

TOWN OF AMHERST
Zoning Board of Adjustment

July 20, 2021

FINAL

1 In attendance: Doug Kirkwood – Chair, Tracy McInnis, Tim Kachmar (alternate) [7:15pm],
2 Charlie Vars, Jamie Ramsay, and Danielle Pray.
3 Staff present: Natasha Kypfer, Town Planner, and Kristan Patenaude, Recording Secretary.
4

5 Doug Kirkwood called the meeting to order at 7:03 pm. Doug Kirkwood introduced the Board
6 members and staff. He explained that applicants will have the chance to speak to their case. The
7 ZBA will then carry out its business for each case, including asking questions, and hearing from
8 the public and abutters. The Board will then enter into private deliberations, at which time no
9 further comments are allowed from applicants or the public.

10

11 **PUBLIC HEARING:**

12

13 **1. CASE #: PZ14423-062821 – VARIANCE Josh & Brittany Leidinger (Owners & Ap-**
14 **licants), 6 Upper Flanders Road, PIN #: 007-039-003 – Request for relief from Ar-**
15 **ticle 4, Section 4.3, Paragraph D to construct an accessory building or structure**
16 **(shed) within the 20-foot rear setback. Zoned Residential/Rural.**

17

18 Jamie Ramsay read the case.

19

20 Josh Leidinger presented the case. He explained that his house sits on a ¾ acre lot. The family is
21 not able to store their cars inside the garage, due to a number of items currently housed in it. He
22 would like to place those items in the proposed shed. He stated that the layout of the lot is that
23 there is a stonewall border to the south between his property and the abutters. The front yard
24 drops off, and the backyard has only about 2’ of space between the lawn and another stonewall.
25 He is proposing to place this shed 6’ away from the rear property line in the footprint of where
26 another shed sat many years ago. He noted that he had letters of support from abutters.

27

28 *Tim Kachmar entered the meeting at 7:15pm.*

29

30 Josh Leidinger reviewed the tests:

31

32 1&2) The variance will not be contrary to the public interest and will be consistent with
33 the spirit of the ordinance. Granting the variance would not alter the essential character of
34 the neighborhood as there are numerous properties in the area with garden sheds and
35 outbuildings. The proposed shed would be located at the rear property which backs up to
36 a wooded area of the property at 86 Mack Hill Rd. Visibility of the shed would be very
37 limited from Upper Flanders Road, as our house blocks the view of the area from most of
38 the surrounding properties. The shed wouldn't be visible at all from Mack Hill Rd.
39 Accordingly, there is virtually no impact to the public.

40

41 3) There is no detriment to the public interest from the proposal and granting the
42 variance will not threaten the public health, safety, or welfare. The proposal will make
43 caring for the property more feasible by keeping the existing two car garage clear for cars
44 and storing the lawn mower, snow blower, and various other tools in a dedicated space in

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45 the shed. Denial of the variance would deprive us reasonable use of the property and
46 would result in a loss to us that is not outweighed by any benefit to the public.

47
48 4) The values of surrounding properties will not be diminished by granting the variance.
49 The shed will match our main house in appearance and color, and it should only serve to
50 increase the values of the surrounding properties by improving the appearance of our
51 home. The proposed shed will not impact the surrounding properties in any way by
52 blocking views, impacting access, etc. We have discussed the plan with the abutting
53 property owners, and they are all supportive of the plan.

54
55 5) Literal enforcement of the provisions of the ordinance would result in an unnecessary
56 hardship. Our house is situated diagonally on our lot and creates limited space for our
57 yard. The lot is 0.75 of an acre and currently our yard runs to the borders of the property
58 on almost all sides. To have a 20' setback would require the shed to be located in the
59 middle of the yard, greatly impacting the outdoor space for our family to enjoy.
60 Additionally, it would be such an odd placement of a shed within the setback that it
61 would likely negatively affect the value of our property. It is this limited size and layout
62 of the property that necessitates a variance, and we think this is a fair and reasonable
63 request to make the most efficient use of our lot.

64
65 In response to a question from Doug Kirkwood regarding addressing the test for substantial
66 justice, Josh Leidinger stated that denial of this request will not allow him reasonable use of his
67 property, thus approving the request will allow substantial justice to be done.

68
69 In response to a question from Doug Kirkwood about the location of the shed, Josh Leidinger
70 stated that the shed is proposed to be located in the southeast corner of the lot.

71
72 In response to a question from Danielle Pray, Josh Leidinger stated that the back corner of the
73 yard already contains a mature maple tree, gardens, a retaining wall and a swing set. Thus, the
74 shed could not be placed in this area.

75
76 In response to a question from Danielle Pray, Josh Leidinger stated that the gas tank sits
77 approximately 10-12' from the back screen porch on the house. The proposed shed would sit
78 approximately 35-40' from the patio. The nearest abutter to the east is approximately 30' from
79 the stonewall. Abutting the south side of the property is a wooded lot that is owned by the
80 Potenzas on Mack Hill Road.

81
82 In response to a question from Jamie Ramsay, Josh Leidinger stated that he was unable to
83 contact one nearby neighbor that has not yet moved into his/her house. He also did not speak to
84 one other abutter diagonal to him. All other abutters were spoken to and have no issue with the
85 proposal.

86

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87 In response to a question from Doug Kirkwood about the scale of the plan, Josh Leidinger
88 explained that the drawing he submitted was taken directly from the plot plan. The scale is 1" =
89 40' and the orientation is that left on the map, where the road is indicated, is north.

90
91 In response to a question from Jamie Ramsay, Josh Leidinger stated that the proposed shed is
92 12'x16' and the 16' side will run parallel to the rear lot line. The closest abutters will have some
93 line of sight of the shed. It will be completely obscured from the view of the abutter on Mack
94 Hill Road. There is also a tree line that will block the line of sight to the shed from the abutter at
95 9 Upper Flanders Road. The shed will be blocked from the sight of other properties on the street
96 by the house itself.

97
98 In response to a question from Tim Kachmar about the existing footprint of a shed, Josh
99 Leidinger stated that the spot in which there was previously a shed has a crushed rock bed and 6"
100 concrete sonotubes. This area on the property will not need to be cleared for the proposed shed.

101
102 In response to a question from Jamie Ramsay, Josh Leidinger stated that he plans to purchase a
103 shed kit from Pine Harbor, MA, which should be available in the fall.

104
105 Charlie Vars noted that he drove by the property and saw a swing set and trampoline in one of
106 the backyard corners. There are two large trees on the property. Josh Leidinger explained that
107 there is a zipline currently from the trampoline to one of those trees. One of the tree stumps on
108 the property is approximately 4-5' from the edge of the proposed shed. Josh Leidinger noted that
109 he is trying to leave a bit of space between the stonewall at the back of the property and the
110 proposed shed.

111
112 In response to a question from Charlie Vars, Josh Leidinger stated that the stonewall at the back
113 of the property is not the property line. There is a line of sight between a PK nail on the property
114 line and a granite marker. The stonewall is constructed within the property line.

115
116 Charlie Vars asked why the shed is proposed to be a larger size, 12'x16', instead of a smaller
117 size, such as 8'x10' or 10'x12', in order to allow for less of an issue with the setback. Josh
118 Leidinger stated that he would like to fit a ride-on lawnmower, wheelbarrow, potting bench, etc.,
119 inside the shed. He went on to say that if he was going to construct a shed, he wanted to make
120 sure it was large enough for everything he would need it for.

121
122 Charlie Vars noted that the proposed shed was shown fully within the setback and asked why not
123 move the shed up a couple of feet from the proposed location or make it narrower. Josh
124 Leidinger explained that there is a steep embankment drop off located in the same area, which
125 disallows for much movement from the proposed location.

126
127 Danielle Pray noted that the Staff Report suggests a survey of the property as a condition of ap-
128 proval because the proposed shed is only 6' from the lot line.

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130 Josh Leidinger stated that he is trying to avoid incurring additional costs for this project. Hence,
131 why he used a recycled plot plan and is representing himself in this matter. He explained that the
132 PK nail and stonewall are clearly visible on site. He is willing to do the measurements to make
133 sure the lot lines are correct himself but would also be willing to have a survey done if
134 conditioned by the Board.

135

136 There was no public comment at this time.

137

138 **Jamie Ramsay moved to enter deliberations. Danielle Pray seconded.**

139 **Voting: 5-0-0; motion carried unanimously.**

140

141 **Danielle Pray moved no regional impact. Charlie Vars seconded.**

142 **Voting: 5-0-0; motion carried unanimously.**

143

144 Doug Kirkwood addressed the five variance tests.

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

146 • C. Vars – true, he had reviewed the physical aspects and had no doubt this was not
147 contrary and there does not appear to be any dissent from abutters.

148 • J. Ramsay – true, it is a reasonable request for the applicant to want a shed in his
149 backyard.

150 • D. Pray – true, building the shed will not alter the essential character of the
151 neighborhood or affect the health, safety, and welfare of the public.

152 Doug Kirkwood explained to the new ZBA member, Tracy McInnis, how this part of the hearing
153 takes place.

154 • T. McInnis – true, the proposal will not impact neighbors and she appreciates that the
155 applicant is proposing to place it in an area of the property that previously held a
156 shed.

157 • D. Kirkwood – true.

158 **5 True**

159

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

161 • J. Ramsay – true, one of the intents of the Ordinance is to allow applicants to enjoy a
162 reasonable use of the property without being egregious to abutters. This satisfies that
163 intent.

164 • D. Pray – true, the spirit of the Ordinance is to protect the health, safety, and welfare
165 of the public. This encroachment does not violate that spirit.

166 • T. McInnis – true, the abutters are okay with the proposal.

167 • C. Vars – true.

168 • D. Kirkwood – true.

169 **5 True**

170

171 3. Substantial justice is done.

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- 172 • D. Pray – true, the public has nothing to gain by denying this request, but the
173 applicant would incur a loss.
- 174 • T. McInnis – true, there is no loss to the public interest by allowing the applicant to
175 better utilize his garage by constructing a shed.
- 176 • C. Vars – true, the request is a reasonable use of the property. The proposed shed will
177 have limited public view.
- 178 • J. Ramsay – true.
- 179 • D. Kirkwood – true.
- 180 **5 True**
- 181
- 182 4. The values of the surrounding properties will not be diminished.
- 183 • T. McInnis – true, the proposal will not diminish abutting property values and is
184 providing a shed to allow him to upkeep his property.
- 185 • C. Vars – true, the proposal will not rob abutter views or impact neighbors. Four out
186 of five neighbors spoke in favor of the proposal.
- 187 • J. Ramsay – true, it is not unusual to see a shed in backyards and the neighbors in this
188 area support this proposal.
- 189 • D. Pray – true, no evidence was given that abutting property values will be
190 diminished. The proposed shed will match the existing house in color and appearance.
191 If anything, this will increase the property values.
- 192 • D. Kirkwood – true, he noted that this test is a difficult one to prove.
- 193 **5 True**
- 194
- 195 5. Literal enforcement of the provisions of the Ordinance would result in an unnecessary
196 hardship.
- 197 • C. Vars– true, the proposal is for a large shed, but it would be a hardship to the owner
198 to not allow a shed on the property. The lot is small, and the proposed area is essen-
199 tially the only spot to place it.
- 200 • J. Ramsay – true, the placement of the house on the property is a preexisting
201 condition and is a hardship in this case.
- 202 • D. Pray – true, this request for a variance does not frustrate the purpose of the
203 Ordinance. The special conditions of the property include placement of the house in
204 the middle of the property, the elevation drop-off, the retaining wall, and the
205 preexisting swing set, leaving little room for a shed. The proposal is a reasonable one.
- 206 • T. McInnis – true, there are not many places on the property in which the proposed
207 shed could be placed, and the applicant is proposing to put it in a place that
208 previously held a shed.
- 209 • D. Kirkwood – true.
- 210 **5 True**
- 211
- 212 **The Chair stated that the application, as it passed all of the tests, is granted, as sub-**
213 **mitted.**
- 214

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215 **Charlie Vars moved that to exit deliberations. Jamie Ramsay seconded.**
216 **Voting: 5-0-0; motion carried unanimously.**

217
218 OTHER BUSINESS:

219
220 **1. Minutes: May 18, 2021**

221
222 **Charlie Vars moved to approve the meeting minutes of May 18, 2021, as amended**
223 **[Lines 64-67 - need to be clarified; Line 75 – delete the word “opened;” Line 341 –**
224 **change the wording to match that on the Conclusion Sheet].**
225 **Jamie Ramsay seconded.**
226 **Voting: 4-0-1; motion carried [T. McInnis abstaining].**

227
228 **Jamie Ramsay moved to adjourn the meeting at 7:59pm. Charlie Vars seconded.**
229 **Voting: 5-0-0; motion carried unanimously.**

230
231
232
233 Respectfully submitted,
234 Kristan Patenaude

235
236 Minutes approved: September 21, 2021