

**DUNBARTON ZONING BOARD OF ADJUSTMENT
MONDAY, MAY 13, 2013
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 Bracy
Michael Kaminski, Alternate**

Other Town Officials:

**Kyle Parker, Building Inspector
Kelly Dearborn-Luce, Building, Planning and Zoning Department
Ken Swayze, Chairman, Dunbarton Planning Board
Jeff Crosby, Road Agent
Jon Wiggin, Fire Chief**

Members of the Public:

**Ted Vallieres, Dunbarton Historical Society
Mert Mann, Dunbarton Historical Society
Jacques Belanger, Surveyor
Donna Dunn
Andrew Dunn**

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, NOVEMBER 19, 2012

MOTION:

David Nault made a motion that the Dunbarton Zoning Board of Adjustment approve the minutes of the previous meeting of Monday, November 19, 2012 as written. Dan DalPra seconded the motion. The motion passed unanimously.

ELECTION OF OFFICERS:

Chairman:

MOTION:

David Nault made a motion that the Dunbarton Zoning Board of Adjustment nominate John Trottier as Chairman. Dan DalPra seconded the motion. The motion passed unanimously.

Vice Chairman:

MOTION:

Dan DalPra made a motion that the Dunbarton Zoning Board of Adjustment nominate David Nault as Vice-Chairman. Wayne Bracy seconded the motion. The motion passed unanimously.

Secretary:

MOTION:

John Trottier made a motion that the Dunbarton Zoning Board of Adjustment nominate Alison Vallieres as Secretary. Dan DalPra seconded the motion. The motion passed unanimously.

7:00 P.M. PUBLIC HEARING – THE DUNBARTON HISTORICAL SOCIETY (H3-01-05) REQUESTS A VARIANCE TO ARTICLE 4, SECTION C. 1. c. DIMENSIONAL REGULATIONS OF THE DUNBARTON ZONING ORDINANCE TO ALLOW THEM TO RECONSTRUCT A 1763 CAPE CLOSER THAN THE REQUIRED SETBACK AT THEIR PROPERTY LOCATED ON 276 STARK HIGHWAY NORTH IN THE LOW DENSITY DISTRICT IN DUNBARTON, NH

Ted Vallieres, President, Dunbarton Historical Society, appeared before the Board to present the Society's request for a Variance. He presented a letter of authorization allowing him to act on behalf of the Dunbarton Historical Society for this request.

Ted Vallieres stated the Dunbarton Historical Society was in the process of reconstructing a 1763 Cape which was donated from the present owners of Flintlock Farm. The building was dismantled and is being stored. The Cape will be approximately 30' x 30'. They would like to locate the building on the southern boundary next to the existing Blacksmith Shop. The Zoning Ordinance allows them to put the building within 20 feet of the boundary. If the building is put 20 feet from the boundary, there will only be about 18' between the two buildings.

The Historical Society has activities on the rear of the property such as farm day and other activities. If the building is put at the rear of the property, it will limit these type of activities. In addition, the Dunbarton Fire Chief has requested that the buildings be at least 30 feet apart due to the fact that they both have wood shingle roofs and also the Fire Department would need to access the property with a wider span than 18'.

Ted Vallieres stated that the Fire Chief is present this evening but has to attend another meeting and would appreciate any questions the Board may have regarding this.

Fire Chief Jon Wiggin stated he would like to see as much room as possible between the two buildings so he would be able to have egress to the back of the property with his Fire truck. He stated there are standards that recommend this type of building be at least 30 feet away from the other building. They are going to have a challenge with trying to meet the building code. The original plan was a little too tight.

Dan DalPra asked about the back of the property. You want to leave it open for functions.

Ted Vallieres noted that the back has been filled with approximately 50 truck loads of fill which is 7 feet deep. It has not been compacted. We would have to put pilings in. In addition, the foundation will be only an 18" trench with stones with granite on top of the stones similar to what was done in the 1760's. There is no cement foundation. We don't feel the fill would support the building.

We have talked with all the neighbors and none of them have a problem with this location. Have spoken with Fred Mills, Sr. who is a Trustee of the St. John's Church and he agrees there is no problem with the Church.

There will be no water or septic system for this building. Will have electricity because of small windows, etc.

Ted Vallieres answered the questions necessary for the granting of a Variance as follows:

1. The variance will not be contrary to the public interest because:

The Dunbarton Historical Society is a small non-profit organization dedicated to preserving town history and the location of this building would not infringe on the abutting church property.

2. The spirit of the Ordinance is observed because:

The Fire Chief is recommending that this new building be placed as far from the abutting Blacksmith Shop as possible because of wood shingle roofs and access to the rear of the property with fire apparatus.

3. Substantial justice would be done because:

Without this Variance, it would be difficult for the Society to access the rear of the property for public events and fire apparatus.

4. The values of surrounding properties are not diminished because:

The Society is reconstructing a 1753 cape as an original historic building and it will blend in with the historic homes and church in the neighborhood.

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

(a) For purposes of this subparagraph, "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;

The variance is needed in order to meet the recommended distance between buildings on the site. There is no other location on the property that this building could be reasonably sited.

(ii) The proposed use is a reasonable one.

The proposed use is a non-occupied residential building in a residential neighborhood. This is a reasonable use.

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

Robert/Ellen Allwood - Not Present
Theresa Tolman - Not Present
Dunbarton Episcopal Church - Not Present
David Dugrenier Trust - Not Present
Gertrude Dulude Revocable Trust - Not Present
Jacques Belanger Surveying - Present. (Surveyor of the property)

Board Discussion:

The Board reviewed the necessary criteria for the granting of the Variance as follows:

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

Mike Kaminski stated that this is a matter of public safety to have the building located where it is proposed. The Fire Chief is recommending this. I think it is a great idea.

2. The spirit of the Ordinance is observed because:

Dan DalPra stated that the Fire Chief is making a recommendation for this location in the spirit of the ordinance. The land between the two buildings is much more stable than the filled area.

3. Substantial justice would be done because:

It was noted that this is a Non-Profit organization dedicated to preserving historic properties, etc. The proposed location will make the property accessible for public functions, etc.

4. The values of surrounding prperties are not diminished because:

John Trottier stated he remembers going to farm day at the Society. This makes sense. The 1763 original historic building will fit in with the neighborhood.

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

It was noted this is a residential neighborhood and this is a residential use. Dan DalPra stated this seems like a reasonable use.

At this point in the discussion, Alison Vallieres stated she would abstain from voting and discussion because she was a member of the Historical Society.

At this point, John Trottier, Chairman, closed the Public Hearing.

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

John Trottier
David Nault
Dan DalPra
Mike Kaminski, Alternate
Wayne Bracy

MOTION:

Dan DalPra made a motion that the Dunbarton Zoning Board of Adjustment grant the request from the Dunbarton Historical Society (H3-01-05) a Variance to Article 4, Section C.1.c. Dimensional Regulations of the Dunbarton Zoning Ordinance to allow them to reconstruct a 1763 Cape closer than the required setback at their property located on 276 Stark Highway North in the Low Density District in Dunbarton, NH in accordance with the plan as submitted this evening.

Mike Kaminski seconded the motion. The motion passed unanimously with the following vote:

Trottier - Yes
Nault - Yes
DalPra - Yes
Kaminski - Yes
Bracy - Yes

7:15 P.M. PUBLIC HEARING – SHAWN & ALICIA BRADY (C3-02-10) REQUEST A VARIANCE TO ARTICLE 4. A. Use Regulations, 7. Structures Per Lot - “NO MORE THAN ONE SINGLE-FAMILY DWELLING STRUCTURE, OR MORE THAN ONE CONNECTED TWO-FAMILY DWELLING STRUCTURE SHALL BE PERMITTED ON ANY LOT” AND TABLE OF USES, WHICH IF GRANTED, WOULD ALLOW THEM TO APPLY TO THE DUNBARTON PLANNING BOARD FOR A LOT LINE ADJUSTMENT OF THEIR PROPERTY LOCATED ON 1062 GORHAM POND ROAD IN THE LOW DENSITY DISTRICT IN DUNBARTON, NH

Jacques Belanger, Surveyor, appeared before the Board on behalf of Shawn and Alicia Brady for a Variance. In addition, Andrew and Donna Dunn were present on behalf of the Brady's.

The Brady's would like to sell 7.48 acres to the Dunn's to be annexed to their existing lot making a total acreage of 24.33 for the Dunn's. The Brady lot will be reduced to 7.04 acres, the required acreage for a duplex according to the Zoning Ordinance.

Jacques Belanger stated there presently is a home, a barn and a detached cottage which is rented in the back. This lot was previously subdivided and the Willis's built a home. If the Brady's are granted the Variance, it will add 7.48 acres to the Dunn lot making a total of 24 acres and will increase their frontage. Presently, the Dunn's have less than 300 feet of frontage on their lot. There will be no changes in the neighborhood. The second dwelling unit is already existing. It is a stand-alone building and has been there since the 1970's. Both these units have a common well and septic system.

Jacques Belanger stated that if the Variance is granted, it will make both lots conforming because the Dunn's will have over 300 feet of frontage and the granting of the Variance will make the two separate structures on one lot conforming. This is a grandfathered non-conforming use at this point.

The Board noted that an accessory apartment has to be attached to a barn or a garage according to the Zoning Ordinance.

Jacques Belanger, Surveyor, addressed the criteria for a Variance as follows:

1. The variance will not be contrary to the public interest because:

The use of this property is residential. The use and density of the lot will not be effected by this application.

2. The spirit of the Ordinance is observed because:

The spirit of the ordinance will be maintained because the use of the property will remain as a residential use.

3. Substantial justice would be done because:

The land that is being transferred to the abutting lot is excess land, not necessary for the use of the property.

4. The values of surrounding properties are not diminished because:

The current use of the land has been in place since before the early 80's. The change in acreage will have no effect on the surrounding properties.

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

(a) For purposes of this subparagraph, "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;

This application is to bring a current non-conforming grandfathered use into conformance, while reducing the acreage of the lot.

(ii) The proposed use is a reasonable one.

The use of the property will remain the same as it has been for 30+ years.

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

Andrew/Donna Dunn - Both present
David/Melissa Willis - Not Present
Frederic Greenhalge - Not Present
Starr Trust - Not Present
J. E. Belanger Land Surveying - Present, representing the applicants

Board Discussion:

David Nault asked what the total frontage was for Lot 10. Stated Jacques needs to check the math.

Jeff Crosby stated that this is a non-conforming lot because the Brady property has two residential buildings and the second dwelling unit doesn't have a garage. You stated that we have to make the lot conforming. It is still going to be 7 acres. How does that make it conforming? Don't understand.

Jacques Belanger stated they need to ask "forgiveness" from the Zoning Ordinance.

David Nault stated the lot number was wrong, it should be labeled Lot 11 instead of Lot 12.

The Board noted this presently is a 14 acre lot being reduced to a 7 acre lot. There will still be two separate dwelling units on the lot. Glad to see they left seven acres which is a requirement for a duplex.

John Trottier noted that if the separate building were to come down and burn, he would have reservations that we would allow them to rebuild it.

Wayne Bracy stated he had concerns about the shared septic system.

The Board noted this will end up at the Planning Board and they will address any health and safety issues.

Dan DalPra noted that they are helping the adjacent lot become conforming. Our ordinance does allow for this use. Could have a duplex on the lot. It makes sense the Dunn's lot gets more value.

It was noted this was not making the use any more non-conforming that it presently is.

John Trottier, Chairman, closed the Public Hearing.

John Trottier noted the following would be voting members for this request for a Variance.

Trottier
Nault
Vallieres

Bracy
DalPra

MOTION:

David Nault made a motion that the Dunbarton Zoning Board of Adjustment grant the request from Shawn & Alicia Brady (C3-02-10) for a Variance to Article 4. A. Use Regulations, 7. Structures Per Lot to allow two separate structures on one lot and allow them to apply to the Dunbarton Planning Board for a Lot Line Adjustment of their property located on 1062 Gorham Pond Road in the Low Density District in Dunbarton, NH subject to the following conditions:

1. The Certified Plot Plan should be revised to reflect the correct Lot number, frontage, etc. as noted by the Board.
2. Add the number of square feet of the cottage to the plan in order that they not be allowed to increase the size of the dwelling unit in the future.

Dan DalPra seconded the motion. The motion passed unanimously.

OTHER BUSINESS:

Hammand Zaka, Dunbarton Trailside Store - Informal Discussion:

Mr. Zaka appeared before the Zoning Board of Adjustment to discuss the possibility of putting a one bedroom apartment in the office space at his property. He noted there presently is an apartment located in the store already. This would be a second apartment.

Kyle Parker, Building Inspector, stated this is presently a Commercial Property and Mr. Zaka would need a Special Exception to put in another apartment. There is no provision to allow this to have a second rental unit without coming to the Zoning Board of Adjustment for a Special Exception.

David Nault expressed concern about the existing septic system. It was put in for an office space and not another apartment.

The Zoning Board of Adjustment noted they could not make any recommendations at this point.

Mr. Zaka was advised to apply for a Special Exception if he chose to put in another apartment.

There being no further business, the meeting adjourned at 7:50 p.m.

Respectfully submitted,

Alison R. Vallieres, Secretary

