

1 **AMHERST ZONING BOARD OF ADJUSTMENT**

2
3 Minutes of February 25, 2014

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5 **ATTENDEES:** Robert Rowe – Acting Chairman, Jamie Ramsay – Regular Member, Jim Quinn – Regular
6 Member, Charlie Vars-Alternate, Sarah Marchant – Planning Director

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8 **ABSENT:** Douglas Kirkwood - Chairman

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10 Robert Rowe opened the meeting at 7:00, explaining the procedures of the ZBA.

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12 *Jamie Ramsay moved to hear the cases. Jim Quinn seconded the motion. All were in favor, none were*
13 *opposed, the motion passed.*

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15 **Case #PZ 4750-011014 – Special Exception**

16 **Susan M. Cormier, 20 Pine Top Road, PIN# 007-58-000, requests a special exception from Section**
17 **4.5.C.7 to allow an accessory dwelling unit in the Northern Rural Zone.**

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19 Ms. Cormier presented this application; Robert Whalen assisted Ms. Cormier with the presentation.
20 Robert Rowe asked if this partial board is acceptable or if the applicant would prefer to wait for the full
21 board. Ms. Cormier indicate she is fine with the abbreviated board. Ms. Cormier approached Robert
22 Rowe with a drawing to point out what is in contention; this has been this way for 34 years. Robert
23 Rowe indicated that this presentation needs to address the requirements under the law as listed in the
24 application. Ms. Cormier stated she is unsure if she has that and believes she handed those in. Ms.
25 Cormier responded to the required questions as follows: Yes this is an accessory apartment in a rural
26 zone. Yes it meets dimensional requirements. Yes it meets parking requirements. There have been no
27 significant impacts. Nothing is changing, the plan reflects the use, and the septic and ground water will
28 supply to this addition. Robert Rowe said it does not matter if this structure has been there for 34
29 years. Ms. Cormier said the space was permitted in the original plan, the question is about the kitchen
30 being legal, and the space was approved but not the use. Robert Rowe asked if a building permit was
31 received. Ms. Cormier answered there was. Robert Rowe asked if the use of that space was approved
32 as an accessory apartment. Ms. Cormier said she was told it was grandfathered in and has been
33 utilizing that space ever since. Robert Rowe asked when Ms. Cormier purchased the property. Ms.
34 Cormier replied 2002. Robert Rowe asked if the space was measured. Ms. Cormier responded it is 24
35 x 30. Robert Rowe noted there is a separate door from the kitchen to the apartment. Sarah Marchant
36 said one limitation is that an accessory apartment is one bedroom. Robert Rowe said this plan says
37 one bedroom, living room, bath but not a kitchen. Sarah Marchant said the plan has the kitchen
38 scribbled out. A CO was granted at the time when it was approved, but the plan did not identify a
39 kitchen. Robert Rowe asked if the kitchen was not supposed to be there. Ms. Cormier said she did not
40 build it. This is a matter of whether or not the kitchen can stay there.

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42 Robert Whalen talked about a letter from the residents of Pine Top Road, indicating there were some
43 tenants in this building at one time, but there are no longer tenants. There were many cars at the
44 home at that time, and there were problems. There are now no more tenants. Jamie Ramsay indicated

45 enforcement is not the purview of this board; the ZBA is here to decide whether or not this accessory
46 apartment is being used as such. Sarah Marchant explained that an additional dwelling unit has a
47 kitchen, (bedroom, kitchen, and bathroom). Jim Quinn said if it was a legal apartment, this would not
48 have come to the ZBA, this is for a special exception to allow the accessory apartment in this home.
49 Jim Quinn indicated if this is approved, what will be on the record as approved, because the plan is
50 scribbled on. The only drawing submitted is from 1999 and some things are scratched out. Sarah
51 Marchant said it is up to the ZBA to add conditions if desired. Robert Rowe said the ZBA will review the
52 seven questions required for special exception and he read the seven questions.

53
54 Robert Rowe asked about access. Ms. Cormier explained the driveway. Robert Rowe asked if there is
55 good visibility. Ms. Cormier said there is. Ms. Cormier indicated the neighbors would have to be asked
56 about some of the questions regarding how it would affect the neighborhood. Robert Rowe noted that
57 it is up to the applicant not the ZBA to collect that data.

58
59 Robert Rowe asked for input from abutters. Donna Brooks, 4 Locke Road abutter, has no problem with
60 this application. Robert Rowe asked if there are any objections to the application. John Depolito, Pine
61 Road, indicated his concerns are about the zoning, he knew the home at the end of the road had an in-
62 law apartment and believed an in-law apartment was for in-laws but that has not been the case.
63 Robert Rowe said it was an in-law apartment but that term was changed in 1998 to accessory dwelling.
64 Mr. Depolito said septic systems are designed on the number of bedrooms but what about the
65 intensity with the number of people and the wetlands? Robert Rowe understands that the septic is
66 designed on the number of bedrooms not people. Mr. Depolito is concerned with potential problems
67 of contaminating the water; he would like the zoning to stay the same and not make an exception and
68 keep it as a single family home without the accessory apartment. His concern is who will live there
69 next and who goes in and out. Robert Rowe asked if he feels it could reduce his property value. Mr.
70 Depolito said he does not know, but if there is an apartment building down the street anywhere, it
71 could lower the value.

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73 Ms. Cormier said that Steve Desmarais installed the septic; it was replaced when she bought the home,
74 she does not bother anybody; and if this is not approved, it would affect her ability to collect rental
75 income to pay for her property taxes. Charlie Vars asked what precipitated this. Sarah Marchant said
76 it was a written complaint from an anonymous complainant. Robert Rowe asked if a photocopy could
77 be made of the plan, to retain the copy for the file and he asked Ms. Cormier to sign and date the plan.
78 Charlie Vars asked if the applicant requested a permit for this property with the accessory apartment,
79 would that satisfy the requirements. Sarah Marchant explained they would end up here to get a
80 special exception, that is the only way it can be allowed, because a violation currently exists. Jamie
81 Ramsay asked if this apartment is rented. Ms. Cormier lives in the accessory apartment and nobody
82 lives in the main part of the house. Jamie Ramsay said if the applicant were directed to remove the
83 kitchen, how would that affect the use of the structure as a multi-family building? Ms. Cormier said
84 she would have to use the kitchen in the main part of the house, she would still remain there and still
85 live in the accessory apartment, but she wouldn't like it.

86
87 Walter Swanbon, abutter, said there is an accessory building and then the in-law apartment. Sarah
88 Marchant said there is no dwelling unit in the shed. Walter Swanbon asked if this is just to have it be

89 legal. Robert Rowe said this type of apartment was allowed for an in-law apartment and then it
90 became an accessory apartment under special exception if conditions are met (800 sf, entrance
91 between apartment and main house, one bedroom and a kitchen). Walter Swanbon said there have
92 been multiple sets of people living there at different times and there was a trailer there one time.
93 Robert Rowe said this application is just for the accessory apartment. Walter Swanbon said he has no
94 problem with this accessory apartment. Jim Quinn asked if the Assessor has seen the property in the
95 past 34 years. Sarah Marchant indicated the Assessor is not always granted access to homes. This
96 ended the discussion on application PZ-4750-011014

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98 **Case #PZ4768-011714 – Variance**

99 **Denis Vaillancourt, 14 Clark Island Road, PIN#008-106-000, requests a variance from Section 4.3.D.3**
100 **to allow a generator within the Residential/Rural Zone side setback.**

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102 Denis Vaillancourt presented the application. Portable generators have been used during power
103 outages, and they decided to install a permanent generator. The way the house is set up, he could not
104 find anywhere on the property close enough to have the electricity and propane to provide electricity
105 for the generator. The proposed placement of the generator is between bushes and the neighbor's
106 property line, where there is nothing there. It was found the most suitable place for placement is in
107 the side setback area. Mr. Vaillancourt said it seemed logical to add this to the side of the property
108 where there is propane and an air conditioner unit. Robert Rowe asked why the generator pad cannot
109 be moved closer to the propane tanks right next to the house. Mr. Vaillancourt said it must be a
110 certain number of feet away from the house, and there is a slight hill so it would not work. Sarah
111 Marchant said it must be a minimum of five feet from all combustible surfaces and ten feet from
112 propane tanks. Sarah Marchant said the issue tonight is setback. Charlie Vars asked where the access
113 is. Mr. Vaillancourt said the electrical is from the basement, and the propane is from the tanks. Mr.
114 Vaillancourt said the only thing that is permanent is a pad. Mr. Vaillancourt said different alternatives
115 were looked at, and the one that makes the most sense is this plan. This section being proposed to
116 place the generator is abutting a wooded area. Jim Quinn asked if all the neighbors are aware of this.
117 Mr. Vaillancourt said they are.

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119 There were no further questions from the board. There were no people in the audience opposed to
120 this application. Jamie Ramsay again indicated tonight's board is four members so there could be a tie.
121 Mr. Vaillancourt said a four member board is fine.

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123 *Jamie Ramsay moved to enter deliberations. Charlie Vars seconded. All were in favor.*

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125 **DELIBERATIONS:**

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127 **Case #PZ-4750-011014 SPECIAL EXCEPTION –**

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129 *Jim Quinn moved no regional impact. Jamie Ramsay seconded. All were in favor.*

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131 Robert Rowe reviewed the questions:

132 1. The use is allowed in the Zoning Ordinance? 4 true FINAL VOTE 4/0

- 133 2. That the property is in conformance with the dimensional requirements of the zone and the use is
134 compatible with the Amherst Master Plan? Jamie Ramsay true, an accessory apartment is permitted in
135 northern rural zone; Charlie Vars true; Jim Quinn true; Robert Rowe true – FINAL VOTE 4/0
136 3. There is safe vehicular and pedestrian access? Jim Quinn-not true and he said it is unknown as
137 there was nothing presented by the applicant, what we have is an old 1999 plan from Meridian; Jamie
138 Ramsay true-the accessory apartment is allowed but there is nothing in the plan about the accessory
139 apartment so he would assume in the absence of evidence to the contrary it probably is safe; Robert
140 Rowe true - Ms. Cormier spoke about the driveway but there is nothing to verify dimensions on the old
141 plan; Charlie Vars true; FINAL VOTE 3/1
142 4. There will be no significant adverse impacts from the proposed use on safety and general welfare of
143 the neighborhood and Town? Jamie Ramsay true; Charlie Vars true, there has not been testimony
144 about anything negative; Jim Quinn true; Robert Rowe true – FINAL VOTE 4/0
145 5. The use will not be more objectionable to nearby properties by reason of noise, fumes, or
146 inappropriate lighting than existing use? Charlie Vars true; Jamie Ramsay true, this probably is not
147 objectionable, but this was poorly represented in the evidence; this comes here on an anonymous
148 complaint; Jim Quinn true; Robert Rowe true - FINAL VOTE 4-0
149 6. The plan submitted by applicant / owner accurately depicts the use? Jim Quinn not true; Jamie
150 Ramsay true, the plan is inadequate but the plan is consistent with town records dimensionally; Charlie
151 Vars true; Robert Rowe true - FINAL VOTE 3-1
152 7. The use will not affect the ground water? Charlie Vars true; Jamie Ramsay true; Jim Quinn true;
153 Robert Rowe true - FINAL VOTE 4-0

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155 The application passes all tests; therefore, the request is granted.

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157 Case #PZ4868-011714 – VARIANCE

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159 *Jamie Ramsay moved no regional impact. Jim Quinn seconded. All were in favor.*

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161 Robert Rowe reviewed the questions:

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- 163 1. The Variance will not be contrary to the public interest. Charlie Vars true; Jamie Ramse true; Jim
164 Quinn true; Robert Rowe true - FINAL VOTE 4/0
165 2. The Variance is consistent with the spirit and intent of the Ordinance. Jamie Ramsay true, it does
166 not seem to infringe on the neighbor, and there does not seem any other logical place to place the
167 generator; Jim Quinn true; Charlie Vars true; Robert Rowe true - FINAL VOTE 4/0
168 3. Substantial justice is done. Jamie Ramsay true; Charlie Vars true; Jim Quinn true; Robert Rowe true
169 - FINAL VOTE 4/0
170 4. The values of the surrounding properties will not be diminished. Charlie Vars true; Jamie Ramsay
171 true; Jim Quinn true; Robert Rowe true - FINAL VOTE 4/0
172 5. Literal enforcement of the provisions of the Ordinance would result an unnecessary hardship. Jamie
173 Ramsay true, the proposed use is reasonable and this property is not unique in this area; Jim Quinn
174 true; Charlie Vars true; Robert Rowe true - FINAL VOTE 4/0

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176 This request passes all the questions therefore the request is granted.

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Jamie Ramsay moved to come out of deliberations. Charlie Vars seconded. All were in favor. Motion passed.

OLD BUSINESS:

Sarah Marchant indicated that Neil Benner has submitted his resignation as an alternate as he cannot commit to the ZBA with his job. If there is an interested party, they can talk to Sarah or Torrey, and there is a volunteer application on the website. Beth Davis plans to come back when it is a little warmer, and she said she wants to come back to the ZBA, but there are also alternate seats that need to be filled. Jamie asked about the application on Pine Top. When something comes in as a complaint, how is that handled? Sarah said she will respond to every written complaint, but will not respond to verbal complaints. The ZBA does not need to respond to an anonymous complaint, but Sarah does. Jim Quinn asked how an anonymous complaint can be responded to. Sarah said she follows through with the building department and sees the process through. Jim asked when it is anonymous, is there anyone in town that can go after somebody? Sarah said if it is a basic complaint and she finds it is not valid, that is the response, and she does not pursue it further.

Charlie Vars moved to adjourn at 8:30. Jamie Ramsay seconded. All were in favor.

Respectfully submitted,

Darlene J. Bouffard
Recording Secretary