DUNBARTON ZONING BOARD OF ADJUSTMENT
MONDAY, AUGUST 13 , 2012
DUNBARTON TOWN OFFICES – 7:00 P.M.

The regular monthly meeting of the Dunbarton Zoning Board was held at the above time, date and place with Chairman John Trottier presiding. The following members were present:

John Trottier, Chairman
David Nault, Vice-Chairman
Alison Vallieres, Secretary
Dan DalPra
Wayne Bracey
Michael Kaminski, Alternate

Other Town Officials:
Barbara McCann, Planning and Zoning

Members of the Public:
Michael Charron
Scott Attridge
Malka Kessler
Michael Smith
David Kashulines
Joseph Wichert, Surveyor

John Trottier, Chairman, called the meeting to order at 7:00 p.m.

Meeting Posting:

The Chairman verified with the Secretary that the meeting notice had been posted in three public places throughout the Town and published in the Concord Monitor for one day. In addition, the notice was posted on the Dunbarton Web Page.

Approval of Previous Meeting Minutes - Monday, July 9, 2012

MOTION:

Dan DalPra made a motion that the Dunbarton Zoning Board of Adjustment approve the minutes of the previous meeting of Monday, July 9, 2012 as written. Mike Kaminski seconded the motion. The motion passed unanimously.

7:00 PM - PUBLIC HEARING - DAVID M. KASHULINES AND MICHAEL D. SMITH (K1-01-23) REQUEST A VARIANCE TO ARTICLE 4, SECTION C.1. (PAGE 20) OF THE DUNBARTON ZONING ORDINANCE TO ALLOW THEM TO BUILD A HOME ON THE MERGED LOTS WITHOUT CLASS V ROAD FRONTAGE AT THEIR PROPERTY LOCATED AT STEPHANIE ROAD AT GORHAM POND IN THE LOW DENSITY DISTRICT IN DUNBARTON, NH.

Michael Smith appeared before the Board on his behalf and David Kashulines to explain his request for a Variance as follows:
1. Stated they were trying to make this lot a buildable lot. It was merged about 15-20 years ago. It originally was two lots.
2. Lot is about 1 acre. It is considerably larger than the surrounding lots located on this road.
3. Noted that it is smaller than lots are allowed in the Town. Everyone else in the area has smaller lots than this one. There are lots with less than 1/2 an acre.
4. Stated that the lot does not have Class V road frontage. This is not a Town maintained road.

Dan DalPra asked where does the dirt road start.

It was noted that the gravel surface road starts at the turn-around on Holiday Shore Drive.

David Nault stated he drove up there to look at the property and could not go any further than the Ingalls property. (Ingalls abuts this lot. The Ingalls house was built by Mike Poirier in 1988 and he received a Variance for setbacks.) David Nault stated that the Road Agent says he only maintains the road until the end of the pavement. The road is maintained by private contractors paid by the residents, etc.

Mr. Ingalls went to the Board of Selectmen and asked them to maintain the roadway. Selectmen did not agree to maintain the road. The neighbors do the work themselves.

Dan DalPra asked if they have done any research as to the size of the house you would like to build. Have you decided where the well and septic will go, etc.?

Mike Kaminski stated that the Certified Plot Plan is incomplete. There are no wetlands or locations of other wells and septic systems. This is just a basic plan. The Board needs more information before making a decision. The definition of a Certified Plot Plan is within the Ordinance.

John Trottier stated he has an issue as far as wetlands are considered with them not being on the plan. He would be uncomfortable about acting on this plan without more information.

Mr. Smith asked if that wouldn't be part of the Building Permit process. The Board explained that they needed this information to make a decision as to whether or not to grant the Variance.

Alison Vallieres stated that the request for a Variance is necessary because there is no road frontage. She stated that even if they can fit a house, well and septic system on the property, there is still no road frontage. She stated that emergency vehicles need to be able to access the property in the event of a medical emergency or fire, etc. Presently, that is not

possible. Asked if the applicants have considered upgrading the roadway. Requested that the Fire Chief be contacted with regard to access, etc. She stated she would require a statement from the Fire Chief that he is satisfied with the access to the proposed house, etc.

The Board noted they would need the following information before acting on the request for a Variance:

1. Plot Plan should have adjacent lots marked with location of wells and septic systems.
2. Letter from Fire Chief and Road Agent giving their approval.
3. A Certified Plot Plan is defined on page 3 of the Zoning Ordinance. This plan should adhere to this definition. It states as follows:

"CERTIFIED PLOT PLAN - A boundary line survey and site plan, certified (stamped and signed) by a land surveyor licensed by the State of New Hampshire. The survey must detail existing natural features (wetlands, topography, ledge, etc.), applicable set back lines and the location and dimensions of all existing and proposed: buildings and structures, septic systems and wells, and driveways; and to the extent practical and accessible, such survey and site plan shall also show comparable site details, within 75 ft., on abutting properties encroachments, protective covenants, easements, and similar land-use restrictions, filed at the Merrimack County Registry of Deeds shall be accurately shown and/or written."

Abutters were read as follows and noted all had been notified by Certified Mail:

McDonnell Revocable Trust - Not Present
Edgar Properties - Not Present
Gislain Boucher - Not Present
William Ingalls - Not Present
Joseph and Jennifer Anzalone - Not Present
Frederic Greenhalge - Not Present
Alfred/Lisa Santilli - Not Present
Dalberg Land Services - Not Present (Surveyor for the applicant)

After discussion, the following motion was made:

MOTION:
John Trottier made a motion that the Dunbarton Zoning Board of Adjustment continue this request from David Kashulines and Michael Smith for a Variance until they have information to present the Board as requested. Dan DalPra seconded the motion. The motion passed unanimously.

Mr. Smith was advised to coordinate with Barbara McCann, Planning and Zoning Department, to get onto the agenda when they have all the information as requested by the Board.

<u>7:15 PM - PUBLIC HEARING</u> - MICHEL CHARRON (K1-04-02) REQUESTS A VARIANCE TO ARTICLE 4,
SECTION C.1.c. (PAGE 20) TO ALLOW HIM TO BUILD A 12' X 14' DECK TEN (10) FEET FROM THE LOT LINE WHEREBY 20' SETBACK IS REQUIRED AT THEIR PROPERTY LOCATED ON 4 STEPHANIE ROAD AT GORHAM POND IN THE LOW DENSITY DISTRICT IN DUNBARTON, NH.

Joseph Wichert, Land Surveyor, representing Mike Charron, Applicant, appeared before the Board to explain that Mr. Charron would like to build a 12' x 14' deck onto his property ten feet from the property line. He stated that the existing house is 12' from the property line already. Noted the following with regard to the request for a Variance:

1. **House was built in 1955. Mr. Charron purchased it in 2008. It was a rental property and the first thing he did was upgrade the septic system. He is presently living at the property.**

2. **Mr. Charron would like to put a deck on the rear of the property. Obviously it is under the 20' required by the Ordinance.**

3. **Can't put a deck on the other side of the house because the access would be through a bedroom. The house location is already placed so can't move the house, etc.**

4. **It will be an open deck with no roof.**

5. **Presented pictures of the existing house and the abutting properties. (attached)**

Dan DalPra asked if they couldn't make the 12' deck into a 10' deck. Have you looked at other options? Would you consider bringing the deck in so it is 12' from the boundary instead of 10'. This would put the deck in line with the house.

Mr. Charron stated he would consider this.

Abutters were read as follows and noted all had been notified by Certified Mail:

Shelton Trust, Clara Shelton - Not Present
Fred/Gayle Mansfield - Not Present
Peter/Angela Desrosiers - Not Present
Craig Greenwood - Not Present
Lea Gartland - Not Present
Scott Attridge/Malka Kessler - Present. Stated that the setback will be narrower than it presently is. Stated he objects to the deck being allowed. Stated he (Mr. Charron) put in a well without obtaining a permit.
Mark Merrill - Not Present
Jonathan Riley - Not Present

Joseph Wichert - Present (Surveyor for the applicant)

Mr. Wichert addressed the criteria necessary for the granting of a Variance as follows:

1. Granting the variance would not be contrary to the public interest because:
Approval of this variance request would allow the applicant to construct a modest sized deck on the rear of his house. According to Town records, the existing house was believed to have been built in 1958. The building is now only 12' off the lot line so there is no way a complying deck could be built unless the deck was set back an additional 8' from the building corner. Unfortunately, the existing door into the back yard is only 5' in from the corner and major renovations would be needed to relocate the door north so a deck would comply without the required 20' setback. The south line of the proposed deck is designed to be an extension of the south line of the existing house. As stated above, the applicant is working to improve his property and a modest sized deck is not out of character for the neighborhood. Both the northerly and southerly abutters have similar sized decks as that being proposed. Therefore, it would seem that approval of this variance request could not be contrary to the public interest.

2. Granting the variance would not be contrary to the Spirit of the Zoning Ordinance because:
The spirit of the zoning ordinance is to promote as much compliance with the ordinance as practically possible. Both the subject lot and house predate the current ordinances. The existing house does not meet the minimum required 20' setback requirements. Therefore, the applicant is requesting a reduction in the required 20' setback to 10' due to the location of the existing house and door. Other than moving the house or substantially reconfiguring the house, there is nothing the applicant can do to make the proposed deck fully compliant. Strict compliance with the ordinance is not practical when both the hosue and lot predate zoning. It is for this reason, we believe this request is reasonable and within the spirit of the ordinance and should be approved.

3. By granting the variance, substantial justice would be done because:
Under Malachy Glen Associates, Inc. v. Town of Chichester, any loss to the individual that is not outweighed by a gain to the general public is an injustice. Without the requested variance, the applicant would need to substantially reconfigure the existing house in order to build a deck that fully complied with the minimum building setbacks. Denial of the variance would result in the applicant not being able to build a modest sized deck on the rear of his house. The relief being requested is reasonable and the applicant believes similar applications have been previously approved by the ZBA. We can see absolutely no benefit to the public by denying this variance request and the hardship to the applicant, should the application be denied, would be substantial. As the loss to the applicant would greatly outweigh any perceived public gain, it is our opinion that the statues specify that the variance should be approved.

***4.* The proposed use would not diminish surrounding property values because:**

The variance request calls for the applicant to be allowed to construct a 12' x 14' deck on the rear of his house, 10' off the lot line where 20' is required. It is our opinion that the proposed deck would add to the value of the subject property and as such does not diminish the value of the surrounding neighborhood. As stated previously, decks were observed on both the northerly and southerly abutters' houses. Approval of this request will not alter the character of or negatively affect the neighborhood in any way. Should the variance request be approved, the proposed deck will be located 10' from the existing lot line which still allows for an adequate buffer to the abutting property. As such it is our opinion that approval of this variance will not diminish the property values of surrounding neighborhood.

5. Literal enforcement of the provisions of the ordinance would result in unnecessary hardship because of the special conditions of the property that distinguish it from other properties in the area:

(1) 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.

The general purpose of the zoning ordinance is to prevent overcrowding, unsafe situations and promote orderly and efficient development. The subject lot needs a dimensional variance because the location of the existing house and door (which predate zoning) do not comply with the current setback requirements of the ordinance. The size and location of the proposed deck would not be out of character with the surrounding neighborhood. As the location of the house and door predate the ordinance and are considered grandfathered, we feel approval of the variance request would be a fair solution to this existing nonconformity. We can see no public benefit to be gained by denial of this request.

(2) The proposed use is a reasonable one:

Decks are an allowed use in this zoning district providing they comply with the required setback requirements. Approval of this variance request and the subsequent construction of the proposed deck will not change the character of or negatively affect the neighborhood in any way. The subject property is already improved and both the lot and its' improvements predate the current ordinance so full compliance with the dimensional requirements is not practical. A deck is considered a normal ancillary feature to a house and the proposed deck is modestly size and in keeping with the area. Therefore, we believe that approval of this variance request is both reasonable and justified.

The public hearing was closed at 7:50 p.m.

Board Discussion:

John Trottier noted that the existing house is 12' from the property line. The applicant is willing to go back to 12' from the property line for the deck.
Other Board members agreed that the applicant is willing to compromise with regard to the setback being 12' instead of the requested 10'. The Board felt that 12' is a good

compromise. This will make it no worse than the present house and it will keep the distance between the neighbor's property.

Mike Kamsinki stated that he felt the oral part of the presentation done by Surveyor Wichert was very good but felt that the written presentation done with regard to the criteria was very condescending to the Board. This is not a right as noted in the presentation.

Wayne Bracey stated he had some concerns for the abutters. He felt that if the deck is approved, every effort should be made to moving it down there so it is not infringing upon the property lines.

Alison Vallieres stated that the 12' x 14' deck was alright with her. We are not going to change the size. We will just change the setback from 10' to 12'.

John Trottier, Chairman, noted the following members would be voting members on this request:

John Trottier
David Nault
Alison Vallieres
Wayne Bracey
Dan DalPra

MOTION:

John Trottier made a motion that the Dunbarton Zoning Board of Adjustment grant the request for a Variance to Article 4, Section C.1.c. (Page 20) from Michel Charron to allow him to build a 12' x 14' open deck (no roof) no closer than 12' from the lot line whereby a 20' setback is required at his property located on 4 Stephanie Road at Gorham Pond in the Low Density District in Dunbarton, NH. Dan DalPra seconded the motion. The motion passed unanimously.

There being no further business, the meeting adjourned at 8:20 p.m.

Respectfully submitted,

Alison R. Vallieres, Secretary