

Approved 7/28/16

**ZONING BOARD OF APPEALS  
MAY 26, 2016 - 7:00 P.M.  
9 SCHOOL STREET, AMESBURY**

Meeting called to order at 7:02 PM. Chairman reads the agenda.

Present: Bill Lavoie, Matt Vincent, Matt Sherrill, Donna Collins, David Haraske, Bob Orem.  
Absent: Sharon McDermot

Also Present: Denis Nadeau, Building Inspector, Joan Baptiste, Recording Secretary.  
Transcription by Paul Bibaud

**MINUTES:**

February 25, 2016: Approved –AIF.

March 24, 2016: Approved – AIF.

April 28, 2016: Approved – AIF.

**CONTINUED PUBLIC HEARINGS:**

**Ronald G. Poulin**, 42 Monroe Street, seeking a VARIANCE under the Amesbury Zoning Bylaw, Section VI. Applicant is seeking a variance from the minimal side yard requirements in order to erect an addition on the right side of his existing home in order to add a family room and a screen porch at 42 Monroe Street in an R-40 zoning district, precinct two.

Sitting on this case will be Bill Lavoie, Matt Sherrill, Donna Collins, Matt Vincent. and Dave Haraske.

**Robert Deshaies**, attorney for Ronald Poulin. Wants to add a family room with a screened porch (and amend interior staircase). Mr. Poulin staked out the boundary line and proposed area of construction. If you didn't see it, he has provided photos of the stakes, etc. The building area consists of roughly 999 square feet. He wants to add a family room and screened in porch. Because of the shape and topography of the lot, and because of the arrangement of the interior of the house, there is really only one place that he can build that addition. The existing lot has approx. 100 feet of frontage and goes back around 400 feet. It's a long, narrow lot that goes straight up the hill towards the back of the golf course. The interior of the house has an existing staircase that is too steep, located on the right side and he wants to correct it. He can do that at the same time as he builds the addition. The house was built in approximately 1900. It predates zoning. When zoning originally came in, it was in an R8 district. Now it is in an R40 district. We propose that his hardship is his inability to make reasonable use of the property. He has an existing just under 1,000 square foot house. The addition is approx. 288 feet, so it's not making it excessively large, but just expand it for the family. This is a rare instance where both the shape of the lot and the topography argue in favor of granting this relief. He is looking to build within 12 feet of the property line where 25 is required. The other physical attribute is that his abutter to the right would be most impacted by this construction has his frontage on Fairway Drive. It is set up that if the addition would come out towards their side yard, rather than interfering with their back yard directly, it is my understanding that the abutter is happy with the proposal. The only

other thing is, for historical reasons, front yard and side yard requirements, was to prevent the spread of disease and for fire safety more so than anything else, and as this will get upset, it is getting closer to the property line, than would be ordinarily permitted. It's not detracting from the ability to keep that open space. I can answer any questions that you might have and Mr. Poulin is here to make sure I understand what is going on.

**Matt Sherrill:** Could you just tell us again, so his side lot will be 12 feet now? (correct).

**Dave Haraske:** Could you explain why the addition wasn't considered for some other positioning off the house instead of encroaching on the setback line?

**Robert Deshaies:** If you go out the back of the house, the land almost immediately starts going up the hill. On the existing building, this is where the kitchen is. You're going to expand in that direction, you'd basically have to tear that out and build that way. It would create an interior stairway problem.

**Matt Sherrill:** I've been on this board long enough to know that you've been in front of us before for your garage, and you were in front of us three times, because you didn't do it, then you came back and asked us for permission to do it again, and you didn't do it. Then you came back in front of us again and asked permission again, and finally you did it. Is there going to be any guarantees if we allow you to do this addition that you are going to build it this time, and not come back in front of us in two years and ask us to do this again?

Ron Poulin: Yes.

No questions from the audience.

**Close and discuss motion by Donna Collins and seconded by Dave Haraske.**

Hardship: Topography. (shape and topography of lot).

Due to hill in back and interior design of the house.

Detriment: none.

Affect: none

Derogate: none

**Motion by Donna Collins to close and vote, seconded by Dave Haraske**

Stipulations: none

Bill Lavoie – yes.

Matt Vincent.-yes

Donna Collins - yes

Matt Sherrill - yes

Dave Haraske - yes.

**Application is approved.**

**PUBLIC HEARINGS:**

**Lesa L. Scott and Philip J. Jackson, 494 Main Street, Amesbury,** are seeking an appeal of the Building Inspector's decision under the Amesbury Zoning Bylaw Section X.H and M.G.L., Chapter 40A, Section B and Section 15 in connection with the applicant's beehives located on their property at 494 Main Street, Amesbury, in an R-20 zoning district, precinct one.

Sitting on this item will be Bill Lavoie, Bob Orem, Donna Collins, Matt Sherrill and Dave Haraske.

**Robert Deshaies,** attorney for the applicants, presenting an appeal regarding the location of beehives on their property at 494 Main Street. We petition the decision of the building inspector based on his decision based on information that led him to believe that the property was being used for commercial purposes. The applicant maintains that this is not a commercial establishment. The owners wanted to use bees to improve the quality of their garden and landscaping. They made an arrangement with DPW to come down and care for the bees. Neither the applicant nor the beekeeper sell any product to anyone. They share it between themselves. So I think the issue is whether or not this is commercial use of the property, then we need to define what commercial means, since it is not defined in the bylaw. Agriculture is defined in several different statutes, and most statutes when discussing agriculture, they include horticulture, agriculture and everything else. But the real focus is on being engaged in agriculture which includes preparations to market, delivery to storage or a market or ferry, etc. So it all focuses on the sale or other marketing of the product produced on site. That is not the situation here. What this is most like is simply hiring somebody to come in and work in the yard for your own purposes. The property is not being used for a commercial purpose. That is the substantial distinction. The owners market no product. They keep the bees strictly as a benefit to their property.

**Donna Collins:** I'm confused. The complaint was based on just the fact that they have bees, or is it that they thought they were selling some?

**Denis Nadeau:** The section of the zoning that we refer to lists what the violation is section, paragraph B, table of use. What I cited was table of use regulations, commercial stables / commercial kennels or other commercial establishments which is all animals, fowl, or other forms of life are completely enclosed in pens or other structures. This is an R-20 lot.

**Bob Orem:** Do you consider this an agricultural use?

**Robert Deshaies:** In a way, but if it were really an agricultural use, the way it is defined in the statute consistently is that it is really an agricultural use is for marketing. In that sense, this is not an agricultural use, it is really a personal use for the benefit of their yard and a public service, because the bee population is dwindling.

**Charlie Cullen,** 495 Main Street, abutter in support.

**Katherine Bostik,** 490 Main Street, abutter. Allergic to bees, they are selling honey, they offered to sell it to me. The bees all came to my pond, because they are not supplying a water source on their property. I have a frog pond next to my deck. So about 100-150 bees are there. I got stung and my whole arm swelled up and was bad for about a month. So they scare me. There are best practices for bee keepers. They need to make sure the surrounding properties are ok with it, and to supply a water source. Neither of which has been happening at all.

**Lisa Ward** – 484 Main Street. For four years, I had a bee hive. Bees died over the winter. I support the bee population. I have a fish pond.

**Len Johnson/Christine Johnson**, 488 Main Street: Have no objection to the hives. Bees are an asset to our gardens, so I have no objections.

**Greg Souther**, Main Street: I am for the bees.

**Elizabeth Peterson**, 491 Main Street. Not bothered by the bees. They help my lovely garden.

**Denis Nadeau**, Building Commissioner/Zoning Compliance Officer: When this complaint came in, I did a lot of research on this. I have some information to show you. I decided to cite it under the commercial because that was the closest thing we had to it, and it was my understanding that they were selling it. When I read the commercial entity in here, it clearly says that it is a commercial for the use or relates to the trade or traffic of commerce in general and is occupied with a business in commerce. The food kitchen in Amesbury is still a commercial place of business. Zoning in my opinion is not defined by whether you make a profit or not. You can open a restaurant anywhere you want, we don't care if you make a profit, it is still a commercial entity. You have in zoning the intent of zoning. The purpose of the bylaw is to lessen congestion in streets, to conserve health, secure safety from fire, wood, panic or other dangers, to provide adequate light and air and to prevent overcrowding of land, etc. We have a lady here who is severely allergic to bees. The hive used to be further away and didn't bother anybody. Now they move it within 5 or so feet from her fence. I believe the intent of zoning is to protect the people. I understand people say these bees don't sting. They DO sting. She has a right to protection on her own land. As far as being agricultural, there's no 5 acres of land. And I checked with the agricultural board and bees are not considered under the state as an agricultural use. The whole thing is the danger to the person. Maybe I cited the wrong section of the code, but if you read section 5 of the zoning bylaw, it says no building, structure, water body or lot shall be used except for the purposes permitted in the district as described in this section. Any use not listed in the table of uses can be construed to be prohibited unless otherwise listed in section 10, section 11, special conditions. Nowhere in an R20 zoning district do we allow the raising of livestock or animals or poultry. So in my opinion, this is not allowed. Whether they sting or they don't sting, I have paperwork here from danger to backyards explaining aggression. I'm here to protect people. They shouldn't be anywhere near anybody that is allergic to them, and there should be water there, so they don't go to anybody else's property. This has neither of the situations. When they moved it so close to her property, they are now endangering the neighbor. So in my opinion, this is not allowed anywhere in our system. The commercial is irrelevant. It can't be done in an R20.

**Matt Sherrill**: I'm a little confused. I'm hearing that it is your hive but not your property?

**Lesa Scott**: We are hosting it. We paid for all of the materials. They are servicing it for us. We're just doing it to do pollination, have the bees live, and we get some honey. That hive has not been that successful, but it doesn't stop us from trying to keep them alive.

**Matt Sherrill**: Where do you live?

**Lesa Scott**: We live in Salisbury, and we do not have the property to do that on, because there is no vegetation on our property.

**Phil Jackson**: But we do have a hive in the back yard. I walk out there every day, no suit on, I walk right up to the hive, they land on me, they don't bother me unless you upset them.

**Matt Vincent**: First: Barter is a form of commerce. So it doesn't matter whether money exchanged hands. If you are splitting the product, I think Denis is right in that it does constitute commerce. Second: I appreciate that you know how to handle the bees, it shouldn't be your

neighbor's problem to deal with gingerly walking around her property to avoid being stung. Third: I really hate the argument when you look at the ordinances and say, "well, it is not prohibited by the ordinances." I think if you look at the intent for livestock, it mentions transmission of diseases. It may not be transmitting diseases by the bees, but you do have a danger factor that comes with disease. Denis pointed that out in the materials that he said. This all points to the need for this town to come down and look at the ordinances that we've had for a long time and realize that we are urbanizing here. A lot of communities are looking at model bee keeping ordinances. They recognize that bee keeping is not a matter of right or needs to be regulated under their current ordinances. What if somebody in this town wants to build a wind turbine? There is nothing in the statute that precludes it. Would we accept it? It may not even come before us. The unfortunate reality is, this is the type of thing that the town needs to review, that the city council needs to weigh in on, re: urban bee keeping and other urban forms of livestock, given the desire by the community but not necessarily the permission to do it under the existing statutes and ordinances of the town.

**Phil Jackson**, owner of the home that the bees live at in my back yard. We like bees. The problem might be if she didn't have a pond. If the pond wasn't there, the bees would have to go somewhere else. There must be something you can put in the pond, like a couple tablespoons of oil. I believe that the bees will not go there. We have a sprinkler system on our property. Also a large bird bath placed fairly close to the hive in hopes of drawing them there.

**Denis Nadeau**: The other issue that I see is that they'll tell you that if you get aggressive with these bees, they will sting. If Katherine goes to work on her pond, she shouldn't have to worry about getting stung by bees because she's cleaning her pond. She has the right to the privacy of her property. If you can't control the livestock then you shouldn't have them. Bees can't be controlled.

**Donna Collins**: So it seems to me if we can't identify the specific bees and theirs were covered, it would seem that the other bee hives within 1000 yards as they do fly that far, that you'd have to shut them all down. You can't just shut one down, I would think.

**Denis Nadeau**: I'm not aware of any other bee hives. There are no other complaints.

**Lisa Ward**: Depending upon the ruling, is it the location or is it the fact that bee hives are around? There are other bee hives around and can travel up to 5 miles.

**Matt Sherrill**: Please understand that we are ruling on the 494 Main Street bees. Not your property. So if you have bees but no complaints, have at it.

**Motion to close the public portion of the hearing and to discuss was made by Donna Collins and was seconded by Bob Orem. Close and discuss with the board.**

**Bill Lavoie**: I'm allergic to bees.

**Bob Orem**: 1. commercial use- no provision to allow bee keeping. 2. Bylaw for public safety.

**Donna Collins**: Other bees are in that neighborhood. Nothing allows or prohibits.

**Dave Haraske**: Moving the hive closer to neighbor Katherine made the situation worse for Katherine. Owners should be responsible bee keepers. No water source and public safety.

**Matt Sherrill**: My thought is it's not their bees. They are hosting this. That is my issue. If it was their hive on their property, and they were doing what they needed to do, they had water sources and this was more clear for me, I might be more sympathetic, but the fact that they are hosting the bees is my issue. Let's vote. YES upholds Denis' ruling that they can't have the bees. NO means we do not agree with his ruling and bees should be allowed.

Approved 7/28/16

**Bob Orem: I motion that we decide whether or not to uphold the zoning compliance officer's decision forbidding beekeeping on this particular property, 494 Main Street. Motion was seconded by Dave Haraske.**

Bill Lavoie: Yes.  
Bob Orem: Yes.  
Donna Collins: No.  
Matt Sherrill: Yes.  
Dave Haraske: Yes.

Bees will have to be removed within 30 days.

**William Schall and M. Juliet Drennan**, 3 Willowdale Court, Amesbury, are seeking a **SPECIAL PERMIT/FINDING** under the Amesbury Zoning Bylaw Section XI, K.2 to request an In-Law apartment at 3 Willowdale Court, Amesbury, in an R-80 zoning district, precinct three.

Sitting on this will be Bill Lavoie, Matt Vincent, Bob Orem, Donna Collins and Matt Sherrill.

**Juliet Drennan:** We'd like permission to put in an in-law apartment for my mother to move in with us. She's 80 and needs to be closer. Here is an architect design of what we're thinking about. It is exactly the footprint of the garage...23x23. It will connect into our house. There will be a common door in the house. We'll put in a ramp since she can't do stairs. So she can enter her unit through the common door.

**Bob Orem:** Is there anything in the record that the original builder had a variance to build?

**Juliet Drennan:** That was done by a Special Permit about 30 years ago. 1986.

**Bob Orem:** There might be a future problem with that. You'd have to get a variance.

**Julie Drennan:** We just recently had the land surveyed again. I don't trust these measurements. It should be attached somewhere.

**Motion to close and discuss this application was made by Donna Collins and seconded by Bob Orem.**

Special Permit.

Currently exists in table of uses: Yes.

Is this essential or desirable to public convenience or welfare: Yes.

Will it create undo traffic or impede pedestrian safety: No.

Will it overload public systems: No.

Have the special conditions on Section XI satisfied: Yes

Impair: No.

Excessive Use: No.

Parking has been satisfied and size of dwelling is appropriate

**Motion to close and vote on this application was made by Donna Collins, seconded by Bob Orem.**

Approved 7/28/16

Bill Lavoie: Yes.  
Matt Vincent.: Yes.  
Bob Orem: Yes.  
Donna Collins: Yes.  
Matt Sherrill: Yes.

**Application has been approved.**

**Motion to adjourn the meeting was made by Donna Collins, seconded by Bob Orem. AIF.**

Meeting adjourned at 8:20 PM.