

BOARD OF ADJUSTMENT
P O BOX 159
DEERFIELD, NH 03037

APRIL 26, 2022

MINUTES OF MEETING

PRESENT; Board members Anthony DiMauro, Jonathan Leer, Joshua Freed, Amy Lockwood. Also present secretary Jane Boucher.

7:15PM Chair Anthony DiMauro called the meeting to order.

Chair DiMauro suggested postponing election of officers until May, when everyone is present. No one objected.

Joshua Freed announced that he he decided not to serve another term as a member of the ZBA. Chair DiMauro thanked Mr. Freed for his many years of service.

APPROVAL OF MINUTES

Joshua Freed moved and Jonathan Leer seconded to approve the minutes of March 22, 2022.

The following corrections were made to the minutes:

- . Page 1 Paragraph 6: Correct to read "...the pool and house..."
- . Page 2 Paragraph 2: Correct to read "...for an open space subdivision."
- . Page 2 Paragraph 3 :Correct to read "...the building of driveways in open space."
- . Page 2 Paragraph 4:Correct to read "...showing two hammerhead roads..."
- . Page 2 Last Paragraph: Correct to read "...the Planning Board would require eliminating the 350 foot buffer."
- . Page 3 First sentence: Correct to read:...put in three driveways is not contrary to the spirit of the ordinance."

Voted in favor.

It was noted that Spencer Tate had indicated an interest in serving as a member of the ZBA and is attending via zoom.

7:30 Clerk DiMauro introduced members and explained procedure.

Clerk Jonathan Leer read the Notice of Public Hearing.
Case 22-03 Map 207 Lot 37; Applicant/owner John and Donna McGowan, 21 Parade Road, Deerfield, NH (Map 207 Lot 37) are requesting a variance from Article II Section 204.1 and 207.2 for yard dimensions and front yard regulations for the purpose of constructing a carport.

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Case 22-04 Map 411 Lot 41-02: Applicant/owner Michael Barry 41 Mount Delight Road, Deerfield, NH is requesting an equitable waiver for getting a certified plot plan and mortgage.

Case #22-05 The Deerfield Board of Selectmen is applying for a motion of rehearing by the Board of Adjustment in the case of Edward and Sandra Cross for property on Range Road. (ZBA Case 22-02).

Chair DiMauro noted that Case #22-05 will just be a discuss among the Board as to rehearing it and if a rehearing is approved it will need to be properly noticed.

CASE #22-03 Joshua Freed moved to accept CASE # 22-03. Jonathan Leer seconded. Voted in favor.
John and Donna McGown were present.

John McGown advised the Board the he would like to construct a carport which would not meeting front yard setback requirements. He noted that a barn was previously at the location, but was torn down several years ago.

He advised that he will put in a small driveway to access the carport. Joshua Freed questioned if he has applied for a driveway permit. Mr. McGown replied "no, not yet".

Board members reviewed the plans and questioned if another location would be more suitable. Donna McGown spoke noting that she would have to go up and down 128 steps if it was on the other side of the garage.

Mr. McGown read the five criteria for granting a variance on his application. A copy is attached to these minutes.

Richard Pitman spoke in favor of granting a variance to John and Donna McGown, noting the property is in good condition

7:50PM The Board went into deliberative session at completed work sheets at this time.

No one spoke in opposition.

7:55PM Joshua Freed moved to Grant a variance to John and Donna McGown with the stipulation that it be contingent upon receiving a Driveway Permit. Amy Lockwood seconded. Voted in favor.

CASE #22-04 MICHAEL BARRY
Michael Barry was present.

Joshua Freed moved to accept CASE #22-04. Amy Lockwood

seconded. Voted in favor.

It was determined that there wasn't a specific form for an Equitable Waiver.

The Board reviewed a letter submitted by Code Enforcement Officer Richard Pelletier and Section 674:33-a. A copy of each is attached to these minutes.

8:05PM The Board went into deliberative session.

Anthony DiMauro referred to @II of Section 674:33-a "In lieu of the findings required by the board under subparagraphs I(a) and (b), the owner may demonstrate to the satisfaction of the board that the violation has existed for 10 years or more, and that no enforcement action, including written notice of violation, has been commenced against the violation during that time by the municipality or any person directly affected."

Joshua Freed moved to Grant the Equitable Waiver dimensions based on the criteria in section II of RSA 674:33 a and testimony in Richard Pelletier's letter. Amy Lockwood seconded. Voted in favor.

8:15PM Chair DiMauro said that the Board will discuss Case 22-05. There will be no public comment. He noted that there are four members present. He asked Richard Pitman, a member of the Board of Selectmen, if he had any objection to the ZBA discussing this case. Mr. Pitman replied "no".

Chair DiMauro noted that under RSA 677:2 , the Board of Selectmen have legal standing to make this appeal. Appeals have also been received from Erroll Rhodes and Linda Perry.

Chair DiMauro noted that the Board has to decide if they will rehear Case 22-02. If no motion is made to conduct a rehearing, no rehearing will take place. If a motion is made, but not seconded, no rehearing will take place. If a motion is made and seconded , discussion will take place. If a vote is affirmative to Grant a rehearing, the Board will set a date for the rehearing and abutters will be notified. He noted that he would like to have the Planning Board and Board of Selectmen attend the rehearing.

Amy Lockwood moved to rehear Case # 22-02. Jonathan Leer seconded.

Amy Lockwood felt there was sufficient reason based on the evidence received to grant a rehearing. Joshua Freed and Jonathan Leer agreed that a rehearing should be held.

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A rehearing for Case #22-02 will be held on May 24, 2022 at 7:30PM.

Chair DiMauro called for a vote on the motion to rehear: It was unanimous

Anthony DiMauro - In Favor
Jonathan Leer - In Favor
Joshua Freed - In Favor
Amy Lockwood - In Favor

APPOINTMENT

Joshua Freed agreed to serve as an Alternate.

Amy Lockwood moved to appoint Joshua Freed to serve as and alternate member of the Board of Adjustment for one year. Term to expire April, 2023.

The meeting was adjourned at 8:30PM.

Recorded and transcribed by Jane Boucher
Pending Approval by the Board of Adjustment



OFFICE OF THE BOARD OF ADJUSTMENT
P.O. BOX 155
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FACTS IN SUPPORT OF GRANTING THE VARIANCE

1. Granting the variance would not be contrary to the public interest because:

A new car port will be nicer than the Rotted Barn That was There we had Removed six year ago.

2. If the variance were granted, the spirit of the ordinance would be observed because:

We have a small Lot. The car port would only have twenty five foot frontage We need a place to park our cars under coven in winter.

3. Granting the variance would do substantial justice because:

I get weak when I do any physical activity over my head. No having to clean snow off the cars would be a great help.

4. If the variance were granted, the values of the surrounding properties would not be diminished because:

This property was probably one of the worst properties in town when I bought it seven years ago. We have done a lot of improvements to the property that must have increased the values. We think a car port would do the same.



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5. Unnecessary Hardship

A. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:

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 because:

although there will not have forty foot frontage it seems like twenty five feet would be ample frontage.

and:

ii. The proposed use is a reasonable one because:

It doesn't impede any vehicles passing on the road.

B. Explain how, 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.

It would protect our vehicles and prevent snow from accumulating on the vehicles thus complying with state law about snow removed from the cars

Applicant

John McGee

(signature)

Dennis M. Brown

Date

Mar 29, 2022

TOWN OF DEERFIELD

Board of Selectmen
Planning Board of Selectman
Tax Collector/Town Clerk

8 Raymond Road
P.O. Box 159
Deerfield, N.H. 03037
603-463-8811

Board of Adjustment
Building Inspector
Health Office

Board of Adjustment
Re Map411 Lt 41-2

Dear members,

The property located at 165 Mt Delight Rd has existed for a number of years in its current state. The planning board approved a subdivision of the property and inadvertently missed the fact that the setback line runs through the current building on the property. This error occurred when the Katz owned the property 11 yrs ago and has changed ownership 4 times since the error occurred and not discovered until recently. The current owner has applied for financing and his lender has requested a certified plot plan. The engineering company discovered the error. At this time the lender and engineering company has requested an equitable waiver in order to bring the property into compliance. Under the statute the error stands. No other information is available.

Rick Pelletier



Code Enforcement

TITLE LXIV

PLANNING AND ZONING

CHAPTER 674

LOCAL LAND USE PLANNING AND REGULATORY POWERS

Zoning Board of Adjustment and Building Code Board of Appeals

Section 674:33-a

674:33-a Equitable Waiver of Dimensional Requirement. –

I. When a lot or other division of land, or structure thereupon, is discovered to be in violation of a physical layout or dimensional requirement imposed by a zoning ordinance enacted pursuant to RSA 674:16, the zoning board of adjustment shall, upon application by and with the burden of proof on the property owner, grant an equitable waiver from the requirement, if and only if the board makes all of the following findings:

- (a) That the violation was not noticed or discovered by any owner, former owner, owner's agent or representative, or municipal official, until after a structure in violation had been substantially completed, or until after a lot or other division of land in violation had been subdivided by conveyance to a bona fide purchaser for value;
- (b) That the violation was not an outcome of ignorance of the law or ordinance, failure to inquire, obfuscation, misrepresentation, or bad faith on the part of any owner, owner's agent or representative, but was instead caused by either a good faith error in measurement or calculation made by an owner or owner's agent, or by an error in ordinance interpretation or applicability made by a municipal official in the process of issuing a permit over which that official had authority;
- (c) That the physical or dimensional violation does not constitute a public or private nuisance, nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of any such property; and
- (d) That due to the degree of past construction or investment made in ignorance of the facts constituting the violation, the cost of correction so far outweighs any public benefit to be gained, that it would be inequitable to require the violation to be corrected.

X II. In lieu of the findings required by the board under subparagraphs I(a) and (b), the owner may demonstrate to the satisfaction of the board that the violation has existed for 10 years or more, and that no enforcement action, including written notice of violation, has been commenced against the violation during that time by the municipality or any person directly affected.

III. Application and hearing procedures for equitable waivers under this section shall be governed by RSA 676:5 through 7. Rehearings and appeals shall be governed by RSA 677:2 through 14.

IV. Waivers shall be granted under this section only from physical layout, mathematical or dimensional requirements, and not from use restrictions. An equitable waiver granted under this section shall not be construed as a nonconforming use, and shall not exempt future use, construction, reconstruction, or additions on the property from full compliance with the ordinance. This section shall not be construed to alter the principle that owners of land are bound by constructive knowledge of all applicable requirements. This section shall not be construed to impose upon municipal officials any duty to guarantee the correctness of plans reviewed by them or property inspected by them.

Source. 1996, 226:4, eff. Jan. 1, 1997.