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From: Joel Bard [mailto:JBard@k-plaw.com]
Sent: Wednesday, November 12, 2014 5:26 PM
To: Brestrup, Christine
Cc: Tucker, Jonathan; Ziomek, David; Musante, John; Morra, Robert
Subject: RE: Amherst Planning Board - One East Pleasant Street (Carriage Shops)

Dear Chris et al.

Questions have been raised as to how the Zoning Bylaw's Table 3, Dimensional Regulations, should be applied to the pending Carriage House development proposal. In particular, the focus is footnotes "a" and "e" as they appear under the B-G column for "Basic Minimum Side and Rear Yards (ft)", which entry also carries a footnote "g". I have studied the Table as well as the entire Article 6, Dimensional Regulations. As explained below, it is my opinion that the footnotes and text must be viewed together to achieve a harmonious reading of the bylaw as whole. When a statute or bylaw contains seemingly conflicting language, a court must "interpret ... [it], if possible, so 'as to make it an effectual piece of legislation in harmony with common sense and sound reason,' " Massachusetts Comm'n Against Discrimination v. Liberty Mut. Ins. Co., 371 Mass. 186, 190 (1976) (quoting Atlas Distrib. Co. v. Alcoholic Beverages Control Comm'n, 354 Mass. 408, 414 (1968)).

Reading the relevant language of the Bylaw, it is my opinion that it would be reasonable to interpret footnotes "a" and "e" as increasing the side and rear setback requirements for the Carriage House to 20 feet, but allowing those requirements to be modified by special permit.

In my opinion, the Table and Bylaw should be read as follows. Per Table 3, in the B-G district, there is a "basic" requirement of a 10-foot setback for side and rear yards. The Table shows the requirement as "10^{ae}". Footnote "e" increases that setback to 20 feet if the property adjoins a Residence District, which is the case here. Footnote "a" states that the setback requirement may be modified by special permit. The question is whether the special permit is available when the setback has been increased to 20 feet. I see no logic for excluding the special permit in that situation.

First, I do not find it significant that the footnotes appear as "ae" rather than "ea". If one reviews Table 3, one sees that in all instances where there are two footnotes, they appear in alphabetical order. Second, it is my opinion that the use

of the word “shall” in footnote “e” does not carry a mandatory weight so as to absolutely require a 20-foot setback. Here, it is useful to review sections 6.132 and 6.141 of the Bylaw. As noted earlier, the relevant line of Table 3 has a footnote “g”, which refers to section 6.15. That is, apparently, an outdated reference. It should refer to sections 6.13, 6.14, which regulate side and rear yards. Both sections contain the following two sentences, in sections 6.132 and 6.141: “In the General Business (B-G) and Light Industrial (LI) districts, minimum side yards shall be at least 20 feet when adjoining a residence district. Otherwise, side yards are not required, but if provided, shall be at least ten feet.” You will note that the word “shall” is used when referring to both the 10- and 20-foot requirements. If one interprets the “shall” as mandatory, then the special permit provision in footnote “a” has no meaning, which is prohibited under rules of statutory interpretation.

Clearly, footnote “e” is intended to provide additional protection to adjoining residential districts. In my opinion, the special permit language in footnote “a” provides guidance in that regard when it states, “In applying the criteria established in Section 10.395, the Special Permit Granting Authority shall consider the proposed modified dimensional requirement in the context of the pattern(s) of the same dimensions established by existing buildings and landscape features in the surrounding neighborhood.”

Do not hesitate to contact me if you have further questions.

Joel

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