

DRAFT

**AMES BURY ZONING BOARD OF APPEALS
AMESBURY CITY HALL AUDITORIUM
62 FRIEND STREET
THURSDAY, APRIL 25, 2013**

Present: Matt Sherrill (Chair), Sharon McDermot, Donna Collins, Bill Lavoie, Olyce Moore.

Absent: Bob Orem.

Ben Osgood has resigned.

Also Present: Sue Yeames taking notes/recording. Transcription by Paul Bibaud.

Meeting was convened at 7:05 P.M.

MINUTES:

Feb. 28, 2013: *Motion to approve by Donna Collins. Seconded by Sharon McDermot. All in favor.*

March 28, 2013: *Motion by Sharon McDermot to approve. Motion is seconded by Bill Lavoie. All in favor.*

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**Michael Mammola: Seeking special permit / Finding** under Amesbury Zoning Bylaws section IX, paragraph B, Extension and Alteration and Section VI, paragraph B to demolish existing storage shed and replace with updated structure at **22 Merrimac Street**, Amesbury in an R20 Zoning District, Precinct 1. (Bill Lavoie, Donna Collins, Sharon McDermot, Matt Sherrill, Olyce Moore seated).

**Michael Mammola:** I want to remove an existing structure and replace it with an updated structure. The structure there now is in disrepair. To remodel and get it back to structurally sound is not an option. All the board had a chance to go look at it. Height of the new will be higher than the old by about five feet. Existing shed is rotted away. Foundation will be sonar tubes and a cement pad. It will be within two feet of the old one. The application shows it'll be in the same basic footprint of what is there now. I'm going 16' by 16', it is currently 18' by 16'. I have 12' by 10' on the smaller side of it, that'll be 10' by 10'. We're not increasing the non-conformity. The front section that appears to be a garage, my son sleeps in there, but can't live in there without plumbing, heat, etc. This new shed is more for possible entertaining but also will be used for storage. Electricity will be in there. Plumbing will be coming down the road.

**Matt Sherrill:** Well, if you don't have plumbing going in now, and we put a stipulation on here that there was to be no running water, just electricity, and that means forever. No heat.

**Mr. Mammola:** I have 1,100 square feet of living space, living next to Castles. I'm trying to work with what I have. The structure is there. I don't know why I'd be restricted to never having plumbing in there.

**Mr. Sherrill:** It's because you're coming here asking us to allow you something that you can't do. We have to be aware of your neighbors and make sure that what is going in is exactly what you claim it will be. That is why we would consider some sort of stipulations, just so we don't get "room creep", or a porch that suddenly gets heat and windows. It's something that happens when it was not the original intent.

**Mr. Mammola:** I have a riding lawnmower, a wave runner, a snow blower, they're in there now and need a continued place to go. But a 10' by 10' structure won't cut it. Maybe 5 years down

the road, I want to come before you and say “I want the front to be a garage again to contain my stuff, but have a game room in the back, with plumbing / bathroom. Right now, I’m just looking for a structure.

**John Newton, abutter** 24 Merrimac Street: My concern is the height on the building, where the grade slopes off. If Mr. Mammola says he thinks it’d be slower than the garage or step the roofs down. I guess it’s up to the board, but I wouldn’t want it to block the view.

**Ken Roberts** lives across the street at 25 Merrimac Street: I’m here to protect myself and my property values. I’ve lived there 39 years, but I worry about my sight corridor. On one side, I have a window going down to the waterfront on the river. On the other side, I have a view of the water treatment plant. If you take away one sight line of the river and throw in the water treatment plant, suddenly my property value goes down. So if this blocks my view, then I’d say I’m against it.

**Virginia Noon, abutter** 24 Merrimac Street: My concerns are the height, function and use of the property. There are two different plans. One shown to Conservation Commission shows an 18’ by 20’ structure, and then the most recent one showing a 16’ by 26’ structure. One is detached, one is attached. The most recent proposal says it’ll be 26 feet long, but that leaves an opening that you can see of about 12 feet.

I measured it to about 28 feet. I’m curious what the plan is for the structure. My concern is it is doubling the height. Also, the function and use. At the front, it’s about 3 feet from the boundary, but at the back, it’s about 18 inches from the boundary. Those are my concerns. He talked earlier about a 16’ by 16’, yet this plan shows 26 feet.

**Denis Nadeau, building inspector:** The height of 12 feet is allowed to the mean level of the roof. Anything on a slope is measured from the average height from the middle of the structure. When he talks about height, he (Mr. Mammola) is talking about the peak. The mean level is half the distance between the soffit and the peak.

**Mr. Mammola:** Matt Sherrill asks him about the question Ms. Noon brought up about a 12 foot section that he’s confused about. Mr. Mammola says that stays. The buildings will be detached. There will be a small 30 inch space between them. I don’t want to block my view, either.

**Mr. Sherrill:** You are presenting something here and we’re going off of what is being presented. If you’re telling us that that is what’s going on your property, you can’t move it. That’s where it is going to be on your property. I know you were talking closer or whatever, but it has to be right there.

**Virginia Noon:** How can he build 18 inches from my bound that he can’t access it? Wouldn’t he have to give it three feet?

**Mr. Sherrill:** If it is pre-existing, non-conforming, he has the right to rebuild on the exact same footprint.

**Denis Nadeau, building inspector:** What can happen in a situation like this is, either there is an agreement made, or they can go to the police department, and have a bond put up that allows them to go on the property, and any damage done to neighboring property would be paid for out of the money in that bond. That’s called the Courtesy Law. Also, under the building code, if he’s within three feet of the lot line, he can’t put in any windows.

*Motion by Sharon McDermot to close and discuss the FINDING, seconded by Donna Collins.*

1. Pre-dates zoning? Yes, 1861.
2. Non-conforming in size of the lot, the frontage, and front and right side setbacks.

3. Less Detrimental to the neighborhood as presented. It is an improvement of the structure.
4. No new non-conformity. Height will be taken care of through building codes. If designated as a shed, no water is involved. So that should be stipulated with no water. At a later date, he can come before the board again to discuss heat and water.

***Motion to close by Sharon McDermot, seconded by Donna Collins.***

***Vote: Bill Lavoie, yes; Olyce Moore, yes; Donna Collins, yes; Sharon McDermot, yes; Matt Sherrill, yes.***

***Application is approved, with the stipulation that no running water can be plumbed into this, and you have to maintain your heights.***

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Nicholas Cracknell: Seeking a variance and a Finding under Amesbury Zoning Bylaws Section IX, Paragraph B1 (Finding) and Section VI.B (side and rear yard setback) to replace an existing 415 square foot cottage at **98E South Hampton Road**, Amesbury in an RC Zoning District. (sitting board: Bill Lavoie, Olyce Moore, Donna Collins, Matt Sherrill, Sharon McDermot).

Nick Cracknell: Seeking a variance and finding to replace an existing 415 square foot cottage with a 752 square foot cottage. I am the recent owner of 98 E South Hampton Road, and also own the abutting property at 98 F. The purpose of my request is three-fold. I want to replace the existing structure on the property with a larger, more functional seasonal cottage structure. I seek three forms of relief: **1.** the finding to remove / replace the structure needed no matter what our plans were, **2.** two variances for the proposed structure: one is a five foot encroachment on the rear yard setback, which is required to be fifteen feet and I'm requesting it to be ten feet off the rear yard, and **3.** for a seven foot encroachment on the side yard of the proposed structure, which would be on the side of my abutting lot. You can see the narrative in your packets for a complete history. The short history of it is: in the late 1960s, there were five cottages constructed built on a larger parcel on this farm, where the farmhouse is in South Hampton, N.H. and the lion's share of land is in Amesbury, MA. On exhibit 5 and 6, the subdivision plans filed in 1970 and 1972 (one before / one after zoning), the initial subdivision in 1970 was to cut off an acre and a half from that farm. The five structures were already located on the back of that farm on the river's edge. In 1971, a subsequent subdivision was submitted the Planning Board and recorded, showing five separate lots with a shared right-of-way called a beach lot within the subdivision itself, and there's a 1,700 foot right-of-way that leads from the edge of the camp project out to South Hampton Road. That's been the layout since 1971. In the early 1980s, kids came across the river on the ice from the Lake Gardner condo project which had just been completed a couple years earlier. The kids burned all five structures to the ground. I submit tonight a copy of photographs from the abutting Parker family had, showing what the structures looked like up until the 1980s. It was an eyesore for the last 30 years. I cleared my property after buying in 2003.

There was never any electricity or plumbing in the camps. The cottage is a mini-house, basically a two car garage. It is 570 square feet, plus 170 square foot, unenclosed deck on the front. The 752 includes that deck. The 18 feet in height, probably 3 to 3 ½ feet are taken up by the piers coming up out of the ground before you hit the floor. Seasonal use, not a single family home like it is assessed at. No water there. I'm looking at a compost toilet, bringing in water. For power, I'll have a solar panel. The design took me about six months. I've spoken to my abutters. I have a

support letter signed by abutters. The cottage design fits in with the rural setting and improves the view for neighbors. The hardship for the two dimensional variances speak to the lot shape, soil and topography. I think the findings and variances are reasonable, improving the value of surrounding properties and more pleasurable views.

I propose these possible stipulations to you: **1.** That the proposed seasonal cottage shall be limited to no more than 752 square feet as presented and shown in exhibit 19. **2.** That it be restricted as to the duration of seasonal use by the Board of Health. The system I put in for the toilet will likely require a deed restriction get recorded that will specify when the toilet can be used. **3.** That the seasonal use cottage be restricted so any changes or alterations to the size or the principal use of the proposed cottage structure shall require approval from the Board of Appeals.

Denis Nadeau made a couple comments that were from his seat in the audience and unintelligible to the microphone.

Motion to close and discuss this application by Donna Collins and seconded by Sharon McDermot

Variance:

1. Substantial hardship? Impractical to rebuild or remodel existing structure.
2. How is substantial hardship related to the soil, shape, or topography of the land? Land has a steep slope and cannot be closer to the river.
3. Do the above features generally affect it? No.
4. What is the substantial detriment to the public good if granted? None.
5. Does this petition stray from the bylaw? None.

Finding:

1. Proof that it pre-dates zoning? Yes, 1971
2. How is it non-conforming? Left side and rear setbacks.
3. More or less detrimental? Less detrimental.
4. Any new non-conformance? No new non-conforming use. Seasonal structure.
Stipulations that the owner submits are incorporated in the approval that the size will be limited to 752 square feet, limit time use to Title V, no changes in size or use without the approval of the ZBA.

Motion by Sharon McDermot to close and vote. Motion is seconded by Bill Lavoie.

Variance vote: Bill Lavoie, yes. Olyce Moore, yes. Donna Collins, yes. Matt Sherrill, yes. Sharon McDermot, yes.

Finding vote: Bill Lavoie, yes. Olyce Moore, yes. Donna Collins, yes. Matt Sherrill, yes. Sharon McDermot, yes.

Application is approved with stipulations.

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**Heather Arthur: Seeking a Special Permit/Finding** under the Amesbury Zoning Bylaws Section XI, Paragraph K1; Residential Conversion to convert an existing single family home to two family at **20 South Martin Road**, Amesbury in an Industrial Zoning District, Precinct 1. **Heather Arthur**, resident owner of 20 South Martin Road, looking to convert from a single family home into a two family dwelling by finishing existing unfinished space. No addition to the structure, no non-conformities, no neighbors oppose it, parking requirements are met Special permit, no change to the house.

***Motion to close and discuss by Sharon McDermot. Motion is seconded by Donna Collins.***

Residential conversion. Lot must be 12,000 square feet. Lot size is 58000. Minimum lot frontage is at least 80 feet in an industrial zone, frontage here is 147 feet. All other zones are fine. Must be minimum off-street parking for three vehicles, this site has enough for 6 vehicles. Maximum number of dwelling units allowed in any previously existing single family dwelling shall be two, and this is what is being requested. All health / safety regulations of town and commonwealth shall be met, and a report to that affect shall be obtained by the applicant from the building inspector, which will happen.

Does it currently exist in the table of uses? Yes.

Is it essential or desirable to the public convenience or welfare? Yes.

Will this create any undue traffic or impede any pedestrian safety? Not as presented.

Will this overload public systems? No.

All Special Conditions have been met.

Will this not impair the health or character of the district? No.

Will it create any excess of use in the neighborhood? No.

***Motion to close and vote by Sharon McDermot. Motion seconded by Donna Collins. Bill Lavoie? Yes. Olyce Moore? Yes. Donna Collins? Yes. Matt Sherrill? Yes. Sharon McDermot? Yes.***

***Application approved.***

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Discussion of a new June meeting date. The meeting date settled upon is Wednesday, June 26, at 7:00 P.M. We need to change the submission dates to reflect this change.

Motion to close at 8:25 P.M. by Donna Collins. Motion is seconded by Sharon McDermot. All in favor.