

TOWN OF AMHERST
Zoning Board of Adjustment

April 20, 2021

APPROVED

In attendance: Doug Kirkwood – Chair, Tim Kachmar, Charlie Vars, Jamie Ramsay, and Danielle Pray.
Staff present: Nic Strong, Director of Community Development, Natasha Kypfer, Town Planner, and Kristan Patenaude, Recording Secretary.

Doug Kirkwood called the meeting to order at 7:02 pm., with the following statement. As Chair of the Amherst Zoning Board of Adjustment, I find that due to the State of Emergency declared by the Governor as a result of the COVID-19 pandemic and in accordance with the Governor's Emergency Order #12 pursuant to Executive Order 2020-04, as extended by various executive orders, this public body is authorized to meet electronically.

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

However, in accordance with the Emergency Order, I am confirming that we are:

Providing public access to the meeting by telephone, with additional access possibilities by video or other electronic means:

We are utilizing Zoom for this electronic meeting.

All members of the Board have the ability to communicate contemporaneously during this meeting through this platform, and the public has access to contemporaneously listen and, if necessary, participate in this meeting through dialing the following phone #312-626-6799 and password 897 1585 2030, or by clicking on the following website address: <https://zoom.us/j/89715852030> that was included in the public notice of this meeting.

Providing public notice of the necessary information for accessing the meeting:

We previously gave notice to the public of the necessary information for accessing the meeting, including how to access the meeting using Zoom or telephonically. Instructions have also been provided on the website of the Zoning Board of Adjustment at:

www.amherstnh.gov.

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

Adjourning the meeting if the public is unable to access the meeting:

In the event the public is unable to access the meeting, the meeting will be adjourned and rescheduled.

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

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

Roll call attendance: Doug Kirkwood, Tim Kachmar, Jamie Ramsay, Danielle Pray, and Charlie Vars – all present and alone.

TOWN OF AMHERST
Zoning Board of Adjustment

April 20, 2021

APPROVED

Doug Kirkwood explained that each case will be opened and then the applicant will have a chance to speak to it. The ZBA will then carry out its business for each case, including asking questions, hearing from the public and abutters, going into private deliberations, and potentially voting.

Tim Kachmar sat for Bob Rowe, in his absence.

NEW BUSINESS:

- 1. CASE #: PZ13888-031521 –VARIANCE Steven and Barbara Chamberlain (Owners & Applicants), 102 Baboosic Lake Road, PIN#: 006-006-005 – Request for relief from Article III, Section 3.11 Paragraph B. (12.), to build a 14’x16’ lawn and garden equipment shed along a scenic road. Zoned Residential/Rural.**

Jamie Ramsay read and opened the case.

Barbara Chamberlain explained that the house on their property was recently completed in June 2020. Due to the location of the septic system, the only place on the property that would not require extensive sitework to house the proposed shed is the front left side of the house. There is a line of young white pines in this area that will block the shed from most of the scenic road. The proposed shed will not have electricity, heat, or water. She noted that their neighbor has a farm structure that is located closer to the road that this shed would be, thus she was surprised that a variance was needed. The shed will face this neighbor’s property, but the line of pine trees will help to block it.

Steven Chamberlain explained that if the shed needs to be moved back 100’, extensive site work will be needed, and a lot of trees will need to be cut. This would actually make the shed more visible to the road and the abutter. The shed would also then be approximately 25’ from the abutter’s property line. He noted that the proposed shed will match the house in materials, color, siding, molding, doors, and roof pitch.

Barbara Chamberlain stated that she doesn’t believe this will detract from the scenic road view. She also doesn’t believe it will detract from abutter views. There is a house being built next door that will be approximately 200’ back from the road. Across the street sit two large empty lots, and the abutter to the north side has three acres.

In response to a question from Doug Kirkwood, Steven Chamberlain stated that very little fertilizer will be stored in the shed, and that what there is would be stored on shelves. Barbara Chamberlain explained that the proposed location is a flat area, and that putting it about 100’ back from this area would require enough fill to raise it 2.5-3’. The shed will also be placed on crushed gravel and concrete blocks. Doug Kirkwood noted that there is concern about the 100-year floodplain and how to prevent fertilizer and pesticides from leaching into the groundwater. Barbara Chamberlain mentioned that when they purchased the property they were not required to get flood insurance.

TOWN OF AMHERST
Zoning Board of Adjustment

April 20, 2021

APPROVED

Steven Chamberlain explained that the shed, as proposed, will be situated approximately 56' from the road, and the back part of it will be further back due to the curvature of the road. The shed is also approximately 51' from the setback and 26' from the 25' setback.

In response to a question from Charlie Vars, Steven Chamberlain stated that, if the shed was placed even with the house, the land slopes down there and approximately 3' of fill would be needed to make the area level with the driveway. There would also be a large number of trees that need to be cut. There is also standing water in this area and it would be easier seen from the road and abutters.

Charlie Vars explained that he would like to hear a hardship for being allowed to put the shed outside of the building envelope. Steven Chamberlain stated that the hardship would be the cost of having the fill the area.

Jamie Ramsay asked if there was room adjacent to the turnaround in the driveway to place the shed. Steven Chamberlain explained that the turnaround in the driveway had been extended approximately 10' to the south toward the road than was shown on the plan because there was not enough room to back out of the garage beforehand. Barbara Chamberlain stated that the east side of the house has a higher elevation and there is a stone wall there that can't be touched. There is not enough room between the turnaround and the stone wall to place the shed there.

Steven Chamberlain read the five tests and Barbara Chamberlain provided the answers they had included in their application packet:

- 1) This request for variance would not be a conflict with the ordinance because the shed would be over 50 feet from the road and over 100 feet from adjacent buildings on Baboosic Lake Rd. There is a stand of young white pines that are approximately 25 feet tall that would block most of the view of the proposed shed from the road. There would also be no health or safety issues because the shed would have no electricity, plumbing, or heating.
- 2) There will be no issues with the proposed shed impacting surrounding properties because the buildings of the property next to ours (a farm) would be closer to the road than the proposed shed and will be shielded from their view with a large apple tree on our property and several large trees on their property between their buildings and the shed.
- 3) The majority of the homes on Baboosic Lake Rd are not subjected to the requirement of the 100-foot setback, the ordinance affects less than half a mile of the entire road, our property has 200 feet frontage.
- 4) The proposed shed would be finished with these same materials (siding, trim and roofing) as the home, which was new home construction on June 5, 2020.
- 5) The placement of the shed is requested because the location of the septic system, the leach field, and the slope of the property would require extensive site and access road work to be done to access the equipment that the shed would be used for, such as snow removal equipment.

TOWN OF AMHERST
Zoning Board of Adjustment

April 20, 2021

APPROVED

Doug Kirkwood asked the applicants to better answer both sections of the 5th test with regard to hardship. Barbara Chamberlain stated that it seems subjective to try to outline unnecessary hardship. She noted that the property has the special conditions of where the septic system is located and the slope on other parts of the property that would require extremely costly site work. She also believes that defining the proposal as a reasonable use is subjective, but that she does believe the shed, being used to store lawn and snow removal equipment, is a reasonable use. Most of the lawn for the property is in the front, which is also a reason for it to be placed in the proposed location. She explained that she doesn't believe the proposed shed will be displeasing to any neighbors.

Danielle Pray explained that she drove by the property to see the proposed location. She noted that some of the other properties nearby that lie closer to the road predate current zoning ordinances. She asked the applicants if they know of other detached buildings in the area that lie closer to the 100' setback. Steven Chamberlain stated that there is a detached shed at the corner of Pavilion Road that is probably approximately 50' from the road. There is also a corn crib and barn structure that exist along Baboosic Lake Road that are approximately 25' from the road.

Charlie Vars explained that he's having a hard time determining the hardship of having to place the shed in the proposed location because the plans have no topography on them. He understands that, if there is a large drop off in the area next to the house, it could be a site condition that creates this hardship, but that is not shown in the plan or application.

Charlie Vars moved to table this application to the next meeting, so that the applicant may have time to submit additional information regarding the conditions of the property.

Doug Kirkwood and Danielle Pray stated that this motion would be better made after entering into deliberations.

Tim Kachmar moved to enter deliberations. Charlie Vars seconded.

Natasha Kypfer stated that there were no hands up from the public at this time.

Roll Call: Charlie Vars – aye; Tim Kachmar – aye; Jamie Ramsay – aye; Danielle Pray – aye; and Doug Kirkwood - aye. Motion carried unanimously.

Discussion:

Charlie Vars noted that he would like to see a copy of the septic plan with the topography included. He would also like to be able to walk the property to see the proposed location.

Doug Kirkwood stated that he would also like to see the overlays for the property, in order to see if the well is located 100' from the leach field.

April 20, 2021

APPROVED

The Board discussed a site walk but decided that it was not necessary to do so as a group. The applicants gave each Board member permission to access the property on his/her own to look at the site, even if the applicants are not home at the time.

Charlie Vars moved to table this application to May 18, 2021, at 7pm, via Zoom, so that the applicant may obtain the necessary information (a set of plans with topographical information and plans that show the house in its location relative to other properties in the area). Jamie Ramsay seconded.

Roll Call: Charlie Vars – aye; Tim Kachmar – aye; Jamie Ramsay – aye; Danielle Pray – aye; and Doug Kirkwood - aye. Motion carried unanimously.

Charlie Vars moved to exit deliberations. Danielle Pray seconded.

Roll Call: Charlie Vars – aye; Tim Kachmar – aye; Jamie Ramsay – aye; Danielle Pray – aye; and Doug Kirkwood - aye. Motion carried unanimously.

- 2. CASE #: PZ13938-032621 –VARIANCE Christ’s Church of Amherst NH (Owner) & Ellen Grudzien, The Amherst Preschool (Applicant), 58 Merrimack Road, PIN #: 003-036-002 – Request for relief from Article IV, Section 4.3, Paragraph A, seeking an updated approval for an expansion to increase the capacity of students in attendance to 42. Zoned Residential/Rural.**

Jamie Ramsay read and opened the case.

Danielle Pray noted that her son attended The Amherst Preschool years ago. She does not believe this will have an effect on her deliberating on this case.

Charlie Vars noted that his three granddaughters also attended The Amherst Preschool. He does not believe this will be a conflict for him to deliberate on this case.

Ellen Grudzien stated that 12 years ago today, the Zoning Board of Adjustment (ZBA) approved the preschool to be located within the Christ’s Church. This original approval was for 12 children to attend at a time, for a total of 24 children/day, with a stipulation that if the number was ever to change it would have to come back to the Board. This request is to increase the number of children in attendance to 42/day. She explained that Class 1 will have twelve children from 8:30 AM to 11:30 AM. This class will alternate its shared space with Class 2, which will have 12 children from 12:15 PM to 3:15 PM. Class 3 will hold an additional 15 children from 8:30 AM to 1:30 PM and Class 4 will hold an additional 15 children from 8:45 AM to 2:45 PM. The timing for these classes is staggered so that there will not be a long drop off and pick up line, and so that all of the classes can utilize the playground with only 24 children on the playground at a time.

In response to a question from Doug Kirkwood, Ellen Grudzien explained that the limit for this request is 42 children/day. Classes 1 and 2 will be staggered, so that there will never be 42 children at the preschool at one time.

TOWN OF AMHERST
Zoning Board of Adjustment

April 20, 2021

APPROVED

In response to a question from Doug Kirkwood, Ellen Grudzien stated that the space for the additional children proposed is being addressed through adding two yurts onto the back of the property. This item is being worked through with Building Inspector, Scott Tenney and Fire Chief, Matt Conley. Due to the fact that these structures will be up for over 180 days/year, they must meet building codes. She is working with TF Moran on the plan for these yurts that will then be approved by Scott Tenney and Matt Conley. Each yurt will accommodate 15 children at a time. These yurts are being produced by a company in Oregon.

Ellen Grudzien addressed the five tests:

1&2) Granting the amendment to the variance will allow the public to have an increased option for choosing a quality early childhood education program for their children. The Amherst Preschool has had an extensive wait list for the past five years and is currently restricted in its offerings to the increased interest and families seeking preschool in Amherst. The school provides small classes in a nature-based, semi-secluded environment which has seen much success since 2009 and has a wait list of 30 children for the fall 2021 school year. This waitlist has increased and currently sits at 42 students. The variance amendment will permit the Church and the Preschool to make fuller uses of their facilities without compromising their missions.

The amendment to the variance does not unduly, and in a marked degree, conflict with the ordinance such that it violates the ordinance's basic zoning objectives. The proposed amendment will make minimal impact to the 23-acre site, which is heavily wooded and isolated from neighbors, as it is currently developed. Nor would granting the amendment to the variance threaten public health, safety or welfare.

In response to a question from Doug Kirkwood regarding why the proposal won't threaten public health, safety, and welfare, Ellen Grudzien stated that the proposal will not store chemicals, or produce noise from large machinery. The only increased noise will be "happy" noise from children.

3) The small changes that will be made to accommodate the additional children will not increase noise, odor, fumes, lighting or other offensive matters. The increase in students will not have an impact on traffic due to the plan of a staggered start. The church building is secluded and isolated from its neighbors and the activity of the preschool occurs away from the view of neighbors. The property is blessed with a large parking lot and a driveway that can easily accommodate 24+ cars. She noted that she had to notify 65 people with this application.

In response to a question from Jamie Ramsay, Ellen Grudzien noted that the abutter notices included each individual condo owner across the street from the Church, and several down the road.

4) Substantial justice will be done by granting the amended variance because the loss to the church for not being able to utilize their property and the loss to the operators of the

TOWN OF AMHERST
Zoning Board of Adjustment

April 20, 2021

APPROVED

school to not accommodate students from their consistent wait list will not be outweighed by a gain to the general public.

- 5) It was agreed in the original variance granted that the zoning restrictions, as applied to the church property, interfere with the church's reasonable use of the property, considering the unique setting of the property in its environment, which will accommodate the amendment to the original variance easily. The church property has all the room needed, 23 acres, to pursue its mission and allow the preschool to increase their capacity and therefore the revenue generated, will assist the church in pursuing other objectives.

In response to a question from Charlie Vars, Natasha Kypfer noted that the Community Development Office is not in receipt of letters from the Fire Chief, Building Inspector, or TF Moran, dated April 10, 2021, as indicated by the applicant.

In response to a question from Danielle Pray, Ellen Grudzien explained that the Community Development Office first suggested that she reach out to the State of NH Licensing regarding this project. In order to create a sustainable environment, she is proposing using compostable toilets in the yurts, so as not to use water or septic hookups. The State Licensor worked with Scott Tenney and it was determined that the buildings will be exempt due to not being hooked up to the septic system. She will provide Scott Tenney with a letter regarding how the waste will be disposed of. There will also be a potable water system that will be pumped in and heated in the faucets. The gray water from this system will be disposed of properly in the Church. Ellen Grudzien noted that the State License requires 1 teacher for 15 children. There will be two teachers in each of the classrooms with 15 children.

Public Comment:

Nathan Greer, 12 Boylston Terrace, voiced his support for this proposal. He believes more opportunities for children are needed in town.

Natasha Kypfer noted that there were no other hands up from the public at this time.

In response to a question from Danielle Pray, Jim Burrow, of Christ's Church, stated that the Church has a good relationship with Ellen Grudzien and the Preschool. He noted that Ellen Grudzien has an excellent reputation with the community. The Church does not have any direct interaction with the children but does provide facilities for them. The Preschool was utilizing the two upstairs classrooms in the Church but will no longer use these once the yurts are in place. The Preschool also utilizes the downstairs classroom area and the bathrooms. The Preschool provides visibility and publicity for Church events. He noted that the Preschool allows the Church's 23 acres to be utilized, as they would otherwise sit vacant. This is a stewardship of the property for good use.

Jamie Ramsay moved to enter deliberations. Tim Kachmar seconded.

Roll Call: Charlie Vars – aye; Tim Kachmar – aye; Jamie Ramsay – aye; Danielle Pray – aye; and Doug Kirkwood - aye. Motion carried unanimously.

April 20, 2021

APPROVED

Jamie Ramsay moved no regional impact. Charlie Vars seconded.

Roll Call: Charlie Vars – aye; Tim Kachmar – aye; Jamie Ramsay – aye; Danielle Pray – aye; and Doug Kirkwood - aye. Motion carried unanimously.

Discussion:

Tim Kachmar noted that this appears to be a creative plan that is needed in Town.

Jamie Ramsay stated that this proposal seems to have been carefully studied by the school administration to determine what is possible without exceeding what is appropriate. He is impressed by the proposal.

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

- T. Kachmar – true, the proposal is not contrary to the public interest. This appears to be a positive thing for the public to add more students to an already approved school and it is necessary in Town.
- D. Pray – true, the addition of students will not alter the essential character of this neighborhood. This is currently a preschool and the slight increase in traffic will be dealt with through staggering of start times. This does not threaten the public health, safety, or welfare. There will not be extra noise or fumes as part of this proposal.
- C. Vars – true, this is a reasonable request and meets an important Town need.
- J. Ramsay – true, any negative aspects of this proposal have not been voiced by abutters. This has been reviewed by the Building Inspector, Fire Chief, and State of NH.
- D. Kirkwood – true, he likes the approach that the preschool takes on foundational learning for the youngsters while outdoors.

5 True

Natasha Kypfer noted that there was one letter of concern from an abutter. She “shared screen” so that the letter could be seen by the Board and meeting attendees on Zoom, and Chairman Doug Kirkwood read the letter from Jim Cardoso into the record. Mr. Cardoso was not in attendance at the meeting.

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

- J. Ramsay – true, the original intent of the Board when it first granted the variance for this property is not being changed. The only change is an increase to the student and, presumably, staff population. There is no substantive change that negatively affects the original vote.
- C. Vars – true.
- T. Kachmar – true.
- D. Pray – true, the increase of 30 students to be split between two yurts does not change anything from the original variance granted for the purpose and use of the property.
- D. Kirkwood – true.

April 20, 2021

APPROVED

5 True

3. Substantial justice is done.

- D. Pray – true, the balance of a loss to the school for not approving the variance to allow for extra children and the, thus, increased service to Amherst residents, is not outweighed by a gain to the public.
- C. Vars – true.
- T. Kachmar – true.
- J. Ramsay – true.
- D. Kirkwood – true.

5 True

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

- T. Kachmar – true, this is a large, heavily-wooded property located next to a highway. He does not see a diminution in value to abutters by this proposal. He noted that 65 abutter notices were sent, and only one letter of concern was sent to the Board.
- J. Ramsay – true, there is no diminution in value.
- C. Vars – true, the increased size of student population and the introduction of the yurts will not create additional negative impacts from noise, odor, etc. The increase in student population will have no impact to values.
- D. Pray – true.
- D. Kirkwood – true, he believes the proposed will enhance the area.

5 True

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

- D. Pray – true, there are several special conditions to this property: the limited classroom area has been outgrown by the Preschool. The application to add additional students meets a community need. The proposed yurts are perfect for this space, per a representative of the Church. The public health, safety and welfare does not outweigh the applicant's request for variance. This is a reasonable request because the area is already used for a preschool; this is simply an increase to the number of students.
- C. Vars – true, he believes the proposal is an outstanding use of the property.
- T. Kachmar – true.
- J. Ramsay – true, the original application for a variance is not changed by this proposal. The proposal is an imaginative response to a Town need.
- D. Kirkwood – true, he believes it would be tough to find a more creative way to handle this preschool and he likes the foundation for learning they are giving students.

5 True

TOWN OF AMHERST
Zoning Board of Adjustment

April 20, 2021

APPROVED

The Chair stated that the application, as it passed all of the tests, is granted. He further noted that the Conclusions Sheet would be in the Town Hall by noon the following day for all the Board members to sign.

Charlie Vars moved that to exit deliberations. Tim Kachmar seconded.

Roll Call: Charlie Vars – aye; Tim Kachmar – aye; Jamie Ramsay – aye; Danielle Pray – aye; and Doug Kirkwood - aye. Motion carried unanimously.

Jamie Ramsay noted that the application was only necessary because an of increase to the student population, but the intent of the original variance was never changed. He wondered why this could not have been handled at an administrative level. Doug Kirkwood explained that the amendment to the variance was necessary because there was a request to raise the upper limit of students present at the Preschool that was a condition of the original variance.

OTHER BUSINESS:

1. Minutes: March 23, 2021

Charlie Vars moved to approve the meeting minutes of March 23, 2021, as written.

Danielle Pray seconded.

Roll Call: Tim Kachmar – abstain; Charlie Vars – aye; Danielle Pray – aye; Jamie Ramsay – abstain; Doug Kirkwood – aye. 3-0-2; motion carried.

2. No Show Policy

Doug Kirkwood noted that this will be addressed at the May meeting and asked that, as it appeared there was only one application for the May meeting, that this be put first on the agenda. Doug Kirkwood was asked to send the revised version to the Board members via email and said he would forward it to the Office of Community Development to be distributed.

In response to a question from Charlie Vars, Nic Strong stated that Town Administrator Shankle is investigating how to use a hybrid model to hold Board/Commission meetings at least somewhat in person. The Board of Selectmen has opted to keep to the same model for the time being.

Jamie Ramsay moved to adjourn the meeting at 9:32pm. Tim Kachmar seconded.

Roll Call: Charlie Vars – aye; Tim Kachmar – aye; Jamie Ramsay – aye; Danielle Pray – aye; and Doug Kirkwood - aye. Motion carried unanimously.

Respectfully submitted,
Kristan Patenaude

Minutes approved: May 18, 2021