

TOWN OF AMHERST
Zoning Board of Adjustment

November 21, 2023

APPROVED

In attendance: Doug Kirkwood (Chair), Danielle Pray (Vice Chair), Jamie Ramsay (Secretary), Charlie Vars, Tracy McInnis, 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 7:00pm. 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 deliberation 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/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.

PUBLIC HEARINGS:

1. CASE #: PZ18134-110223 -VARIANCE

Thistle Real Estate Holdings, LLC (Owner) & James Ramsay (Applicant); 5 Limbo Lane, PIN #: 006-060-000 – Request for relief from Article IV, Section 4.6, Paragraph 3 to occupy an existing building for residential use only. *Zoned General Office.*

Danielle Pray read and opened the case.

Jamie Ramsay recused himself from this item. Tony Ortiz sat for Jamie Ramsay.

Jamie Ramsay, applicant, stated that he has owned the property at 5 Limbo Lane since 1988. This property is located in the General Office Zone. He explained that he is seeking relief to allow for use of this property as his personal residence in perpetuity. He has no intention of ever using the property for any sort of commercial use. Per the current Zoning Ordinance, residential occupancy within a General Office Zone is restricted to use of only 25% of the gross square footage of any building. The desired use of this property is restricted under Section 4.6. General Office Zone because mixed use development is limited to office and residential uses. He stated that he believes this is a directive, ordering that both uses shall exist concurrently. 5 Limbo Lane was built as a residential dwelling around 1952 and both the exterior and interior configurations of the building are virtually unchanged since the property was built. Outwardly, there is no question that the building was realized as a single-family dwelling. Jamie Ramsay stated that he does not propose or envision any forms of exterior expansion, or reconfiguration of the interior. He stated that his proposal will impose no adverse impact upon neighboring properties in the General Office Zone.

TOWN OF AMHERST
Zoning Board of Adjustment

November 21, 2023

APPROVED

Jamie Ramsay addressed the variance criteria.

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

Jamie Ramsay stated that the General Office Zone was created presumably to allow for mixed-use development in close proximity to the Amherst Village. The proximity of 5 Limbo Lane in particular is unique. It is within the closest of three General Office Zones in the town of Amherst, located right on the edge of the Historic District. Limbo Lane was created when the Route 101 bypass was constructed in the 1970s. This section of Amherst was historically a mix of residential, commercial, and other uses that went away when Limbo Lane became part of the General Office Zone. 5 Limbo Lane is located at the intersection of Limbo Lane and the terminus of Manchester Road, with the latter being the boundary of the Historic District. Jamie Ramsay stated that his property is surrounded with every characteristic of a residential neighborhood, including the properties of 2 and 7 Limbo Lane and 23 Manchester Road. It is indistinguishable as to where the Residential Zone begins and ends next to the General Office Zone. He stated that he proposes neither physical nor aesthetic alterations of the property and the desired use shall cause no impact upon Limbo Lane regarding its functioning as a General Office Zone. The use that he seeks is reasonable.

*2) How will granting of the variance ensure the spirit of the ordinance will be observed?
Please explain.*

Jamie Ramsay stated that there shall be no physical alteration of the property or the proposed use and the proposed use that he seeks shall cause no adverse impact to the existing functioning of the Limbo Lane General Office Zone.

3) How will substantial justice be done?

Jamie Ramsay stated that 5 Limbo Lane was originally constructed in 1952 as a single-family home and all sections of the building have remained consistent to their original design and configuration. He proposes no change to these items. Currently the permitted use of this property is restricted to only mixed-use occupancy which conflicts with his vision and desire to use it as his personal residence. At this time and in perpetuity, Jamie Ramsay stated that he does not intend to use any portion of the property for a commercial purpose. His property is unique within the Limbo Lane General Office Zone as the other Limbo Lane parcels that exist are either commercial only or residential only properties. Small former residential buildings are no longer viable for multi-tenant/small office uses. He stated that his request for relief from the restrictions of the Zoning Ordinance is a reasonable consideration in that the property shall revert to its original use from 1952. This will allow him enjoyment of his property and substantial justice shall be done.

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

TOWN OF AMHERST
Zoning Board of Adjustment

November 21, 2023

APPROVED

Jamie Ramsay stated that he proposes no physical alterations of the property. The nature of what will be changed on the property will be imperceptible. The property shall continue to exist in its current form and thus there will not be any change in value.

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.:

(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:

Jamie Ramsay stated that the hardship of literal enforcement would be restriction of enjoyment of his property. There is not a current demand for rental of small office spaces in mixed-use buildings in this area. The use of the building as it exists is suitable for residential occupancy.

Charlie Vars stated that he was one of the original authors in the mid-80s of the General Office Zoning District and, at that time, the intention was to be able to allow either residential or commercial uses in the Limbo Lane area. At the time, the Route 101 bypass/Limbo Lane was 100' wide and the State eventually reverted this area back to the Town. The Town chose to retain 50', as it does for all main roads, with 25' on either side of Limbo Lane being reverted to the then property owners. He owned the piece of property next to Jamie Ramsay's that the Church is currently located on. Charlie Vars believed there was a unanimous vote to create the General Office Zone and other properties in this area have been used for residential/office use. In 1990, all references to residential uses were removed from this Zone, but he is unclear as to why this happened, as it was not the original intention.

Danielle Pray asked about the other properties along Limbo Lane. Jamie Ramsay stated that there is one property beyond his that is 100% residential use. He believes that was built in the 1940s. There is also the Limbo Lane Medical Center. To the south, there are two corner properties which are commercial but not easily identifiable as such. There are no mixed-use properties along Limbo Lane. It is unclear why this area became mixed use only and with a restriction of 25% of the area of the house.

Tony Ortiz asked Jamie Ramsay if he has any current commercial tenants. Jamie Ramsay stated that he does not and has not for quite some time. The finished basement was used as office space. The residence at the Limbo Lane level is 40'x26', and will contain a living area, bedroom, and kitchen.

TOWN OF AMHERST
Zoning Board of Adjustment

November 21, 2023

APPROVED

Tracy McGinnis asked if the property was currently occupied. Jamie Ramsay replied that he was the occupant.

Doug Kirkwood asked for public comment at this time. There was none.

2. CASE #: PZ18136-110223 – VARIANCE

Divest LLC (Owner & Applicant); County Road & Thornton Ferry Road II; PIN #: 004- 142, 142-10, 142-12, 142-13 – Request for relief from Article III, Section 3.9, Paragraphs B, C & D to maintain three existing reduced frontage lots as previously approved, and from Article IV, Section 4.3, Paragraph C.2. to maintain an existing corner lot as previously approved. *Zoned Residential Rural.*

Jamie Ramsay retook his seat.

Jamie Ramsay read and opened the case.

Brad Westgate, Esq., Winer & Bennett, LLP, representing the applicant, explained that the applicant is seeking relief from recent changes to the Zoning Ordinance relative to reduced frontage lots and corner lots. Divest, LLC is the owner of 14 lots in a subdivision approved by the Amherst Planning Board in 2005. These include frontage lots along County Road. Thornton Ferry Road II provides frontage for two other lots. These properties are located in a generally developed residential area, with homes around them to the west, south, and east. These properties contain just over 30 acres all together. In 2005, the developer asked the Planning Board to consider either an approach with mainly frontage lots, or one with an 18 lot Planned Residential Development (PRD). It was clear at that time that the Planning Board preferred the frontage lot design, as this would include buffering to other properties, and fewer curb cuts for driveways.

Attorney Westgate explained that the applicant moved forward from the Planning Board approval to create a plan with a 100' wide protective buffer, which is consistent with the setback requirements to a scenic road, as County Road is designated as such. The plan also included a common driveway to service five lots - three reduced frontage lots and the two adjacent lots. The applicant also granted the Town an easement for pedestrian use along this area to a Town-owned, previously landlocked parcel. The applicant created governing documents for the site, including stormwater management, and a Homeowner's Association to ensure that property owners follow the requirements of the stormwater management. This property has good sandy soils, is relatively flat, and contains no wetlands. The applicant recorded easements, covenants, and the plan with the Registry of Deeds. All of this was completed, but the lots were never built. Divest, LLC, came to the decision that it wanted to try to develop the properties and build out single family homes. In 2022, the owners reached out to Nic Strong, Community Development Director, to move this idea forward. She pointed out to them that there was a corner lot provision amended in 2022 that now requires that corner lots have 200' of frontage overall. She also pointed out that the stormwater management regulations in the Town had changed from 2005 to now.

TOWN OF AMHERST
Zoning Board of Adjustment

November 21, 2023

APPROVED

Attorney Westgate explained that the applicant completed a significant analysis of the stormwater management plans approved in 2005 against the current regulations. It was determined that the stormwater management approved in 2005 still met current regulations. Peer review was undertaken by Steve Keach, the Town's consulting engineer, and he agreed with this assessment. During that time, in late 2022/early 2023, there was a proposal in Town to amend requirements for reduced lot frontage, which was then adopted by voters in March 2023. These changes mandate different dimensional elements than what existed when this was approved in 2005, including a five-acre minimum lot requirement for reduced frontage lots. These lots range in size from approximately 2.2 acres to 2.8 acres. The changes also required that reduced frontage lots have 50' of frontage, instead of 35' of frontage for each lot. In addition, only two reduced frontage lots were allowed to touch each other with the common driveway servicing them and there are three proposed through this project. Another change is that there must be a driveway separation to intersections, with a reduced frontage lot's driveway being 500' from another intersection. These parcels are approximately 450' from Conifer Drive.

Attorney Westgate stated that the applicant thought there may be a vesting argument to be made for this project, as it was an already approved subdivision, did not require any new road construction, and all the conditions of approval that were worked out with the Planning Department would have been satisfied. The request is to allow the project to proceed under the old Zoning Ordinance requirements which were in place when the project was originally approved. In speaking with Nic Strong, she stated she did not believe this was possible, and thus the applicant submitted the variance request. If Divest, LLC, came to the Planning Board last September with a raw piece of land, 30+ acres, and filed a design review application, before the changes went into place, it would not have to comply with the new reduced frontage lot requirements of five acres, 50' of frontage, etc. Thus, if Divest, LLC, had never subdivided this property and instead had submitted the exact application to the Planning Board last September/October, it would have been approved as designed. The fact that the approval is 18 years old generates a special circumstance. The application for variance would make no change whatsoever to the subdivision and the plan that was approved in 2005. It would allow for the 100' buffer in the front, the 50' preservation buffer along the rest of the property, and the five lots coming off the common driveway to minimize curb cuts, that the Planning Board found to be important. If the variance is not granted, a redesign will have to occur. These changes would likely not be found desirable by the Planning Board of 2005 or today.

Attorney Westgate addressed the variance criteria.

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

Attorney Westgate stated that allowing these 14 lots to proceed as approved in 2005 is not contrary to the public interest because it accommodates all the Planning Board requests made during that process. It significantly reduces the curb cuts, creates the preservation buffer, and maintains the design and approach the Planning Board found to be sensible at that time. The passage of time has not changed the nature of the public interest concept. Relative to the corner lot regulation, it now states that corner lots have to have 200' of frontage on each

November 21, 2023

APPROVED

street. These parcels have approximately 500' of frontage collectively on the corner lot. It also allows for a driveway off County Road with more than adequate frontage to accommodate the arrangement. The overall frontage certainly is greater than the 200' frontages that would otherwise be required. All of the proposed lots still meet the two-acre minimum requirement of the Residential Rural District.

2) *How will granting of the variance ensure the spirit of the ordinance will be observed? Please explain.*

Attorney Westgate stated that the spirit of the ordinance includes concepts such as promoting good land use and planning practices. These were demonstrated by the Planning Board's approach to this back in 2005. The conditions of approval the Planning Board established also ensured that the spirit of the ordinance be maintained. This is good land use planning. The developable portions of the reduced frontage lots are to the rear of the property, set back from County Road, which maintains the rural nature to some degree. If part of the reasoning for the new ordinance change regarding reduced frontage lots is to give more space for wildlife habitats, and corridor capability, this should not be of concern with this property. The areas to be developed are within an already developed setting. There is not a material benefit to be gained by the denial of the variance which would redesign the layout of this subdivision. This would be to the detriment of the planning practices that the Planning Board previously determined.

3) *How will substantial justice be done?*

Attorney Westgate stated that substantial justice is observed if the variance is granted because it allows this development to occur as it was well thought out in 2005 by the Planning Board. The applicant has updated the stormwater management analysis to make certain that it complies with current regulations. The measure of substantial justice is that if the public realizes no appreciable gain from denying the variance, but the applicant is adversely affected in a material manner if the variance is denied, then substantial justice is done. He stated that he does not believe the public realizes an appreciable benefit if the variance is denied. This would preclude construction of the homes on this property. However, the applicant would be harmed if the variance is denied.

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

Attorney Westgate stated that development in residential areas for new construction typically shows vitality in the area and often enhances nearby property values. These parcels would contain relatively large lots, which are overall larger than the surrounding lots. The 100' preservation buffer will do a good job maintaining the nature of County Road, as the Planning Board noted. He handed out a letter from a real estate professional, Frank Destito, Masiello Group, which gives a determination that Mr. Destito does not believe that property values would be adversely affected by the granting of the variance.

November 21, 2023

APPROVED

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.*

(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:*

Attorney Westgate stated that these properties including the reduced frontage lots, the corner lots, and the project overall have a number of special conditions. The overall property is not that deep, but it is capable of accommodating the reduced frontage lots. The site is very well designed and laid out to accommodate frontage lots. This project has undergone great scrutiny and went through the process to be approved in 2005, which is in and of itself, a unique characteristic. There is no fair and substantial relationship between the purpose of the ordinance and the specific application. The changes requiring an increase to five acres for the reduced frontage lots would result in likely only one being viable. This would likely lead to only two or one of these lots being viable. Additional curb cuts would have to occur, even if a lot is lost. The reduced frontage lots are not adjacent to conservation/open space land. Relative to the corner lot item, there is more than adequate frontage on County Road to accommodate a driveway appropriately. Currently, this land can accommodate three reduced frontage lots of 35’ frontage each. The one driveway proposed can accommodate five lots. Under the new regulations, each frontage lot would be required to have 50’ of frontage. Currently, the plan allows for the reduced frontage lots to be situated such that the developable areas are well off County Road. Typically, owners will want a buffer between their properties and the next. The proposed reduced frontage lots allow for some internal buffering. If fewer and larger reduced frontage lots are required, there will be less incentive for that internal buffering.

Attorney Westgate stated that the test asks if the use is reasonable. The applicant would submit that the use has not changed. The proposal is still for a subdivision for single-family homes, as permitted in the Zone. This is certainly a reasonable use.

Tony Ortiz asked the exact distance from the proposed common driveway to the intersection of County and Conifer which he estimated to be slightly under 443’. Attorney Westgate noted that this was not measured in the field, but agreed with Tony Ortiz that it may be closer to approximately 400’.

TOWN OF AMHERST
Zoning Board of Adjustment

November 21, 2023

APPROVED

Danielle Pray asked about the frontage of the corner lot, 4-142-10. Attorney Westgate stated that there is approximately 350' of frontage on County Road, with a collective frontage of approximately 500'. Map 4 Lot 142-11, as currently configured has at least 200' along Thornton Ferry II which was required at the time of subdivision.

Tracy McInnis asked about the lot size of abutting properties. Attorney Westgate stated that these are typically around one acre in size.

Charlie Vars asked if the owners have paid taxes as single-family lots. Attorney Westgate stated that these lots have been separately taxed as single family lots since day one, but they are in current use.

Charlie Vars noted that there are five driveways off the private Barrington Way drive, leading to four less than proposed if these were all frontage lots. Attorney Westgate agreed and noted that Barrington Way will always be a private way, per the covenants. Charlie Vars asked if the applicant would consider a condition that the entrance driveway on Lot 142-10 would be no more than 125' from the lot corner of Lot 142-9. He also asked about a driveway of 75' from the current Map 4 Lot 58-1. If the applicant went no further than 50'-75' from the lot corner with the driveway entrance, this would free up the entire corner of concern for entrance into Lot 142-10 that has been expressed.

Attorney Westgate stated that the applicant is agreeable to the first condition that the driveway for Map 4 Lot 142-10, the corner lot, be no more than 125' to the southeast with its common corner with Map 4 Lot 142-9 along County Road.

Attorney Westgate stated that the applicant is also agreeable to the condition that, for Lot 142-11, the driveway be no more than 50' up the road heading northeast on County Road toward the four-way corner. He noted a caveat that driveway permits will need to be sought from DPW, and that this will be up to them.

Charlie Vars stated that there is a tremendous benefit to the 100' setback. The proposal has the best configuration to allow for the 100' setback. Visually this will be better than a 50' setback on all sides.

Doug Kirkwood asked for public comment.

Jeffrey Towne, 48 Thornton Ferry Road II, stated that the approved plan may have been great 18 years ago, but there are now new ordinances and regulations in place that may demand a change to the site plan. The proposal seeks to place a driveway almost on his lawn, and he has been living at this property since 2014. The existing Thornton Ferry II/County Road intersection is a drag way. Additional outlets close to the intersection will be a nightmare. The applicant's game plan is to cram as many houses in this area as possible to make a profit. It is no longer 2005 and a new site plan is needed.

TOWN OF AMHERST
Zoning Board of Adjustment

November 21, 2023

APPROVED

Gerry Pelletier, 1 Newbury Drive, stated that he has lived at this address since 1992 and moved there due to the location and setting. He enjoys the privacy of the backyard, which may disappear from this project. He aired his concerns in 2005 and is just as concerned today. The wildlife in this area is amazing and all of this will disappear due to the proposed tree removal for the lots. His house is the closest lot, approximately 50' away, from any of the proposed lots. There are different rules that apply today that would not allow two of the reduced frontage lots proposed. The spirit of the ordinance changes is to prevent exactly what this plan is proposing. The applicant must meet several criteria for this variance. Regarding that granting this request would not be contrary to the public interest, the purpose of the Ordinance, among other things, is to prevent overcrowding of the land. The three house lots proposed are oddly shaped and reducing them would meet the purpose of not overcrowding the land. Regarding granting of the variance will ensure the spirit of the ordinance, the new ordinance changes were passed in recognition of the typically higher wildlife habitat value of undeveloped areas located away from road frontages. Reduced frontage lots have more stringent lot size requirements in order to preserve this open space, and wildlife. The three proposed lots are oddly shaped and, once set back from the access road with driveways in his backyard, all of the existing woods will be gone. There will be nothing left but houses and grass. The back of his house is literally 50' from that lot line, and he will see 5-6 houses. Another criteria is that the benefit to the applicant must not outweigh the harm to the general public or other individuals. The criteria also asks if the proposal will diminish the values of surrounding properties. He noted that the audience was not allowed to review the letter from the real estate professional handed to the Board and so cannot comment on it. He stated that there is no way this property will not lower his property value. These houses will mean more trees removed, exposing homes, impacting privacy, and replacing wildlife and serenity with noise. All other developments in this area have one thing in common; they all have woods surrounding the properties to maintain a rural setting as much as reasonably possible. It is clear, as no improvements or work have been done whatsoever to the property within the required five-year vesting period, that the ordinance changes must be met. This project is not grandfathered in and should adhere to today's ordinance. He stated that the Board should not put much weight on the 2005 plan defense. There has been a lot of emphasis placed on the fact that these properties are reduced frontage lots and the houses will be set back from County Road where they cannot be seen. However, these houses will be seen very clearly from Newbury Drive. The rural setting will be gone. The applicant makes the argument that the lots back up against existing developed, residential properties, as opposed to undeveloped rural land. However, since this was rural land, the applicant should maintain some of that rural land. The applicant argued that reconfiguring the plan would result in lots significantly less uniform in shape. However, the proposed lots are very unusual in shape already, as the developer is trying to put as many houses in the area as possible. For example, Lot 4-142-12 has seven abutters. He challenged the Board to find another property in this area that has seven abutters to one piece of property. There is an opportunity for the Board to allow for the preservation of woodlands and wildlife by adhering to the spirit of the Town ordinance. He asked the Board to rule in favor of the intent of the ordinance and for those who have supported the Town and its community.

Jennifer Lohnes stated that much of the paperwork was not received until Saturday, and the meeting being in Thanksgiving week made it potentially difficult for some to attend this meeting.

TOWN OF AMHERST
Zoning Board of Adjustment

November 21, 2023

APPROVED

Doug Kirkwood asked Nic Strong to respond to this. Nic Strong stated that notice letters are sent out according to State statute, ten days prior to the meeting. The materials presented online are not a requirement, but a courtesy. Since the Building Inspector left the Town, another person in the office has taken over posting those items and had trouble getting them onto the website. The notice letters to the abutters state that the materials will be available on Friday in case there are similar issues, and the employee came into the office on Saturday to figure that out.

Randie Meyer, 3 Mayhew Drive, stated that she purchased her home in 1993. She expressed concern regarding loss of wildlife from the proposed development, along with the impact on the water table. She asked the Board to decline this request, as no work has been completed on the site in the last 17 years. The applicant should have to start anew.

Jamie Ramsay asked about the lapse between when this plan was approved and this request to seek a variance to preserve the plan. Attorney Westgate explained that Divest, LLC, is the company that owns this property. This company is owned by the Slattery family, who are also the owners of Etchstone Properties and, simply put, the company worked on other projects.

A member of the public submitted photos as evidence as to how close the proposed houses would be to her back yard.

Attorney Westgate asked to respond to some of the comments made. Doug Kirkwood agreed. Attorney Westgate stated that the initial meeting with the Planning Board in 2005 included a conversation as to whether the Planning Board would rather see a PRD or frontage lots along County Road. A PRD design would have allowed for 18 lots, not accounting for bonus density. The applicant agreed to 14 lots, rather than 18. The goal was never maximizing the number of lots. The regulations never changed in a material way until the corner lot change occurred in 2022. Throughout those years, this proposal would have been approved as designed with the same Planning Board scrutiny. This is not a case of staleness of the regulations. The stormwater management regulations did change, and the Community Development Department mandated that the applicant prove that what was designed matches what is required now and that was proven out. A 50' buffer along the other side of the parcels is not going to be any different than if the property is developed in another way. Land is not static, and this property will be developed in some way. The only way it becomes static is if a conservation group or the Town purchases the land. It is not incumbent upon a landowner who was provided that benefit for many years to provide it for eternity. The applicant has to develop something that matches the regulations. The applicant respectfully submits that the recent changes to regulations are not of a material benefit to cause a redesign of this property. Regarding the notion of overcrowding, 18 lots could have been contemplated in a PRD approach, only 14 are now. This area will be developed in some way. County Road is a scenic road but none of the other roads around are. The rural character focus of the ordinance is to implement the purpose of the scenic road and the reduced frontage lot provisions push the development off County Road. The applicant is requesting the ability to proceed with a plan that matches the regulations that existed for all this time until 2022. This is not raw land that has never been reviewed by any Town boards before and simply trying to get by the new variance requirements.

TOWN OF AMHERST
Zoning Board of Adjustment

November 21, 2023

APPROVED

Gerry Pelletier stated that the applicant must meet the criteria for granting a variance, such as that the plan would not conflict with the implicit and explicit purpose of the ordinance, which is in recognition of the typically higher wildlife habitat which currently exists. Of undeveloped areas located away from both frontages, reduced frontage lots have more stringent lot sizes requirements to preserve open space, wildlife habitat, and wildlife corridors. The applicant is ignoring the impact this has on the abutters on the south side. The variance does not comply with the spirit of the ordinance in that way.

Susan Sarraf, 11 Danbury Circle, echoed comments regarding the woods and wildlife in this area.

There were no additional public comments at this time.

**Charlie Vars moved to enter deliberations. Danielle Pray seconded.
Voting: 5-0-0; motion carried unanimously.**

CASE #: PZ18134-110223 -VARIANCE

Thistle Real Estate Holdings, LLC (Owner) & James Ramsay (Applicant); 5 Limbo Lane, PIN #: 006-060-000 – Request for relief from Article IV, Section 4.6, Paragraph 3 to occupy an existing building for residential use only. *Zoned General Office.*

Jamie Ramsay recused himself. Tony Ortiz sat for Jamie Ramsay.

**Danielle Pray moved no regional impact. Charlie Vars seconded.
Voting: 5-0-0; motion carried unanimously.**

The Board reviewed the criteria tests:

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

- D. Pray – true, the requested variance will not change the character of the neighborhood, as there are other residential properties in the area. This has historically been a residential property. The request also does not violate or go against the general public health and welfare.
- T. Ortiz – true, this proposal will not change the essential character of the neighborhood; what it does do is increase uniformity in the neighborhood, bringing a permitted use in line with that of abutting properties along Limbo Lane and 23 Manchester Road.
- T. McInnis – true, for the reasons previously stated and that the applicant will not be changing the property at all.
- C. Vars – true, the initial reason for creating the General Office Zone was to allow residential uses to continue. This was somehow removed over a period of time.
- D. Kirkwood – true, for the reasons previously stated.

5 True

November 21, 2023

APPROVED

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

- T. McInnis – true, the applicant is not changing or altering the property in any way and there were several references that there are similar uses surrounding the property.
- T. Ortiz – true, the spirit of the ordinance is to protect the public health, safety, and welfare and the proposed use does not violate that spirit.
- C. Vars – true, there is no physical alteration of the existing building. The owner has put some new siding on the front of it, enhancing the neighborhood.
- D. Pray – true, the proposed residential use does not violate the public health, safety, and welfare purposes of the ordinance.
- D. Kirkwood – true, for the reasons already iterated.

5 True

3. Substantial justice is done.

- C. Vars – true, there were neither physical nor aesthetic alterations made to the property. The building is the same as it was in 1952. It is a single-family home, adjacent to a single-family home. It is substantial justice to approve this.
- D. Pray – true, the historical use of this property is residential, and this will allow that historical use.
- T. Ortiz - the applicant has demonstrated this proposal is a reasonable one and there is nothing to suggest that this would cause harm to the public. The public would have nothing to gain by denying this request.
- T. McInnis – true, this was built as a residential home back in 1952 and granting the variance will allow the owner to enjoy the property.
- D. Kirkwood – true, for the reasons previously iterated.

5 True

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

- D. Pray - true, there are no physical changes to the property and no evidence was presented that surrounding property values would be diminished.
- T. McInnis – true, the owner has no intention of changing the property and there was no evidence provided to show property values would diminish.
- T. Ortiz – true, there is no evidence that surrounding property values would be diminished.
- C. Vars – true, there was no evidence provided to this.
- 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

- C. Vars – true, there is definitely a hardship if the Board turns down this variance. The Board has discussed all the reasons why this meets the criteria. The visual of this area will not change at all. Taxes will not change. The occupancy will still be for a single-family home.

TOWN OF AMHERST
Zoning Board of Adjustment

November 21, 2023

APPROVED

- T. McInnis – true, denial would result in an unnecessary hardship for the owner because this property seems to be the only one in the area that is mixed use.
 - T. Ortiz – true, this is a reasonable request and is the best use of the property, which is consistent with other properties in the neighborhood. Denying this request would prohibit the applicant from occupying the property as his primary residence.
 - D. Pray - the special conditions of this property include that it is the only one that is zoned the way it is. This has historically been a residential property. The general purposes of the ordinance are to protect the general health, safety, and welfare of the public, and granting the variance has no negative effect on these purposes. It would create a hardship for the applicant to deny the variance. The request is a reasonable one, as the house was built as a residence, looks like a residence, and is surrounded by other residences.
 - D. Kirkwood – true, for the reasons already iterated.
- 5 True**

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

**Charlie Vars moved to exit deliberations. Danielle Pray seconded.
Voting: 5-0-0; motion carried unanimously.**

Jamie Ramsay retook his seat.

**Charlie Vars moved to enter deliberations. Danielle Pray seconded.
Voting: 5-0-0; motion carried unanimously.**

CASE #: PZ18136-110223 – VARIANCE

Divest LLC (Owner & Applicant); County Road & Thornton Ferry Road II; PIN #: 004-142, 142-10, 142-12, 142-13 – Request for relief from Article III, Section 3.9, Paragraphs B, C & D to maintain three existing reduced frontage lots as previously approved, and from Article IV, Section 4.3, Paragraph C.2. to maintain an existing corner lot as previously approved. *Zoned Residential Rural.*

**Danielle Pray moved no regional impact. Charlie Vars seconded.
Voting: 5-0-0; motion carried unanimously.**

Doug Kirkwood asked if there were any general comments. Tracy McInnis stated that the three lots in the back seem to be of concern, as they do not conform, and it affects the abutters in that area more so than others along County Road. She asked if something could be done to help this issue. Doug Kirkwood stated that if those conditions existed when others tried to build in Town, they would not have been able to. It is difficult for some people to accept, but this item was approved in 2005.

TOWN OF AMHERST
Zoning Board of Adjustment

November 21, 2023

APPROVED

Jamie Ramsay stated that, regardless of how the lots are configured, the applicant will be able to build with an approved plan. The 50' buffer is a minimum and will not go away. This will not buffer the abutters from the development any more than the existing plan does.

Charlie Vars suggested that the houses on the three lots proposed closest to Mayhew and Danbury be placed tightly to the front setback as opposed to half-way back or at the rear of the lot. Unfortunately, some of the abutters are very close to these lot lines, but he has heard these arguments many times before. If the proposed houses are set back in the area of the existing cart path, there could be almost 300' between the houses and the abutters. This would be to the developer's advantage. There is a high density of trees on this site and there is a decent water table. He does not believe there is an issue with topography.

Danielle Pray asked Charlie Vars to describe his suggestion for the driveway for the corner lot. Charlie Vars stated that the proposal was for a maximum of 125' from the property corner between Lots 142-9 and 142-10. It was noted that driveways require 200' to an intersection. Charlie Vars explained that his proposal would still work because the frontage of 142-10 is roughly 150' and there would then be another 100', leading to approximately 250' from the corner of Thornton Ferry Road II and County Road.

Jamie Ramsay asked if Charlie Vars was also suggesting placing the houses on Lots 142-11, 142-12 and 142-13 closer to County Road and away from abutters. Charlie Vars stated that this was his proposal. The required setback at the time of approval was likely 20'-25'. He is trying to allay abutter concerns. The developer could redesign the plan, but it will likely look similar to this. Jamie Ramsay noted that the 50' setback leaves the applicant within their right to develop within it. Charlie Vars noted that there are no driveways on the opposite side of the road from these lots, as it is bordered by the golf course.

In response to a question from Tracy McInnis, Charlie Vars explained that his proposal regarding the driveways would lead to only one driveway on Thornton Ferry Road II from this project.

Charlie Vars stated that the deer will come whether there are new houses built or not. New building does not deter wildlife in the area and this argument does not carry any real weight with him in this case.

The Board reviewed the criteria tests:

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

- D. Pray – false, the explicit purpose of the reduced frontage ordinance states that in recognition of typically higher wildlife habitat value, the undeveloped area is located away from road frontages and reduced frontage lots have more stringent lot size requirements to allow for open space, wildlife habitat, and wildlife corridors. She stated that granting a variance would directly be in violation of that purpose.
- T. McInnis – false, the ordinance was changed for a reason regarding reduced frontage lots and granting this would be contrary to the public interest.

November 21, 2023

APPROVED

- C. Vars – true, this will not have any more impact on the public interest than if the plan was redesigned. He already commented about the lack of wildlife impact.
- J. Ramsay – true, granting the variance would not be contrary to the public interest. He understands the concerns of abutters but the 50’ buffer will remain.
- D. Kirkwood – true, he has property in the southern end of Town and has a lot of wildlife there even though there has been construction in the area.

3 True, 2 False

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

- J. Ramsay – true, he was not aware this subdivision existed over the years. He is amazed that each lot is two acres, and this is hard to find nowadays. The zoning ordinance deals with the general health, safety, and welfare of the public and he sees nothing that would run contrary to that.
- D. Pray – false, the specific purpose of the reduced frontage lot ordinance, per Section, 3.9 states that there are more stringent lot size requirements for reduced frontage lots, meaning that the back lots would be five acres. The ordinance deals with preserving open space, wildlife habitat, and wildlife corridors, and this proposal is in direct violation of the spirit of the ordinance.
- T. McInnis – false, granting the variance will not observe the spirit of the ordinance as the spirit states that it would require five acre lots and preservation of wildlife corridors, which could not happen with development of the three back lots.
- C. Vars – true, if the plan was redeveloped, there would be no way to take five of the driveways off County Road. If this was laid out as a PRD, many of the units could be right up against the 50’ buffer, which would be even closer to abutters. The deer and antelope will still play here anyway.
- D. Kirkwood – true, for the reasons already iterated.

3 True, 2 False

3. Substantial justice is done.

- T. McInnis – false, substantial injustice would be created through granting the variance as it would violate the ordinance.
- C. Vars – true, substantial justice would be done for many of the reasons stated previously. This plan helps the public health, safety, and welfare. The subdivision could be laid out differently but will look mostly similar.
- J. Ramsay – true, the lot size being expanded to five acres is not germane to the objections. The objections are to the constraint that a 50’ setback has on abutters. He hears this all the time, and it is what it is. This subdivision is the definition of enjoyment of property and that deals with using the property to its full purpose, within the zoning ordinance.
- D. Pray – false, this test is a balancing test between the public and the applicant. The applicant mentioned that curb cuts would increase, and a couple of other minor things might change if this variance is not granted. She does not believe those items outweigh the public interest. The voters voted for the zoning ordinance changes in

November 21, 2023

APPROVED

2022, with the intent to preserve open space, wildlife habitat, and rural character. Without this variance, the applicant still has many options to develop this property. The public interest outweighs reducing the number of units by one through adherence to the ordinance.

- D. Kirkwood – true, for reasons previously stated.

3 True, 2 False

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

- C. Vars – true, if anything, with the cost of construction at the current time, this proposal would not diminish the value of surrounding properties, but instead increase it.
- J. Ramsay – true, the proposal will not negatively impact surrounding properties. There is currently a high demand for housing in southern New Hampshire and new homes will make the abutting and surrounding properties more valuable.
- D. Pray – true, if this variance was denied, it would only reduce the number of houses by one. A real estate broker provided his opinion that the values would not be diminished. The Board did hear testimony from a member of the public who had some differing views, but she believes this item is true.
- T. McInnis – false, granting this variance will reduce the values of the homes that are surrounding it, due to the ambience and wide-open spaces that will be cut down to build the houses.
- D. Kirkwood – true, for the reasons already stated.

4 True, 1 False

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

- J. Ramsay – true, denial of the variance would lead to a hardship. There are probably ways to re-engineer and redesign a subdivision on these properties that will possibly net one or two less lots, but it is not the Board's job to decide this. This plan was originally approved in 2005 and, though there is a sunset on this and though there have been major zoning changes since that time, the items are not so substantial that they would have precluded this design. The proposal is a good design and changing it may lead to a different type of hardship such as an additional impact on this area. The applicant's request for a variance is reasonable.
- C. Vars – true, the applicant proved that there is a hardship. There are special conditions. If the houses had been built in that period of time they would all be there. The stormwater requirements all still meet the regulations. If this were to come back as a PRD, the Planning Board would hear it, instead of this Board. The variance allows this Board to place certain conditions, such as the ones he suggested.
- T. McInnis – true, there is a potential hardship to the applicant to have to draw up new plans. For the lot that has seven abutters, it will be difficult to find another place on the property for the house.

November 21, 2023

APPROVED

- D. Pray – false, the suggested hardship will be reconfiguring a design that is approximately 16-17 years old. Zoning changes occur over time. The special conditions identified by the applicant are that these properties are on a scenic road and are wide but not deep. None of that precludes the applicant from building on this property and, as testified to tonight, will still allow the applicant 13 of the 14 lots. Loss of one or two lots is not a hardship. The general public purposes are in the ordinance, and these take precedence over the developer being able to continue with a plan that is old.

- D. Kirkwood – true, for reasons already stated.

4 True, 1 False

Doug Kirkwood stated that the application, having passed all of the tests is granted, with the conditions that the driveway for Lot 4-142-10 be no more than 125' from the property corner between Lot 4-142-10 and 4-142-9; also, that the driveway entrance for Lot 4-142-11 be no more than 75' from the lot corner between Lot 4-142-11 and Lot 4-58-1; and that the houses built on Lots 142-11, 142-12 and 142-13 be as close to the 25' front setback from Barrington Way as possible, and as far away from the 50' buffer zone at the rear of these lots as possible.

Charlie Vars moved to exit deliberations. Jamie Ramsay seconded.

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

Attorney Westgate asked for clarification regarding the last condition. Charlie Vars stated that these three houses should be located as close as possible to the 25' setback from Barrington Way. Jamie Ramsay stated that the intention is that the houses will be situated as far away from the 50' buffer between the buyers who are contesting this and the applicant. Attorney Westgate stated that, due to the triangular nature of the building envelopes, the houses will not be able to be right up to the 25' setback. He asked if the normal dimensions for a house that can fit within the building envelope but still be close to this setback is acceptable. Charlie Vars stated that he recognizes this and that is why his condition asked for the houses to be as close as possible.

REQUEST FOR REHEARING:

3. Request for rehearing,

CASE #: PZ17719-081123 – APPEAL OF ADMINISTRATIVE

DECISION - Sten Larson (Applicant); 14 Buckridge Drive, PIN #: 007-017-012 – Request for relief from Article IV, Section 4.11 to appeal an administrative decision of the Office of Community Development regarding their issuance of a building permit that may violate the Zoning Ordinance. *Zoned Residential Rural.*

AND

CASE #: PZ17765-082523 – APPEAL OF ADMINISTRATIVE DECISION - Hal Amadon (Applicant); 33 Buckridge Drive, PIN #: 007-017-033 – Request for relief from Article IV, Section 4.11 to appeal an administrative decision of the Office of Community Development regarding their issuance of a building permit that may violate the Zoning Ordinance. *Zoned Residential Rural.*

TOWN OF AMHERST
Zoning Board of Adjustment

November 21, 2023

APPROVED

Jamie Ramsay read and opened the cases. Jamie Ramsay noted that the time is 10:30pm. He asked if this can be adjudicated quickly or not. Doug Kirkwood stated that the Board only has to vote on whether to grant a rehearing for these cases. If the Board does not want to decide this now, it will need to hold a special meeting. Charlie Vars noted that he has not yet had time to adequately review the information in the packet for these items, however, the Board has yet to deny a rehearing in his number of years on the Board. Doug Kirkwood stated that he believes one or two may have been denied. Jamie Ramsay stated that one of these was a request for rehearing that the applicant did not show up to.

Danielle Pray explained that the Board has to vote on a rehearing based on if the request meets the criteria. The criteria are if the Board originally made an error in its ruling, or if there was new information that was not reasonably available at the time of the original ruling. The Board should determine if a good reason was presented for this rehearing, and she does not believe there was in this case.

Doug Kirkwood stated that the criteria do not ask if the Board made a mistake, or if the Community Development Office made a mistake.

Danielle Pray stated that she will vote no on this.

Doug Kirkwood stated that there was a motion and a second that these items be reheard. Danielle Pray asked who made the motion and Doug Kirkwood stated that she did. Danielle Pray denied this.

Danielle Pray moved to not grant these rehearings.

Jamie Ramsay asked what grounds the motion was made on. Danielle Pray stated that it is made on the grounds that the Board did not make an error in decision, and there was no information presented that was not reasonably available at the time of the hearing.

Charlie Vars seconded.

Doug Kirkwood asked who seconded the motion. Jamie Ramsay stated that Charlie Vars did. Doug Kirkwood again asked who seconded the motion. Charlie Vars stated that he was not yet ready to second the motion.

Doug Kirkwood stated that the motion failed.

Charlie Vars stated that he does not look forward to a rehearing on this item, but he also knows full well that if the Board chooses not to do so, it will probably not be looked at well with the court or the Land Use Board, if the applicants choose to move forward in that fashion, which he suspects they will do.

TOWN OF AMHERST
Zoning Board of Adjustment

November 21, 2023

APPROVED

770 Danielle Pray stated that this is not the standard by which the Board should decide to grant a
771 rehearing or not. The standard is if the Board made a mistake with its previous decision or if new
772 information was presented that was not reasonably available originally.

773

774 Charlie Vars stated that he is trying to protect the Town to a certain extent. Danielle Pray stated
775 that this is not the standard. The Board only needs to look at the standard that is required for the
776 vote. Charlie Vars stated that he understood this, but also knew how the courts and Land Use
777 Board tend to rule.

778

779 Doug Kirkwood stated that the vote to deny based on these requirements failed.

780

781 Jamie Ramsay stated that he was confused. He asked who the applicant is. Danielle Pray
782 explained that the builder for these lots is requesting a rehearing, and the Board must vote based
783 on the items outlined in the Staff Report. Doug Kirkwood stated that this is also a case for the
784 applicant. There are two cases before the Board. Jamie Ramsay stated that these deal with two
785 lots for the same builder.

786

787 Jamie Ramsay stated that he does not have any recollection of discussing building permits at the
788 last meeting on these items. The current verbiage deals with the issuance of building permits that
789 may violate the zoning ordinance. There was no discussion of building permits during the last
790 meeting. At that meeting, the Board was discussing setbacks to wetlands. He asked to table these
791 items.

792

793 Danielle Pray noted that Tracy McInnis was not present for the original deliberations for these
794 items.

795

796 Nic Strong stated that, when someone submits a rehearing, the request for the rehearing is what
797 was posted for the application that they want to be reheard. Thus, the notice for these items is the
798 exact same thing that was on the agenda for the last meeting. During the previous discussion and
799 deliberations, it was determined that these items did not have to do with the building permit, but
800 this is still what was on the notice. The request for rehearing is copied from the original
801 statement because that is what the applicant is requesting a rehearing from. The Board must
802 decide to rehear the cases to bring these items to another meeting.

803

804 Jamie Ramsay stated that, on those grounds, he would vote to grant a rehearing. Danielle Pray
805 asked on what basis. Charlie Vars stated that the decision was made on the type of material in the
806 buffer, not as it relates to building permits. This will be an argument for the court at some point.
807 Danielle Pray stated that the Board did not decide on a building permit. The notice posted for
808 these requests does not deal with the standards that need to be met to grant a rehearing.

809

810 Jamie Ramsay stated that a rehearing would mean that the Board would hear the same two
811 applications, verbatim, as last month, and he is willing to do that. Danielle Pray asked on what
812 basis. She asked if the Board previously made an error in decision or if new information came to
813 light that was unavailable at the last meeting.

TOWN OF AMHERST
Zoning Board of Adjustment

November 21, 2023

APPROVED

Doug Kirkwood stated that other Board members are saying that the administrative decision of the Office of Community Development regarding their issuance of a building permit may have violated the zoning ordinance.

Tracy McInnis noted that she was not present for the original hearing for these items, but that Tony Ortiz was. She asked to step down and let Tony Ortiz sit in her place. Tony Ortiz asked how this would be reflected in the record. Doug Kirkwood stated that Tracy McInnis would be listed as an abstention. Nic Strong noted that one abstains from a vote. Charlie Vars stated that Tracy McInnis should not vote for these items.

Tracy McInnis recused herself from these items. Tony Ortiz sat for Tracy McInnis.

Tony Ortiz noted that he was not previously allowed to speak on these items and was not allowed to have a vote on the motion. Nic Strong noted that the motion did not have a second. Danielle Pray noted that, procedurally, she, or any other Board member, can bring a motion again. Doug Kirkwood stated that any motion made must be accepted by the Chair.

Charlie Vars stated that he believes Scott Tenney, Building Inspector at the time, followed due process in operating within his jurisdiction for these items. Danielle Pray stated that this is not being discussed this evening. The Board only needs to vote on a rehearing based on a very narrow focus.

Danielle Pray moved to deny the rehearings for both cases for the same reason as the first motion. Tony Ortiz seconded.

Discussion:

Jamie Ramsay voted to rehear the cases. Doug Kirkwood stated that the cases would be reheard at the next meeting. Danielle Pray asked for a count of the vote and for those against to explain why a rehearing should occur based on the standard.

Nic Strong asked what an abstention counts as, since there was a tie. Danielle Pray stated that she believes the motion failed.

Voting: 2-2-1; motion failed [C. Vars abstaining.]

Danielle Pray suggested checking with legal counsel regarding a tie vote with an abstention vote. Nic Strong stated that the Board needed another motion, as the previous one failed.

Jamie Ramsay moved to rehear the two cases. There was no second. Motion died on the floor.

TOWN OF AMHERST
Zoning Board of Adjustment

November 21, 2023

APPROVED

Danielle Pray suggested another meeting to discuss these items before its next scheduled meeting, as it should be done within 30 days. Jamie Ramsay agreed.

In response to a question from Doug Kirkwood, Nic Strong stated that the 30-day window will expire on December 15, 2023. The Board discussed a date for an extra meeting.

Charlie Vars asked what the discussion will be at the special meeting and how it will be different from what just occurred. Danielle Pray suggested asking legal counsel for an opinion on these items.

Danielle Pray moved that the Board table CASE #: PZ17719-081123 and CASE #: PZ17765-082523 to November 30, 2023, at 5pm, at Town Hall. Jamie Ramsay seconded.

Discussion:

Charlie Vars asked if another meeting would change the deadlock vote. Danielle Pray stated that it might not, but the Board needs to work out this item. Jamie Ramsay stated that this allows him time to find one word to help this make sense. Danielle Pray stated that the Board should not discuss other things that happened during other meetings, but only the standards for rehearing. Nic Strong stated that this will give the Board time to read the information sent to them by email the previous Friday which was quite a big packet. Doug Kirkwood asked if this required notification. Nic Strong stated that a request for rehearing did not require notice.

Voting: 4-0-1; motion carried [C. Vars abstaining]

OTHER BUSINESS:

1. Minutes: September 19, 2023; and October 17, 2023

The Board agreed to table discussion of the minutes to a future meeting.

2. Any other business that may come before the Board

**Danielle Pray moved to adjourn the meeting at 10:45pm. Charlie Vars seconded.
Voting: 5-0-0; motion carried unanimously.**

Respectfully submitted,
Kristan Patenaude