

TOWN OF AMHERST
Zoning Board of Adjustment

December 19, 2023

APPROVED

In attendance: Doug Kirkwood (Chair), Danielle Pray (Vice Chair), Jamie Ramsay (Secretary), Charlie Vars, and Tony Ortiz (alternate)
Staff present: Nic Strong, Community Development Director, and Kristan Patenaude, Recording Secretary (remote)

Doug Kirkwood called the meeting to order at 7:00 pm. The Board discussed the potential resignation of Tracy McInnis from the Board. Danielle Pray stated that she would like to see an email regarding this resignation directly from Tracy McInnis or personally signed by her.

Doug Kirkwood stated that Tony Ortiz would sit for Tracy McInnis for this meeting. He then outlined the process for the meeting. He outlined the process for the meeting, including that the applicant will make a presentation, the public will then have a chance to comment and ask questions through the Chair, and the Board will have the ability to comment at any time. The Board will then move into the deliberations section of the meeting, at which time public comment will cease. The Board will review regional impact of each case and consider approval or denial with or without conditions. If an applicant does not agree with the decision, they can apply for a request for a rehearing within 30 days of this meeting. In the application for a rehearing, the applicant needs to add a letter explaining why they think the rehearing is necessary. If the applicant is still not satisfied after the rehearing, there is recourse to the Superior Court, within 30 days from the rehearing date.

Doug Kirkwood introduced the Board members.

Tony Ortiz sat for Tracy McInnis.

PUBLIC HEARINGS:

1. CASE #: PZ18275-120523 – VARIANCE

Nelson Realty Trust (Owner & Applicant); 66 NH Route 101A; PIN #: 002-083-000

– Request for relief from Article A, Section 4.7, Paragraph D.3. to allow for the reduction of the rear setback of the proposed warehouse from the required 30' to proposed 10'. *Zoned Commercial.*

Jamie Ramsay read and opened the case.

Sam Foisie, Meridian Land Services, explained that the applicant is proposing a roughly 12,250 s.f. warehouse addition on this parcel. The property is approximately 1.97 acres, located in the southwest corner of Amherst on Route 101A. The existing use of the property is mainly as a wholesale car dealership and associated office. The rest of the property is used as storage for Resin Systems, which is on an adjacent parcel. Resin Systems is running out of space within the existing warehouse, hence this proposal. This proposal went before the Planning Board in October to discuss landscaping, parking, layout of the site, and stormwater management. One key point is that this property is located in the Town's Aquifer Protection District and thus must

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comply with stormwater runoff regulations. The proposed layout is the best one due to design constraints of the site.

Ken Clinton, Meridian Land Services, addressed the special circumstances of this property. This lot is owned in common with the ownership group of Resin Systems. Specifically, the westerly lot is where Resin Systems itself sits on Lot 2-86. Immediately to the north is Lot 2-86-2, which is an Industrial lot with a similar warehouse. The proposal is for a new warehouse in close proximity to the warehouse to the north for ease and shared use. The special circumstances of the lot are that all three adjacent parcels are owned and will be utilized to assist in the Resin Systems operations.

Ken Clinton addressed the five criteria:

1. How will granting the variance not be contrary to the public interest?

The variance will not be contrary to the public interest. For the variance to be contrary to the public interest, it must unduly and to a marked degree violate the basic zoning objectives of the Zoning Ordinance. Owing to the special circumstances of the common ownership of the abutting lots, and the fact that the public will not be able to observe any setback reduction, there will be no harm to the public interest. When viewing this property from Route 101A, especially when driving by, one will not be able to notice, see, recognize, or understand any reduction in the setback to the property line, whether it be the proposed 10' or the required 30'. This will look like a normal, well-situated warehouse amongst other similar features.

2. How will the granting of the variance ensure that the spirit of the ordinance will be observed?

The spirit of the ordinance is observed. It is understood that the rear setback of a lot typically protects abutters from the impact of another structure being too close to the common lot line. In this case, the abutting line is not only owned by the same owner but is zoned Industrial and includes an almost identical warehouse situated nearby. This proposal will result in augmenting the commercial/industrial character of the locality and will contribute to the compliance with other applicable Zoning Ordinances and Site Plan Regulations, most notably impervious coverage, stormwater, and open green space.

3. How will substantial justice be done?

Substantial justice is done. Given the special circumstances, denial of the proposed warehouse would result in a loss to the individual, which would not be outweighed by any perceived gain by the general public, especially since the proposed development is consistent with the area's present use.

4. How will the value of the surrounding properties not be diminished?

The values of surrounding properties are not diminished. The proposed setback reduction will not diminish the property values of the surrounding industrial and commercial lots of the common ownership. The closest residential property is over 350' away from the

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proposed warehouse area, separated by wooded open space. The proposal will not reduce these property values.

5. *Literal enforcement of the provisions of the ordinance would result in unnecessary hardship because:*

(A) For the purpose of this sub paragraph, "unnecessary hardship" means that owing to special conditions of the property that distinguish it from other properties in the area:

(i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property, and

(ii) The proposed use is a reasonable one:

No fair and substantial relationship exists between the general public purposes of the Ordinance provision and the specific application of that provision to this property. Special circumstances and characteristics of this particular lot make it different from others in the area as previously described. As such, full application of the Ordinance to this particular property is not necessary to promote the valid public purpose of the rear setback in any fair and substantial way.

The proposed use is a reasonable one, and relief can therefore be granted without frustrating the purpose of the Ordinance.

(B) Explain how, if the criteria in subparagraph A above are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it:

The criterion is established through 5A, but also, owing to the special conditions of the property that distinguish it from other properties in the area, the unused portion of the property, notably half of this particular lot, cannot be reasonably used in strict conformance with the entirety of the Ordinance and relief of the rear setback is therefore necessary to both enable a reasonable use of the usable portion and to achieve greater compliance with the overall Zoning Ordinance and Site Plan Regulations as previously described.

Charlie Vars asked why the warehouse is not proposed at least 20' from the lot line. Sam Foisie explained that access through the adjacent parcel is required to be in this area and there is a power pole that would otherwise need to be relocated, existing parking, and necessary maneuverability into the access doors. Additionally, one goal of this project is to stay below the impervious threshold. Moving the proposed warehouse further from this lot line would require an extra strip of pavement to access it, placing this over the impervious threshold and requiring an additional variance. The applicant felt that meeting the impervious threshold requirement was more important than the 30' rear setback requirement.

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Ken Clinton added that the proposed reduction to 10' from the rear lot line is reasonable due to the common ownership of the lots and the lack of impacts to anyone else in the immediate area. This warehouse will not be seen by anyone and so the purpose of the setback does not apply in this case, given the circumstances.

Tony Ortiz asked who owns the building to the north of the proposed warehouse. Ken Clinton stated that this is owned by Resin Systems. The south facing side of the existing warehouse does have bays. There are bays on all four sides of that building. The existing warehouse is almost identical in size to the proposed one. Constructing an almost identical warehouse on the site in question would help with storage needs, accessibility, etc. The staff would then know the best way to approach each opening, and this is desired for consistency.

There was no public comment at this time.

2. CASE #: PZ18276-120523 – VARIANCE

Robert Houvener (Owner & Applicant); 13 Washer Cove, PIN #s: 025-020 & 21 Town of Amherst (Owner) PIN #s: 025-028 & 29. Request for relief from:

- a. Article IV, Section 4.3, Paragraph D.1. – Front setback 50' required; 14.63' proposed. (Increased from 13.42' at the existing structure to be rebuilt);
 - b. Article IV, Section 4.3, Paragraph D.2. – Side setback 25' required; 4.8' proposed. (increased from 3.0' at the existing structure to be rebuilt);
 - c. c. Article IV, Section 4.11, Paragraph F.1. – Wetland setback 50' required; 28' proposed. (increased from 22.6' at the existing structure to be removed).
- Zoned Residential Rural*

Jamie Ramsay read and opened the case.

Danielle Pray recused herself from this item.

Doug Kirkwood noted that there were only four members of the Board to hear this case. He stated that in the event of a tie vote, the applicant would lose. Jamie Ramsey noted that although it was unlikely, there could be another alternate at a future meeting if the applicant wished to wait. Robert Houvener determined that he would continue with the hearing this evening.

Robert Houvener, owner and applicant, explained that last December there was a sewage leak in the Baboosic Lake Community Septic System which flowed through his property. In working through the cleanup process with the Town, there was another leak in May of this year. Even after the cleanup, there were mold and other issues in the house. He considered tearing down part of the building, but that was not practical given the costs of things. The decision was made to raze and rebuild the entire structure. This solution will not cost the Town anything, and Robert Houvener stated that he should be able to recoup his investment. This solution will be more environmentally friendly and allow for better setbacks.

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Earl Sanford, Sanford Surveying & Engineering, explained that the proposal will allow for a garage to be built with the new house, allowing for improved parking. The neighboring owners, the Bowlers, sold the applicant some property to make this possible. The applicant was also able to extinguish a couple of paper rights of way in the area, allowing for ownership to come to the middle of those areas. Through a deal with the Town, which is still underway and which approval of this application is conditioned upon, two Town-owned parcels will be transferred to the applicant by the Town. Sale of this land will allow the applicant to reach Washer Cove. The proposal looks to consolidate the four parcels into one. All of these items allowed for an enhanced ability to fit almost the same size house structure, along with a garage on these lots in the best location.

Earl Sanford reviewed an existing conditions plan with the Board. The additional lots will allow for an increase of 0.55 acres of land for the applicant.

In response to a question from Tony Ortiz regarding three structures to be removed from the properties, Robert Houvener stated that these are three sheds. One is a gas storage shed, another was bought years ago, and the third is owned by the Bowlers and will be moved onto their property.

Earl Sanford addressed the five variance criteria:

1. How will granting the variance not be contrary to the public interest?

In general, the proposed house will be more conforming than the old house and;

A. The purpose of the front and side setback ordinance is to ensure reasonable density and separation consistent with the neighborhood. The typical lot in this neighborhood does not meet zoning in any dimensional form except the height of the building. The subject house lot will have the density improved by taking three adjacent lots of record off the books and consolidating them with the existing house lot. The front setback, 50' required, is improved from 13.42' to 14.63', compared with zero setback for the closest two houses.

B. The side setback, 25' required, has improved from 3' to 4.8', constrained by the existing well.

C. The setback from the wetland, 50' required, has improved from 22.6' to 28', also constrained by the existing well.

From an optimum equity and utility perspective, the house change and setbacks create a better nonconformity, honoring the purpose and spirit of the ordinance. Granting the variance would not threaten public health, safety, or welfare, because, and addressing all three setbacks (A, B, &C): the new house location enhances public health, safety, and welfare as it enables additional off street parking for Lot 21, in a garage structure which is generally viewed as a reasonable expansion. Without the garage structure expansion, the new structure is considerably smaller in footprint than the existing structures on the site that are being removed. This increases safety considerably as there is currently almost no parking, and that which does exist has significant challenges to the lines of

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sight and severely limits maneuverability when parking. From a health perspective, unlike many of the ‘converted camps’ that surround the Lake, which have old construction with lingering code compliance and poor energy efficiency, this variance facilitates a new house built to modern code and positioned to enable the proposed construction of an efficient and potentially net zero self-powered home energy system via roof mounted solar photovoltaics, environmentally positive, benefiting all.

2. *How will the granting of the variance ensure that the spirit of the ordinance will be observed?*

As noted previously, the house location change is tied to the four lot consolidation and that consolidation creates one lot that is more conforming and removes three lots that are non-conforming. The new house is positioned such that, in net, achieves greater conformity than currently exists. In addition, the lot consolidation creates a better balance of the non-conformance, allowing the structure to occupy much less percentage of the non-conforming lot and providing more parking area and reasonable side and front yard areas. The variance will reduce overcrowding by placing the structure farther away from the homes on Lots 18, 19, 17, and 16 while not creating unreasonable density and hence enhancing the spirit of the ordinance.

3. *How will substantial justice be done?*

Providing relief to the three nonconforming setbacks presents no injustice to any individuals or the public. The placement of the structure farther away from Lot 19 will improve the parking for that lot, while the new garage on Lot 21 will remove two cars from parking on the areas near Washer Cove Road, improving safety for vehicles and pedestrians. Users of the property, including guests, will obtain enhanced and safer parking of vehicles which will reduce the need for parking that limits access and maneuverability of the general public on Washer Cove Road. Allowing the well thought out new house and garage to be built as proposed benefits both the owner and the public, and there is no harm to anyone that would offset that benefit.

4. *How will the value of the surrounding properties not be diminished?*

Historically, a house upgrade such as is proposed only increases the value of the surrounding properties. The enhanced parking, increased distances from surrounding properties, cleanup of contaminated soil exposed to thousands of gallons of raw sewage from the community septic system failure, along with a more visually appealing housing structure, combine to significantly enhance the value of surrounding properties.

5. *Literal enforcement of the provisions of the ordinance would result in unnecessary hardship because:*

(A) *For the purpose of this sub paragraph, “unnecessary hardship” means that owing to special conditions of the property that distinguish it from other properties in the area:*

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(i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property,

and

(ii) The proposed use is a reasonable one:

The character of the lots around Baboosic Lake is defined by pre-existing non-conforming lots and homes with extreme nonconformities in lot size, frontage, and setbacks. Almost all home upgrades require relief of some sort, and historically, home upgrades have received the needed relief to modernize and bring houses up to code with reasonable expansions. Doing so improves the general public purposes of the big picture, allowing improvements only possible with zoning relief. This site, constrained by the pre-existing nature of land use when the properties in question were plotted and built upon, needs similar relief to allow reasonable improvements. For that reason, there is no substantial relationship between the ordinance and the property in question.

(B) Explain how, if the criteria in subparagraph A above are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it:

Due to the subdividing of real estate being pre-regulations, it is not possible to build reasonable homes that meet setbacks in this neighborhood. Hence, a variance is required in order to allow the reasonable use of the property. Denying this variance would be denying a reasonable solution to rebuilding the structure and, as this variance is tied to the four lot consolidation, it would in turn be denying a reasonable adjustment to the property boundaries that create a better use of land area with no net increase to non-conforming setbacks.

There was no public comment at this time.

Danielle Pray rejoined the Board.

Charlie Vars moved to enter into deliberations. Jamie Ramsay seconded.

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

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Charlie Vars moved no regional impact. Jamie Ramsay seconded.

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

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The Board reviewed the variance criteria tests:

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

- T. Ortiz – true, the proposal will not change the character of the locality. Nor will it affect the public health, safety, or welfare. Furthermore, the reduction of the rear setback will not be noticeable to the general public.
- C. Vars – true, for the reasons already stated.
- J. Ramsay – true, for the reasons already stated
- D. Pray – true, the reduced rear setback does not alter the essential character of the neighborhood and will not be visible from the street. There is no effect to the public health, safety, or welfare.
- D. Kirkwood – true, for the reasons previously stated.

5 True

2. The Variance will ensure that the spirit of the ordinance will be observed.

- C. Vars – true, the structure will not alter the essential character of the site. The warehouse will be adjacent to another building that is already seen from the road.
- J. Ramsay– true, this property has the same ownership as others near it. The spirit of the Ordinance will be observed.
- D. Pray – true, echoing the same reasons as for the first criteria.
- T. Ortiz – true, the proposal does not take away from the character or appearance of the Commercial Zone, nor of that of the abutting property set in the Industrial Zone. It has been previously noted that the abutting property in question is also owned by the applicant.
- D. Kirkwood – true, for reasons previously stated.

5 True

3. Substantial justice is done.

- J. Ramsay – true, the proposed use is low impact to the property and allows the owner enjoyment and use of the property. It will not change the character of the neighborhood and is consistent with the existing use.
- D. Pray– true, the applicant has expressed the benefits he will gain from this proposal, and these outweigh any harm to the public from allowing the variance.
- T. Ortiz – true, there is no gain to the general public in not allowing reduction of the rear setback. The harm to the applicant does outweigh the public gain in not granting the variance.
- C. Vars– true, for the reasons previously stated.
- D. Kirkwood – true, for reasons previously stated.

5 True

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

- D. Pray – true, no evidence was shown that values of surrounding properties will be diminished, and the applicant has provided testimony that they will not be diminished.

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- T. Ortiz – true, no evidence has been provided that values of surrounding properties would be diminished. The proposal is consistent with approved uses in the Commercial Zone.
 - C. Vars – true, the residential houses adjacent to this property are well buffered and there will be no impact.
 - J. Ramsay – true, it is serendipitous that the adjacent lots are owned by the same owner. This will create a consistent look across the lots. If these were not owned by the same owners, this would be a different conversation.
 - D. Kirkwood – true, for the reasons already stated.
- 5 True**

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

- D. Pray – true, the special circumstances of this property include common ownership amongst three parcels of land for a business owner looking to expand his business onto lots that are zoned differently. Any of the public purposes previously mentioned do not outweigh the hardship that would be incumbent on this owner if the variance was denied. It is reasonable for a business owner to expand a use onto contiguous properties.
- T. Ortiz – true, the proposed request for a warehouse is a reasonable one in the Commercial Zone. The applicant has taken the appropriate steps and denial could be detrimental to the applicant. There is no impact on the Town or general public for what is being proposed.
- C. Vars – true, the proposed building will be the same as the rest in the area and there will be no noticeable difference from 101A.
- J. Ramsay – true, for the reasons already stated.
- D. Kirkwood – true, for the reasons already stated.

5 True

Doug Kirkwood stated that the application, having passed all of the tests, is granted.

CASE #: PZ18276-120523 – VARIANCE

Robert Houvener (Owner & Applicant); 13 Washer Cove, PIN #s: 025-020 & 21 Town of Amherst (Owner) PIN #s: 025-028 & 29. Request for relief from:

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- c. **Article IV, Section 4.11, Paragraph F.1. – Wetland setback 50' required; 28' proposed. (increased from 22.6' at the existing structure to be removed).**

Zoned Residential Rural

Danielle Pray recused herself from this item.

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**Jamie Ramsay moved no regional impact. Tony Ortiz seconded.
Voting: 4-0-0; motion carried unanimously.**

Charlie Vars noted that he did not visit the site this time but remembered it from the previous variance application. He stated it is a tough place to get in and around and the proposal is an upgrade to the area. Because the town and the applicant are working together he would not be prone to vote against it.

Jamie Ramsay stated that this proposal is a great way to sanitize this area. The addition of the garage is a good idea, as it adds parking to the area on private property. The house is proposed to be downsized in square footage. This is a good plan.

The Board reviewed the variance criteria tests:

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

- T. Ortiz – true, granting this variance will not threaten the public health, safety, or welfare. The applicant has demonstrated that this proposal will actually be an improvement when compared to the current configuration of the property. And the approval would benefit the public interest.
- C. Vars – true, the setbacks will be slightly better through the proposal.
- J. Ramsay – true, for the reasons already stated
- D. Kirkwood – true, for the reasons previously stated.

4 True

2. The Variance will ensure that the spirit of the ordinance will be observed.

- C. Vars – true, there is no question that the consolidation of four lots into one removes a lot of problems in the area. The home proposed and the improvements to parking enhance the spirit in this case.
- J. Ramsay – true, for the reasons previously stated.
- T. Ortiz – true, this proposal will not alter the essential character of the neighborhood. Granting the variances would enhance the spirit of the ordinance. This is achieved by reducing overcrowding, which is accomplished by allowing one lot that is more conforming and the removal of other less conforming lots.
- D. Kirkwood – true, for reasons previously stated.

4 True

3. Substantial justice is done.

- T. Ortiz – true, the benefit to the applicant is not outweighed by the harm to the general public. This proposal actually benefits the public as it pertains to safer parking and safety of pedestrians. There is no gain to the public by denying this proposal.
- C. Vars – true, for the reasons previously stated.
- J. Ramsay – true, for the reasons previously stated.
- D. Kirkwood – true, for reasons previously stated.

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4 True

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

- J. Ramsay – true, the Board previously deliberated on a similar project and decided that the proposal would make a big difference for the neighborhood. This project goes beyond that in terms of allowing for more parking and constructing a new home. The value of surrounding properties will not be diminished; they will be increased if anything.
- T. Ortiz – true, no evidence has been provided that this proposal would diminish the value of surrounding properties. The applicants have demonstrated that the proposal is likely to benefit the values of surrounding properties by increasing the distances from the surrounding properties, addressing parking, and the cosmetic appearance of the newly proposed house.
- C. Vars — true, for reasons previously stated.
- D. Kirkwood – true, getting rid of nonconforming units and proposing one building relieves the stress on this piece of property. It is nice to see a plan that opens things up a little bit.

4 True

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

- J. Ramsay– true, Baboosic Lake properties and hardships seem to be synonymous. Zoning compliance cannot be met on the property in question. Combining the four lots still does not allow for true compliance, but it is closer, and the hardship is met.
- T. Ortiz – true, this is a reasonable use of the property. This applicant, like many others in the area, faces a hardship due to the fact that these are non-conforming lots that predate existing zoning, which puts them at an automatic disadvantage when attempting to pursue development and remodeling of structures on these lots. The applicant has expended resources in pursuit of this development and denying the variances could be viewed as detrimental.
- C. Vars — true, the character of the lots around Baboosic Lake leave a lot to be desired. Consolidation of the proposed lots will help this issue.
- D. Kirkwood – true, for the reasons already stated.

4 True

Doug Kirkwood stated that the application, having passed all of the tests, is granted.

**Jamie Ramsay moved to exit deliberations. Tony Ortiz seconded.
Voting: 4-0-0; motion carried unanimously.**

Danielle Pray rejoined the Board.

OTHER BUSINESS:

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1. Minutes: September 19, 2023; October 17, 2023; November 21, 2023; November 30, 2023

Jamie Ramsay moved to approve the meeting minutes of September 19, 2023, as presented. Tony Ortiz seconded.

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

Charlie Vars moved to approve the meeting minutes of October 17, 2023, as presented. Jamie Ramsay seconded.

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

Tony Ortiz moved to approve the meeting minutes of November 21, 2023, as presented. Charlie Vars seconded.

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

The Board tabled review of the November 30, 2023, minutes to its next meeting.

2. Any other business that may come before the Board

The Board discussed appointing an alternate member until the next election.

Charlie Vars moved to adjourn the meeting at 8:29pm. Jamie Ramsay seconded.

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

Respectfully submitted,

Kristan Patenaude