

DRAFT, SUBJECT TO REVIEW, CORRECTION AND APPROVAL

(Approved as Amended on 9/12/16)

DUNBARTON ZONING BOARD OF ADJUSTMENT

MONDAY, AUGUST 8, 2016

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
Dan DalPra, Vice-Chairman
Alison Vallieres, Secretary
Michael Kaminski
James Soucy, Alternate
John Herlihy, Alternate

The following member was absent:

David Nault

Other Town Officials Present:

Line Comeau, Town Administrator
Stephen Laurin, Building, Planning and Zoning Department
Ron Jarvis, Kuncanowet Committee

Members of the Public Present:

Jacques Belanger, Surveyor
Real Boyer
David Kashulinas
Michael Smith
William Ingalls

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 two 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, JUNE 13, 2016

MOTION:

Dan DalPra made a motion to accept the minutes of the meeting of Monday, June 13, 2016 as submitted.

Michael Kaminski seconded the motion. The motion passed by a majority vote with Alison Vallieres and John Herlihy abstaining because they were not present at the June 13, 2016 meeting.

7:00 P.M. –PUBLIC HEARING – MICHAEL SMITH AND DAVID KASHULINES (K1-01-23) REQUEST A VARIANCE TO ARTICLE 4, SECTION C. NONCONFORMING LOTS, ITEM 1. TO ALLOW THEM TO BUILD A HOUSE ON AN EXISTING LOT WITH PAPER ROAD FRONTAGE AT THEIR PROPERTY LOCATED ON HOLIDAY SHORE DRIVE IN THE GORHAM POND SUBDIVISION IN THE LOW DENSITY DISTRICT IN DUNBARTON, NH.

John Trottier, Chairman, read the Public Notice. He immediately turned the floor to Michael Smith and David Kashulines to present their case. They noted the following:

- They previously came before the Zoning Board of Adjustment on August 13, 2012. One of the items the Zoning Board requested was a more complete plot plan showing where the well and proposed septic system would be located.**
- Stated they were looking for a Variance to allow them to build a house on the existing lot. This previously was two lots which were combined into one lot which consist of about an acre. They were previously two separate 1/2 acre lots. We should be able to build on the existing combined lot because it is almost an acre.**
- In addition, the Zoning Board had asked that wetlands be shown on the Certified Plot Plan. The present plan shows a house, proposed well and a septic design approved by the State of New Hampshire. In addition, it shows the location of the abutters' wells as requested by the Board.**
- This lot is located in the Gorham Pond area. Many of the houses were built on 1/2 acre lots. This lot is larger than most lots in this area.**
- Noted they reviewed the minutes of the August 13, 2012 Zoning Board Meeting and improved the plan accordingly.**
- Also presented a letter from the Fire Chief stating that the access is acceptable for a house to be built. See attached letter.**

John Trottier, Chairman, asked the applicants to address the necessary criteria for the granting of the Variance as follows:

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

Answer - This was a lot prior to the 1970 Zoning law. It was a result of a subdivision that was allowed in the 1950's. Most lots are smaller than ours and houses have been built on them over the years. My lot would be no different than the other lots in the development

2. The spirit of the Ordinance is observed because:

Answer - An Ordinance was passed to allow building in denser areas where lots have been established prior to 1970 Zoning. We feel our lot falls into the original intent of the Ordinance that allows homes to be built on lots smaller than normal.

3. Substantial justice would be done because:

Answer - Our lot abuts other properties in the development that have already been given permission to build houses. Their lots are smaller than ours. Our lot is larger than most. We should be allowed to do the same as the surrounding properties were able to do.

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

Answer - A house built on the lot would be new and up to current codes. I believe a new home would enhance surrounding property values and not diminish them.

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;

Answer - It would be a hardship because other lots in the area were able to be developed and have homes put on them. We purchased the lot with the expectation that at some point a house could be built on it. All lots in the development are smaller than normal.

(ii) The proposed use is a reasonable one.

Answer - We are staying within the spirit of the subdivision's original concepts which allow for a house to be built on smaller lots within this development. Our lot is larger than most. It was originally two lots which have been combined to make one larger lot.

(b) If the criteria in subparagraph (a) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

Board Questions:

Mike Kaminski asked how do you expect the paper road in front of your house will be plowed/maintained.

Michael Smith stated they would join with other people regarding the maintenance.

Mike Kaminski noted that if you sold the house and there was only a handshake agreement, the new owner would have nothing in writing. Would you be amendable to having something in writing that the owners would have to maintain 130' to your driveway? Not sure what the agreement should say, etc.

The applicants noted that once the house is built, we would have to come up with a maintenance agreement that is acceptable to everyone. The agreement would only go to their home.

John Trottier, Chairman, agreed with what the Fire Chief has recommended that there be a signed Agreement and Release form regarding municipal services and recorded at the Registry of Deeds. This document would run with the land. Any one purchasing the land should know that they are purchasing a parcel of land that the town is not going to maintain the road. This should be a condition of approval.

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

Michael Smith and David Kashulines - Both Present (Owners of property)

Arthur Siciliano, Jr. - Not Present (Surveyor)

Lake Gorham Association c/o Lou DeBerio - Not Present (Stephen Laurin reported that Lou DeBerio had called and said there were no objections from the Association.)

Michael Adams - Not Present

Edbar Properties - Not Present

Frederic Greenhalge - Not Present

William Ingalls - Present - Stated he wanted the Board to know that there is no road maintenance at all by the Town. The Town does not plow the road. Stated he has personally paid to fix the road. The Town accepted 5,982 feet of road within the Gorham Pond development and this is not included. There is no maintenance from the mailboxes all the way to this lot. If something happens to the neighbor who is presently plowing it, there is no one else to plow the road. The plan is incorrect in the statement that "Road Maintenance ends here". There is no road maintenance done by the town. I was never given a release to sign. There is public access to the Kuncanowet Trails. We have had to pay for some grading. Every couple of years, we have to fix the pot holes and ditching. It is important that it be a condition of any approval that this note regarding "Road Maintenance ends here" be stricken from this plan.

The Board asked how the people on that road get along. Mr. Ingalls stated he was relatively easy going but he remembers a Town Meeting when Anne Merrill stated that just to get

these people to talk with each other is a chore. The first two people on the road don't get along.

Mr. Ingalls stated that he objected to the land value on his property.

Thomas Carr , Meridian Land Survey - Not Present

Beverly McDonnell Trust - Not Present

Alfred Santilli/Lisa Santilli - Not Present

Town of Dunbarton, Kuncanowet - Ron Jarvis present. Had no objection

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

Board Discussion:

John Trottier, Chairman, stated the Board would be addressing the criteria for the granting of the Variance as follows:

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

It was noted that the combining of the two lots was in the public interest thus creating a larger lot. Board members agreed with this fact.

2. The spirit of the Ordinance is observed because:

By combining the two lots, they are going over and above the requirements. Board members agreed. It was noted they are at the very end of a paper road. The existing roadway will allow access. Board members agreed.

3. Substantial justice would be done because:

It was noted that the lot is larger than most in the Gorham Pond area. Board members agreed.

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

The building is a new house. They are building a house with more land than what other houses are built on in the neighborhood. Would not result in a negative property value.

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;

If the Variance were denied, it would be a hardship because there are other smaller lots that are built upon in the area. All lots within the development are smaller than normal. Board members agreed with this statement.

(ii) The proposed use is a reasonable one.

The lot was created by combining two lots. In addition, one half of the lot is wetlands. Board members agreed.

(b) If the criteria in subparagraph (a) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

At this point in the meeting, John Trottier, Chairman, stated the following members would be voting on this application for a Variance:

**John Trottier
Alison Vallieres
Dan DalPra
Michael Kaminski
James Soucy, Alternate**

MOTION:

Dan DalPra made a motion that the Dunbarton Zoning Board of Adjustment grant the request from Michael Smith and David Kashulines (K1-01-23) for a Variance to Article 4, Section C. Nonconforming Lots, Item 1. to allow them to build a house on an existing lot with paper road frontage at their property located on Holiday Shore Drive in the Gorham Pond Subdivision in the Low Density District in Dunbarton, NH subject to the following conditions:

1. That Michael Smith and David Kashulines sign an "Agreement and Release Form Regarding Building Permit for Property Abutting a Private Road" Municipal Waiver to be recorded at the Merrimack County Registry of Deeds regarding not having Town services as indicated in Fire Chief Wiggin's letter dated July 12, 2016.

2. The Certified Plot Plan be revised as follows:

- Strike out the clause "Road Maintenance stops here" prior to the final approval for the Variance.***
- Appropriate setbacks be shown as if this was a town road (25 foot setbacks)***
- The McDonnell address be corrected to the legal address of 27 Holiday Shore Drive***
- The Tax Lot Number be corrected to K1-02-23.***

Michael Kaminski seconded the motion. The motion passed unanimously.

At this point in the meeting, Mr. Ingalls asked what steps he should take to get the Town to maintain the paper road which he lives on.

He was told he should petition the Selectmen and ask them to plow the road or put together a Petition Warrant Article for Town Meeting for the Town to maintain the paper road.

PUBLIC HEARING - J. E. BELANGER LAND SURVEYING REPRESENTING EVELYN KANTOR TRUST (B4-01-07) REQUEST A VARIANCE TO ARTICLE 4, SECTION C. NONCONFORMING LOTS, DIMENSIONAL REQUIREMENTS, TO ALLOW THEM TO KEEP IN PLACE AN EXISTING STORAGE BUILDING 2'7" FROM AN ABUTTING SIDELINE. THE BUILDING IS LOCATED IN AN EASEMENT HELD BY THE ABUTTING LOT LANDOWNER FOR THEIR USE, LOCATED AT 1015 MEADOW LANE IN THE LOW DENSITY DISTRICT IN DUNBARTON, NH

John Trottier, Chairman, opened the Public Hearing at 8:05 p.m. for the Evelyn Kantor Trust request for a Variance and read the Public Notice into the record.

Jacques Belanger, Surveyor, and representative for Evelyn Kantor Trust, presented the Certified Plot Plan and explained the situation to the Board. He stated the following:

- The subdivision was done in the 1950's. In 1976 Ray Allard wanted to move the line between the two lots to gain 40' for the Allard (Boyer) lot. It was decided to give the Allard (Boyer) lot a 40' easement. The land would be owned by Kantor but Allard could use it. The reason for this at that time was that the Allard Lot lot was less than the required square footage at that time. By granting the easement allowed the Allard lot to utilize the land.
- The existing storage shed (owned by Boyer) is located on the easement (Kantor Property) less than the required setback. This is the reason for the Variance.
- Boyer came to the Building Department for a Building Permit to build a storage shed on the Kantor Property in July 2015. He was given a Building Permit because it appeared the building was within the appropriate setback.
- The Building Department received a request for an electrical inspection in November 2015 and at that time, it was determined that the storage building did not meet the setback requirements.
- At that point Kantor and Boyer were advised to either apply for a Variance or move the storage building.

At this point in the meeting, Mr. Boyer stated that Jeff Kantor was very ill at that time. Mr. Boyer determined that the storage building was too close to the line and let Jeff Kantor know. Mr. Kantor said it was okay, just leave it where it is. Due to Jeff's illness, Mr. Boyer did not want to pursue any

action at that time. He did not want to bother Mr. Kantor. Mr. Kantor has since passed away and we need to get this straightened out. This is the reason for the request for the Variance.

It was noted that Evelyn Kantor has signed off on allowing Mr. Boyer to locate the storage shed on the Kantor property. The size of the shed is 21' x 16'. The shed is not visible from the roadway due to a slope, etc. It is 11' 6" tall.

Stephen Laurin, Building Department, noted that the original application for the Building Permit showed the storage building located within the appropriate setback on the Kantor property and the Building Permit was issued. Once it was determined that it was in a different location, the Certified Plot Plan was changed to show the present location and they applied for the Variance.

James Soucy stated that the Consent Form signed by Evelyn Kantor, Kantor Trust, should be recorded at the Merrimack Registry of Deeds so in the future any owner of the lot would have an opportunity to see what the situation is.

At this point in the meeting, John Trottier, Chairman, asked that Jacques Belanger, Surveyor and representative for the applicant, address the necessary criteria for the granting of a Variance as follows:

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

Answer - The structure is located in a neighborhood of non-conforming lots. The location and appearance of the building appears as a conforming location due to the easement it is located on.

2. The spirit of the Ordinance is observed because:

Answer - The abutting property is the actual owner of the structure because of a used easement on the abutting lot. The location of the structure appears to be almost conforming.

3. Substantial justice would be done because:

Answer - The use of this structure is to store equipment and maintenance of the property.

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

Answer - The building is well constructed and maintained, and allows for the storage of equipment that may otherwise be left outside in view.

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;

Answer - The location of the structure is placed where it has ease access to the existing house. Locating it in other areas would be more inconvenient to use and would interfere with abutting property owner's views.

(ii) The proposed use is a reasonable one.

Answer - The proposed is is storage of maintenance equipment which will keep everything out of view of abutting properties.

(b) If the criteria in subparagraph (a) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

Public Comment:

There was no Public Comment. There were no abutters present. All abutters were notified by Certified Mail.

John Trottier, Chairman, closed the Public Hearing.

Board Discussion:

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

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

The lots were regarded as conforming at the time they were subdivided. Other lots in this subdivision are of the same size.

2. The spirit of the Ordinance is observed because:

Because of a use easement on the abutting lot, the location of the structure appears to be almost conforming.

3. Substantial justice would be done because:

The use of the structure is to store equipment used for the maintenance of the property.

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

The building is well constructed and maintained and allows for the storage of equipment that may otherwise be left outside in view.

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 location of the structure is in a place where it has ease access to the existing house. Locating it in other area would be more inconvenient to use and would interfere with abutting property owners' views.

(ii) The proposed use is a reasonable one.

The proposed use is for storage of maintenance equipment which will keep everything out of view of abutting properties.

(b) If the criteria in subparagraph (a) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

Michael Kaminski asked when the signed document would be filed at the Registry of Deeds. It was suggested that the documents be signed and recorded within 30 days of the granting of the Variance. It was noted that the document is already drawn up. It should make reference to the modified Certified Plot Plan. It was noted the deadline for this would be September 8, 2016.

James Soucy suggested that the Consent form from Evelyn Kantor and letter from Mr. and Mrs. John Jakows, dated June 8, 1988 from William Donovan along with the Certified Plot Plan be filed at the Registry of Deeds.

John Trottier noted that the property owner is okay with this solution but I wish the property owner was here this evening.

John Trottier, Chairman, noted that the same members of the Board would be voting on this application this evening as follows:

**John Trottier
Alison Vallieres
Dan DalPra**

Michael Kaminski
James Soucy

MOTION:

Michael Kaminski made a motion that the Dunbarton Zoning Board of Adjustment grant the request from J. E. Belanger Land Surveying representing Evelyn Kantor Trust (B4-01-07) for a Variance to Article 4, Section C. Nonconforming Lots, Dimensional requirements, to allow them to keep in place an existing storage building 2' 7" from an abutting sideline. The building is located in an easement held by the abutting lot landowner for their use, located at 1015 Meadow Lane in the Low Density District in Dunbarton, NH subject to the following conditions:

- 1. Modify the proposed Evelyn P. Kantor Revocable Trust Consent document to include reference to correspondence from William J. Donovan to Mr. and Mrs. John Jakows, dated June 8, 1988, recorded at the Merrimack County Registry of Deeds. Book 1726, Page 1096 and record the modified Consent Document at the Merrimack County Registry of Deeds within thirty (30) days (September 8, 2016.)*
- 2. Modify the Certified Plot Plan prior to recording at the Merrimack County Registry of Deeds.*

The motion was seconded by Dan DalPra. The motion passed by a majority vote as follows:

Vallieres - Yes
DalPra - Yes
Kaminski - Yes
Soucy - Yes
Trottier - No

John Trottier, Chairman, stated he just did not like this. The man got a permit and then built the storage shed in the wrong place and then asks for a Variance.

Other Business:

Stephen Laurin, Planning and Building Development, announced that a Law Lecture series is coming up. Any member who wants to attend should contact him. There is money in the budget to cover this. It is being held at three locations throughout the State.

There being no further business, the meeting adjourned with the following motion:

MOTION:

John Trottier made a motion that the Dunbarton Zoning Board adjourn the meeting at 8:25 p.m. John Herlihy seconded the motion. The motion passed unanimously.

Respectfully submitted,

Alison Vallieres, Secretary