of
205 this variance. The proposed children to this preschool program will be inside the
206 building only and there will be no noticeable change to the outside of the property.
207 There are a proposed limited number of students that will attend the preschool and no
208 change to the traffic in the area. The proposal is not contrary to the public interest.

209 • J. Ramsay – true, the proposal is not contrary to the public interest. The proposal
210 favors the town of Amherst.

211 • R. Rowe – true, he agreed with the points made by Danielle Pray.

212 • C. Vars – true, the proposal is not contrary in any way to the public interest. He also
213 noted that the proposed type is not a forbidden use in the zoning ordinance.

214 • D. Kirkwood – true, the proposed use is a less intense and impacting use than a more
215 structured learning business. He believes the proposed location is a decent one for the
216 proposal that will cause no negative impacts to the town. If there are waitlists at a

June 16, 2020

APPROVED

217 number of the other preschools in town, this shows a need for this type of business in
218 Amherst.

219 **5 True**

220

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

222 • J. Ramsay – true, the proposal fosters the younger members of the community and
223 will be a good use of the space.

224 • R. Rowe – true.

225 • C. Vars – true, the spirit of the ordinance is observed. This area is zoned for a limited
226 commercial use, and the proposed business fits into that. There is also a demonstrated
227 need for this type of business in town.

228 • D. Pray – true, the spirit of the ordinance is observed. The purpose of this zone is to
229 provide a commercial area with some general commercial needs of the public. With
230 the separate preschool program going out of business this year, the proposed
231 preschool will serve the needs of the public and meet the criteria for this zone.

232 • D. Kirkwood – true, he is unsure why this type of business is not overtly included in
233 the permitted uses of this zone, but the town seems to be the beneficiary for this type
234 of business.

235 **5 True**

236

237 3. Substantial justice is done.

238 • J. Ramsay – true, he doesn't see this use changing the neighborhood or commercial
239 complex at all. He doesn't see any drawbacks to granting the variance.

240 • C. Vars – true, he stated that he believes the Preschool in the Village will need to be
241 cutting back on some of its student numbers due to COVID-19, so there may even
242 more of a need for another preschool program in town.

243 • R. Rowe – true, he doesn't believe that using this location as a preschool will have
244 more impact on the public than any of the other permitted uses for this area. The
245 applicant will also need state approval in order to assure a safe educational space.

246 • D. Pray – true, the proposed use is consistent with the other businesses currently in
247 the commercial complex. There will be no harm to the general public to grant this
248 variance.

249 • D. Kirkwood – true, if there is a waitlist at the other town preschools then there is a
250 clear need for this type of business. He believes the proposed preschool will provide
251 an alternative option for those on the waitlists at other preschools; this is a benefit to
252 the community and demonstrates that justice is done.

253 **5 True**

254

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

256 • R. Rowe – true, he doesn't believe that granting this variance will make a change in
257 the value of the surrounding properties any more so than a permitted use of the
258 facility.

June 16, 2020

APPROVED

- 259 • C. Vars – true, he doesn’t believe that the owner of the property would be in support
260 of this business if it would cause the other surrounding properties’ values to be
261 diminished.
262 • J. Ramsay – true, he believes the proposed business will be a stronghold for the
263 Salzburg Square complex.
264 • D. Pray – true, there has been no evidence shown that the surrounding properties’
265 values will be diminished. The applicant has shown this is not the case.
266 • D. Kirkwood – true.

267 **5 True**

268
269 5. Literal enforcement of the provisions of the Ordinance would result in an unnecessary
270 hardship.

- 271 • D. Pray – true, this type of business would have needed a variance anywhere within
272 this particular property. There are other permitted uses, such as daycare facilities, that
273 would be permitted in the district and she doesn’t believe there are any special
274 qualities of the proposed business that make it unsuitable for this location.
275 • J. Ramsay – true, he believes the only hardship is that this shows a possible omission
276 in the zoning ordinance that could be addressed. Preschool programs weren’t
277 contemplated as potential uses when the zoning ordinance was written. He hopes the
278 omission of this particular use doesn’t become a hurdle in the future because these
279 types of businesses are necessary for the community.
280 • C. Vars – true, the literal enforcement of the zoning ordinance would be a hardship, in
281 this case. This would cause a good use for this property to be denied. There is no
282 precedence set from past Planning Board decisions, but a variance was granted 15
283 years ago to a similar business so that it could be located in the Meeting Place Plaza.
284 • R. Rowe – true, he believes that this type of business would have been included in the
285 list of permitted uses, if the zoning ordinance was created now. He believes the
286 proposed use and impact of this business are similar to many of the other permitted
287 uses listed.
288 • D. Kirkwood – true.

289 **5 True**

290
291 **The Chair stated that the application, as it passed all of the tests, is granted.**

292
293 **Jamie Ramsay moved to exit deliberations. Bob Rowe seconded.**

294 **Roll call vote: Danielle Pray – aye; Jamie Ramsay – aye; Bob Rowe – aye; Charlie Vars**
295 **– aye; and Doug Kirkwood – aye. Motion carried unanimously.**

- 296
297 **2. CASE #: PZ12445-032320 – APPEAL OF ADMINISTRATIVE DECISION**
298 **Linda L. Robinson, Trustee of the Linda L. Robinson 2000 Trust (Owner &**
299 **Applicant) – 312 Boston Post Road, PIN 004-011-000 – Request for relief from**
300 **Article IV, Section 4, Paragraph 3 to construct a detached garage with a 50’ front**
301 **setback on Boston Post Road and a 20’ setback on North Meadow Road. Zoned**
302 **Residential Rural.**

TOWN OF AMHERST
Zoning Board of Adjustment

June 16, 2020

APPROVED

303 Jamie Ramsay read and opened the case.

304

305 Tom Quinn, representative for Linda Robinson and her husband, addressed the appeal. He
306 explained that the property is located in the Residential Rural district and is about 3.3 acres on a
307 corner lot. The property has about 327 feet of frontage on Boston Post Road and 587 feet of
308 frontage on North Meadow Road. The property currently consists of a residential dwelling and
309 barn. In the fall, his clients planned to construct a garage. The plans were drawn for the building
310 and the area was surveyed. When the applicant went to Town Hall to pull the building permit,
311 they were told that a variance was needed because the structure was not 50' setback from both
312 streets. The application has since been in a holding pattern.

313

314 Tom Quinn explained that the ordinance states that the structure must have a 50' front setback,
315 but that for an accessory structure, that becomes 20' for the side setback. In February, the
316 applicant submitted an application for a building permit. The proposed structure is a two-car
317 garage, 20'x36' which will have more than a 50' setback from Boston Post Road, a 31' setback
318 from one corner, and 36' from the other corner on North Meadow Road.

319

320 Tom Quinn noted that a revised plan was submitted to the Board this afternoon from Meridian
321 Land Services that shows both the 50' setback line from North Meadow Road and the 20'
322 setback line, as originally only the 50' setback line was noted, because it was assumed a variance
323 would be sought. Later in February the applicants heard that Scott Tenney, Building Inspector,
324 denied their application for a building permit based on his interpretation of the zoning ordinance
325 that states that all structures must have 50' setbacks from both streets. The applicants filed an
326 appeal to this decision in March.

327

328 Tom Quinn stated that the Board has the authorization, per RSA 674:33 I and II, to: "Hear and
329 decide appeals if it is alleged there is error in any order, requirement, decision, or determination
330 made by an administrative official in the enforcement of any zoning ordinance adopted pursuant
331 to RSA 674:16; and (b) ... II. In exercising its powers under paragraph I, the zoning board of
332 adjustment may reverse or affirm, wholly or in part, or may modify the order, requirement,
333 decision, or determination appealed from and may make such order or decision as ought to be
334 made and, to that end, shall have all the powers of the administrative official from whom the
335 appeal is taken."

336

337 Tom Quinn explained that the Board, in this capacity, can assume all of the powers of the official
338 from whom the appeal was taken. On an appeal, the Board has the power and obligation, if the
339 language of the ordinance is unambiguous to restrict its view to the language itself. The Board is
340 set to stand in the shoes of the Building Official if the language of the ordinance is clear and
341 unambiguous. The Board should not look for further issues of legislative intent.

342

343 Tom Quinn read from Article 4 Section 4.3, D: YARD REQUIREMENTS.

344

345 1. Each dwelling, building, or structure shall be set back at least fifty (50) feet from the
346 front lot line, or at such distance that will be no closer than an existing structure. An
addition may not be extended laterally more than a maximum of a fifty percent (50%)

TOWN OF AMHERST
Zoning Board of Adjustment

June 16, 2020

APPROVED

347 increase of the lineal frontage of the existing structure and must conform to any other
348 setback requirements on the lot
349 2. ...each dwelling, building, or structure shall be set back at least twenty-five (25) feet
350 from side and rear lot lines. In the case of corner property, this distance shall be increased
351 to fifty (50) feet on that side bordering a street, lane, or public way.
352 3. Any accessory buildings or structures shall be set back at least twenty (20) feet from
353 side and rear lot lines and at least fifty (50) feet from the front lot line and not exceed
354 twenty-two feet in height. The height requirement may be waived for farm structures.
355

356 Tom Quinn explained that the key to this section is item 3. This includes a special rule for
357 accessory buildings to be setback at least 20'. As the proposed garage is an accessory structure, it
358 shouldn't need to be set more than 20' back from the sides. He explained that, in the view of the
359 Building Official, the setbacks from both streets need to be 50', but this is an erroneous
360 interpretation and clearly contrary to section 3. Section 1 appears to set forth a general rule,
361 section 2 sets forth a special rule for corner lots, and section 3 creates a special rule for accessory
362 buildings.
363

364 Tom Quinn addressed an issue from the staff memo stating that this is an appeal to the Building
365 Code of Appeals; it is not. This is an appeal of the administrative decision made under the zoning
366 ordinance. Under the RSA, the Board should act as the Board of Appeals in this case. He ran
367 through a list of other items that do not apply to this appeal, as would be part of the staff report
368 as written.
369

370 Nic Strong, Community Development Director, explained that the template used for the staff
371 report was the incorrect one. She stated that this was her mistake and Tom Quinn was correct in
372 his assessment. This is not an issue with the building code.
373

374 Jamie Ramsay noted that Scott Tenney, in his assessments, reviews not just the building
375 structure, but also the specific zoning ordinances that apply, including, in this case, the proper
376 setbacks. He sides with Scott Tenney in this case.
377

378 Tom Quinn again noted section 3, which specifically states the different setbacks for accessory
379 buildings. There is also nothing in that section that notes that a structure needs two front
380 setbacks.
381

382 Jamie Ramsay stated that the property in question is still a corner lot, and should be treated as
383 such.
384

385 Tom Quinn noted that it doesn't matter whether the proposed garage is considered a building or a
386 structure; per section 3 an accessory structure needs to have 20' setbacks from the side and rear
387 lot lines and this proposed structure will comply with both of those.
388

389 Bob Rowe noted that while all accessory buildings are considered structures, not all structures
390 are considered accessory buildings. He agreed with Jamie Ramsay's assessment of the appeal.

TOWN OF AMHERST
Zoning Board of Adjustment

June 16, 2020

APPROVED

391 Tom Quinn explained that there is a section (2) regarding corner lots and their setbacks, but
392 section 3 deals with accessory buildings which have separate rules for setbacks, which this
393 proposed garage complies with.

394
395 Jamie Ramsay noted that this does not preclude the general rule that the proposed garage is a
396 structure and thus requires a 50' setback from both public ways.

397
398 Tom Quinn stated that the Board should not interpret the intent of the ordinance. If the ordinance
399 contains plain and unambiguous language, no other sections should be read into the decision.

400
401 Danielle Pray stated that she's confused as to why section 3 would have been added if this type
402 of accessory building is covered under sections 1 or 2. It seems that accessory buildings only fall
403 under section 3. She explained that this is not the only area in the zoning ordinance that uses this
404 type of language; it is also found under the Northern Transitional Zone and others. She believes
405 this could be a flaw in the ordinance, but that the ordinance still needs to be interpreted as it is
406 currently written. She stated that there is an existing house on the lot, and that the use of the
407 proposed structure is clearly incidental, so it should be determined to be an accessory structure.

408
409 Jamie Ramsay stated that there is already a barn on the property that has setbacks well from the
410 roads. The existing house does too. He questioned if, through loose interpretation of the
411 ordinance, the Board would now allow an accessory structure to be built closer to the public right
412 of ways than either of the existing historic structures.

413
414 Tom Quinn noted that the proposed structure is also a fraction of the size of the existing
415 structures. It thus makes sense for the proposed garage to be closer to the streets.

416
417 Danielle Pray noted that the ordinance is written in the way it is so that setbacks of that length
418 are possible. The ordinance may need to be amended but that will not solve anything for this
419 case.

420
421 Charlie Vars stated that his interpretation has always been that every corner lot has 50' setbacks
422 for both roads.

423
424 Tom Quinn stated that people learn new things all the time. The fact that this discussion has not
425 come up before is not germane to this conversation. The ordinance needs to be read as it is
426 written and, per section 3, that means that for the special case of an accessory building, side
427 setbacks are 20'.

428
429 Doug Kirkwood noted that the setbacks for corner lots have been followed a certain way for
430 years. The literal wording seems to say that a setback should be 20', per section 3. This raises the
431 question of whether the ordinance should be interpreted not on the intention, but as written. If
432 this proposed structure is looked at as a special case, as per the ordinance, then it leaves the
433 Board without much of a choice.

434

TOWN OF AMHERST
Zoning Board of Adjustment

June 16, 2020

APPROVED

435 In response to a question from Charlie Vars, Tom Quinn explained that Meridian noted the 50'
436 setbacks on the plan because the initial thought was to get a variance for the structure.

437
438 Charlie Vars noted that a variance would have been the way to go. Tom Quinn countered that the
439 ordinance language is plain.

440
441 In response to a question from Nic Strong, Tom Quinn stated that the definition for 'frontage'
442 doesn't come into play here.

443
444 Bob Rowe noted that all accessory buildings are structures, thus the other sections of this
445 ordinance apply. Tom Quinn stated that this kind of a structure is a special one though, and thus
446 covered only under section 3.

447
448 Bob Rowe explained that a structure is a structure. The proposed structure is not the primary
449 structure on the site. The only section that applies to lots with two frontages is section 2.

450
451 Tom Quinn explained that if there was already a special rule in the ordinance for accessory
452 structures, then there would be no need for section 3. However, there is a section 3 that treats
453 accessory structures differently from other structures.

454
455 Bob Rowe noted that the ordinance reads, "accessory building or structure." Tom Quinn stated
456 that this should be interpreted to be, "accessory building or accessory structure." Bob Rowe
457 disagreed.

458
459 In response to a question from Danielle Pray, Tom Quinn stated that the definition of frontage
460 doesn't come into play here. Front setbacks are different than frontage.

461
462 In response to a question from Danielle Pray, Tom Quinn noted that the applicant is only looking
463 for relief from the section of the ordinance as it was interpreted by the building inspector,
464 including a reversal of his decision.

465
466 Tom Quinn noted that an abutter and neighbor to the applicant, John Moriarity, will be speaking
467 in support of the project. He will be able to see the proposed structure from out his front door.

468
469 Public Comment:
470 John Moriarity, 3 North Meadow Road, spoke in support of the project and stated that he has no
471 problem with the placement as proposed.

472
473 In response to a question from Jamie Ramsay, Bob Rowe stated that the next step for the Board
474 is to interpret the zoning ordinance in response to the request made.

475
476 Tom Quinn noted that the applicant will only be back before the Board for a variance if the
477 appeal fails tonight.

478

June 16, 2020

APPROVED

479 **Charlie Vars moved to enter deliberations. Bob Rowe seconded.**
480 **Roll call vote: Danielle Pray – aye; Jamie Ramsay – aye; Bob Rowe – aye; Charlie**
481 **Vars – aye; and Doug Kirkwood – aye. Motion carried unanimously.**

482
483 **CASE #: PZ12445–032320:**
484 **Jamie Ramsay moved no regional impact. Charlie Vars seconded.**
485 **Roll call vote: Danielle Pray – aye; Jamie Ramsay – aye; Bob Rowe – aye; Charlie**
486 **Vars – aye; and Doug Kirkwood – aye. Motion carried unanimously.**

487
488 **Discussion:**

489
490 Doug Kirkwood explained that the decision to be made is if there was an error made in
491 the interpretation of the zoning ordinance by the administrative official.

492
493 Danielle Pray suggested that, no matter the vote, this section of the zoning ordinance, and
494 the others similarly worded, be referred to the Planning Board for clearer interpretation
495 and wording.

496
497 Danielle Pray stated that she would not support the decision as was made by the
498 administrative official.

499
500 Jamie Ramsay stated that he would support Scott Tenney’s decision.

501
502 Bob Rowe stated that he would support Scott Tenney’s decision because the proposed
503 garage is an accessory structure and there is only one section that mentions corner lots,
504 section 2. This is the section that was followed by the administrative official. He does
505 think it is too bad that the applicant will have to go through two hearings for this project.

506
507 Charlie Vars stated that he accepts the interpretation as made by the Building Official.

508
509 **Regarding the question of whether there was an error made in the interpretation of**
510 **the zoning ordinance by the Building Official in this case:**

511 **1 True, 4 Not True.**

512
513 **The Chair stated that the appeal of the administrative official’s decision has been**
514 **denied.**

515
516 **Bob Rowe moved to exit deliberations. Charlie Vars seconded.**
517 **Roll call vote: Danielle Pray – aye; Jamie Ramsay – aye; Bob Rowe – aye; Charlie Vars**
518 **– aye; and Doug Kirkwood – aye. Motion carried unanimously.**

519
520 *Bob Rowe left the meeting.*
521 *Tim Kachmar sat for Bob Rowe.*

522

June 16, 2020

APPROVED

523 **3. CASE #: PZ124646-051720 – VARIANCE**
524 **Donzi Realty LLC (Owner), 96 Route 101A, PIN #: 002-053-000 & S&E Realty LLC**
525 **(Applicant & Owner), 98 Route 101A, PIN #: 002-049-000 – Request for relief from**
526 **Article IV, Section 4.3, Paragraph A to construct and maintain parking spaces as**
527 **shown on plan. *Commercial and Residential Rural.***
528

529 Jamie Ramsay read and opened the case.
530

531 The Board agreed to hear the case in its entirety, even if it carried on after 10p.m.
532

533 Greg Michael, attorney for the applicant, presented the case. He explained that the parking on
534 these properties is in a split zone area. There are two parcels, owned by two individuals. His
535 client will have the option to purchase both parcels and hopes to eventually combine the two into
536 one with a Subaru dealership thereon. Both lots are located on Route 101A. Relief from this
537 article will allow for additional parking spaces. The proposed building complies with the zoning
538 here, even though the lots are not considered consolidated yet. If any of the parking spaces cross
539 over the property lines, this will be initially handled through easements that will expire once the
540 properties are combined.
541

542 Greg Michael noted that the request is an appropriate one because this area is surrounded by
543 other commercial properties and is located in the Route 101A principal commercial district.
544

545 Brett Allard, as associate with the firm of Bernstein, Shur, Sawyer, & Nelson, P.A., addressed
546 the five tests:

- 547 1) The variance will not be contrary to the public interest because the applicant’s
548 property is already being used for commercial purposes, consistent with the manner
549 in which the majority of the property is zoned. The purpose of establishing and
550 distinguishing between residential and commercial zones is to segregate uses
551 consistent with what is appropriate for the area. However, since the applicant’s
552 property is split-zoned, and since it fronts along the busy Route 101A corridor where
553 most of the property is zoned commercial, allowing parking on the rear portion of the
554 property that is technically zoned “residential” does not conflict with the purpose of
555 segregating uses because there is no practical means to simultaneously use the rear
556 portion of the property for residential purposes and the front portion of the property
557 for commercial purposes. The public already views this property as commercial and
558 thus it is not contrary to the public interest to allow the entire property to be used for
559 commercial purposes by allowing parking spaces on its rear portion. For these same
560 reasons, granting the variance would not threaten public health, safety, or welfare,
561 particularly where the applicant only seeks to construct and maintain parking spaces
562 on the rear portion of the lots, which is a relatively passive use.
563 2) Because it is in the public’s interest to uphold the spirit of the ordinance, the Courts
564 have held that these two criteria are related. If you meet one test you almost certainly
565 meet the other. See Farrar v. Keene, 158 N.H. 684 (2009). In addition to the above-
566 stated reasons, which are incorporated herein by reference, granting the variance will

June 16, 2020

APPROVED

567 not alter the essential character of the area because this area alone Route 101A is
568 already zoned commercial and the proposed use is consistent with the area's present
569 use. Therefore, the spirit of the ordinance is observed.

570 3) There is no harm to the general public by allowing parking spaces on the rear portion
571 of this commercial property. This is a use that the public typically expects on
572 commercial properties, particularly car dealerships. As such, there is no gain to the
573 public if the variance is denied. There would only be loss to the applicant in that it
574 would be restricted from using its entire property for a single purpose. Therefore, the
575 loss to the applicant when balancing public and private rights outweighs any loss or
576 injury to the general public (none).

577 4) The values of the surrounding properties will not be diminished because the
578 applicant's property is already used for commercial purposes, consistent with
579 surrounding uses on Route 101A which are also commercial. Granting the variance
580 will also not diminish the value of the residential properties that abut the rear portion
581 of the applicant's property because it is public knowledge that these lots abut many
582 commercial uses, and since the applicant's property is already established as a
583 commercial use, the market inherently contemplates that use continuing. In other
584 words, the applicant is not proposing to establish a new commercial use that would be
585 foreign to an otherwise residential area. The market already accounts for properties
586 located close to Route 101A in this area being abutted by commercial uses, and the
587 applicant does not propose to change that. Indeed, with modern land use philosophy
588 generally trending away from use segregation towards mixed and integrated uses,
589 many view close proximity between residential and commercial lots as a value-added
590 benefit.

591 5) Unnecessary Hardship under A-1:
592 The applicant's property has special conditions that distinguish it from other
593 properties in the area. First, it is a split-zoned property, with the majority of its area
594 being zoned commercial and only a smaller rear portion of the property zoned
595 residential. Second, the property is already established as a commercial use. Third, it
596 is much larger than other properties in the area. In total, the applicant's property is 6.1
597 acres. By contrast, according to NRPC's GIS data for developed abutting lots on
598 Route 101A, lot 2-55-1 is only 1 acre; lot 2-52 is only 0.36 acres; lot 2-51 is only 0.45
599 acres; lot 2-50 is only 5 acres; lot 2-48 is only 0.21 acres; and lot 2-47-1 is only 0.54
600 acres.

601
602 Owing to these special conditions, among others, relative to other properties in the
603 area, there is no fair and substantial relationship between the general purpose of the
604 zoning ordinance's prohibition on parking spaces on the rear portion of the
605 applicant's property and its application to the applicant's property. There is no
606 practical means or reason under the zoning ordinance or otherwise to restrict the rear
607 portion of the property to residential uses while allowing the front portion of the
608 property to be used for commercial purposes. The public already views this property
609 as entirely commercial and the applicant proposes to continue it as such. There is no
610 reason to deprive the applicant of use of the rear portion of its property for a passive

June 16, 2020

APPROVED

611 parking space use simply because it is bisected by a zoning boundary when the
612 property is already used for commercial purposes. Moreover, due to its large size, the
613 property can sufficiently accommodate the parking spaces proposed on the
614 “residential” portion of the property.

615
616 Accordingly, the purpose that the zoning ordinance seeks to protect is not in any way
617 threatened if this variance is granted. Even though this proposal requires this
618 variance, the purpose that the zoning ordinance aims to protect will be preserved if
619 granted.

620
621 A-2. The proposed use is reasonable because:
622 For all the reasons set forth above, which are incorporated herein by reference, the
623 applicant’s proposed use is reasonable. The applicant’s property is already established
624 as a commercial use and the applicant does not propose to change that. The public
625 already views the property as a commercial one. The property is surrounded by other
626 commercial uses on this busy portion of the Route 101A corridor, and parking spaces
627 for vehicle display/sales and employee parking is a relative passive use.

628
629 *Jamie Ramsay took over as Chair for Doug Kirkwood briefly, while Doug Kirkwood stepped*
630 *away.*

631
632 **CASE #: PZ12646–051720:**
633 **Tim Kachmar moved no regional impact. Charlie Vars seconded.**
634 **Roll call vote: Danielle Pray – aye; Jamie Ramsay – aye; Tim Kachmar – aye;**
635 **Charlie Vars – aye. Motion carried unanimously.**

636
637 *Doug Kirkwood rejoined the meeting and retook his seat as Chair.*

638
639 In response to a question from Danielle Pray, Greg Michael explained that the properties are
640 currently two separate lots, but his client has the option to purchase Map Lot 2-53.

641
642 In response to a question from Danielle Pray, Greg Michael explained that both of the properties
643 are about $\frac{2}{3} - \frac{3}{4}$ zoned commercial. The back lots of both properties are about $\frac{1}{4} - \frac{1}{3}$ zoned
644 residential.

645
646 In response to a question from Doug Kirkwood, Greg Michael stated that he believes there
647 already exists somewhat of a visual barrier in the back of these lots between them and the
648 residential lots. This proposal will next go for a site plan review, and buffering between the
649 parcels will be further discussed at that time.

650
651 In response to a question from Charlie Vars, Greg Michael agreed that there could eventually be
652 a new dealership placed on the combined lots. This new structure will comply with the
653 ordinance.

654

June 16, 2020

APPROVED

655 Tim Kachmar asked about how properties can become grandfathered in from being split zoned
656 properties, instead of simply drawing a line down the property and splitting it into two zones.

657
658 Doug Kirkwood noted that there are other places in town where a line bisects certain properties.

659
660 Jamie Ramsay agreed that the zoning district boundary seems a little random and that the
661 division of these two zones falls to the entirety of the stretch along Route 101A.

662
663 Public Comment:

664 Judy Koch, Executive Director for the Regional Services and Education Center (RSEC), stated
665 that RSEC abuts the property. She has no objections to the proposal or to the potential new
666 Subaru dealership on the property.

667
668 **Jamie Ramsay moved to enter into deliberations. Tim Kachmar seconded.**
669 **Roll call vote: Charlie Vars – aye; Jamie Ramsay – aye; Danielle Pray – aye; Tim**
670 **Kachmar – aye; and Doug Kirkwood – aye. Motion carried unanimously.**

671
672 **Jamie Ramsay moved no regional impact. Charlie Vars seconded.**

673
674 **Jamie Ramsay withdrew the previous motion as it was already moved earlier.**

675
676 **Discussion:**

677
678 Jamie Ramsay noted that it is surprising that neither of the two lots is entirely zoned
679 commercial. He doesn't believe there is any wisdom in considering the properties as
680 being in two separate zones, other than for continuity along the Route 101A corridor.

- 681
682 1. The Variance will not be contrary to the public interest.
- 683 • C. Vars – true, a commercial building already exists on the site and a similar size one
 - 684 will be built when the two lots are condensed. He doesn't believe there is an issue
 - 685 with the rear of the properties because no one wants to build a house much closer to
 - 686 commercial properties anyway. Thus the application is not contrary to the public
 - 687 interest.
 - 688 • J. Ramsay – true, the proposal is not contrary to the public interest. He believes it is
 - 689 surprising that these properties are in split zones. He believes it is unlikely that
 - 690 anyone would want to build a new home closer to the rear of a car dealership.
 - 691 • D. Pray – true, she does not believe that granting this variance will be contrary to the
 - 692 public interest. The proposal will not alter the character of the neighborhood. If
 - 693 approved, the proposed parking lot area is a passive use for the property.
 - 694 • T. Kachmar – true, he agreed with the points made by the other Board members.
 - 695 • D. Kirkwood – true.

696 **5 True**

- 697
698 2. The Variance is consistent with the spirit and the intent of the Ordinance

June 16, 2020

APPROVED

- 699 • J. Ramsay – true, he doesn't believe that the proposal goes against the health, safety,
700 of welfare of the public.
- 701 • D. Pray – true, the spirit of the ordinance is observed. She doesn't believe that the
702 proposal will affect the general health, safety, or welfare of the public. The proposal
703 is consistent with the current use present already in this area.
- 704 • T. Kachmar – true.
- 705 • C. Vars – true, he doesn't believe there is any gain to the public if the Board denies
706 this request. The proposed use is also passive and for vehicles only.
- 707 • D. Kirkwood – true.
- 708 **5 True**
- 709
- 710 3. Substantial justice is done.
- 711 • D. Pray – true, the proposal will allow substantial justice to be done. There will be no
712 gain to the public if the variance is denied. The proposed use is specifically for
713 parking, which is passive, not intrusive, and will not affect the public.
- 714 • T. Kachmar – true.
- 715 • C. Vars – true.
- 716 • J. Ramsay – true.
- 717 • D. Kirkwood – true.
- 718 **5 True**
- 719
- 720 4. The values of the surrounding properties will not be diminished.
- 721 • T. Kachmar – true, this is already a commercial area. Parking spaces placed in the
722 back residential zoned location with barriers erected will be okay.
- 723 • C. Vars – true, the value of surrounding properties will not be diminished. Also none
724 of the closest abutters objected to the proposal.
- 725 • J. Ramsay – true, there was no objection from the closest abutters to the west, and the
726 proposed use is consistent with all businesses to the east.
- 727 • D. Pray – true, the applicant's testimony showed that the values of surrounding
728 properties will not be diminished.
- 729 • D. Kirkwood – true, there was no objection from RSEC.
- 730 **5 True**
- 731
- 732 5. Literal enforcement of the provisions of the Ordinance would result in an unnecessary
733 hardship.
- 734 • C. Vars – true, he believes there would be a hardship to the applicant to deny this
735 variance. The proposed use is for passive sales purposes and for employee parking.
736 This, otherwise, meets all of the requirements.
- 737 • J. Ramsay – true, he believes holding this business to the letter of the ordinance,
738 regarding it being a split zone property, would be unrealistic and unreasonable. The
739 split zone on a six acre property is the hardship.

TOWN OF AMHERST
Zoning Board of Adjustment

June 16, 2020

APPROVED

- 740 • D. Pray – true, the split zoning on these properties is a unique condition for
741 demonstrating hardship. It is a hardship because of the character of the property. The
742 proposed passive use of the property is a reasonable use in the residential zone.
743 • T. Kachmar – true.
744 • D. Kirkwood – true, the proposed use is reasonable. There is already a house behind
745 the business here. If a visual buffer is erected there should be no issues to the
746 residential properties. To treat this property as a single zoned property is the best and
747 most reasonable use.

748 **5 True**

749
750 **The Chair stated that the application, as it passed all of the tests, is granted.**

751
752 **Charlie Vars moved to exit deliberations. Jamie Ramsay seconded.**

753 **Roll call vote: Danielle Pray – aye; Jamie Ramsay – aye; Tim Kachmar – aye; Charlie**
754 **Vars – aye; and Doug Kirkwood – aye. Motion carried unanimously.**

755
756 OTHER BUSINESS:

757
758 The Board discussed the option to come by Town Hall in order to sign the finding sheets for
759 these applications. It was noted that the sheets could be left in the lobby of the Town Hall since
760 the building was not yet open to the public.

761
762 Due to the lateness of the hour, the Board determined not to act on their Officer reorganization or
763 the minutes that were on the agenda for approval, from February 18, 2020.

764
765 **Charlie Vars moved to adjourn at 10:23 p.m. Tim Kachmar seconded.**

766 **Roll call vote: Danielle Pray – aye; Jamie Ramsay – aye; Tim Kachmar – aye;**
767 **Charlie Vars – aye; and Doug Kirkwood – aye. Motion carried unanimously.**

768
769
770
771
772 Respectfully submitted,
773 Kristan Patenaude

774
775
776 Minutes approved: November 17, 2020
777
778