

BOARD OF ADJUSTMENT
DEERFIELD, NEW HAMPSHIRE
DECEMBER 22, 2020

MINUTES OF MEETING

PRESENT VIA ZOOM; Board members Joshua Freed, Jonathan Leer, Anthony DiMauro, Stephen Stephenson. Alternate member Harry Hotaling. Also present secretary Jane Boucher.

Chair Joshua Freed called the meeting to order at 7:15PM.

APPROVAL OF MINUTES

Anthony DiMauro moved to approve the minutes of November 24, 2020. Jonathan Leer seconded. Voted in favor.

7:20PM The Board recessed at this time.

7:30PM Chair Freed called the meeting back to order.

Stephen Stephenson recused himself from Case 20-08. Chair Freed appointed Harry Hotaling a voting member.

CASE 20-08 MAP 411 LOT 18 CONTINUED FROM NOVEMBER 24, 2020
Clerk Jonathan Leer read the Notice of Public Hearing, Applicant/owner MDGF LLC, 136 South Road, Deerfield, NH for property at Map 411 Lot 18 Kettle Rock Road, Deerfield, NH for the purpose of building a single family house is requesting a variance from Article II, Section 204 and 207.1 and Article VI, Section 602 definitions Public Right of Way for frontage on a public way.

George Kelley IV was present via zoom.

Anthony DiMauro moved to take case 08-20 off the table. Jonathan Leer seconded. Voted in favor.

Mr. Kelley provided a statement with his application, a copy is attached to these minutes.

Mr. Kelley noted that the lot does have 500 feet of frontage on Kettle Rock Road, a Class 5 Road. If a variance is granted he will sign an agreement with the Board of Selectmen to maintain the road. He noted he will construct one home and will not be subdividing further.

No one spoke in favor or opposition.

7:46PM The Board went into deliberative session and completed work sheets.

7:55PM The Board came out of deliberative session.

Anthony DiMauro move to GRANT a variance to MDGF LLC for property on Kettle Rock Road, Deerfield, NH. Harry Hotaling seconded. Voted in favor.

8PM CASE 20-13 KAREN FESTA AND KELLY GAMACHE 68 MOUNT DELIGHT ROAD

Clerk Jonathan Leer read the Notice of Public Hearing by which Karen M. Festa and Kelly A. Gamache, 68 Mount Delight Road, Deerfield, NH (Map 414 Lot 142.1) is requesting a variance from Article II Section 204.1 and Section 207.2 for setbacks for building a shed.

Karen Festa was present via zoom along with Edward Cross and Errol Rhodes.

Chair Freed explained procedure.

Karen Festa explained that they wish to construct a 10 ft x 6 ft. shed 6- 8 feet from the property line. The zoning requirement is 10 feet, The reason is the proposed area is hard packed gravel and would eliminate the need to remove several trees. The shed will be located on the right back corner of the property and barely seen from the road. The septic system is on the other side of the house. She noted that she has spoken with abutter Edward Cross and he had no objections.

At this time Mr. Cross said that he did not object to the building of a shed.

Errol Rhodes questioned the location of a marsh which Ms Festa mentioned in her presentation . He questioned if the setback from wetlands would be in compliance with zoning.

Board members noted that wetlands setback was not mentioned in the denial letter from Mr. Pelletier.

8:17PM The Board went into deliberative session.

Anthony Dimauro said he had a hard time with the proposed location of the shed.

8:20PM The Board came out of deliberative session.

Ms.Festa said that if they moved the location, a section of patio would also have to be removed.

8:30PM The Board went back into deliberative session and completed work sheets.

Anthony DiMauro moved to Grant a variance to Karen Festa and

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Kelly Gamache for property on 68 Mount Delight Road (Map 414 Lot 142-1). Stephen Stephenson seconded. Voted in favor. It was unanimous.

The meeting was adjourned at 8:40PM.

Transcribed by Jane Boucher
Pending Approval by the Board of Adjustment

This request is to allow a single-family home to be built on a 12 plus acre lot of record. The only deficiency preventing the issuance of a building permit, is the lack of frontage on a Class 5 road. The lot does have 500 feet of frontage on a Class 6 road. This lot has 4 times the usual required 3 acres and 2 1/2 times the usual, 200 feet of frontage. The frontage however, is on a Class 6 road.

I did offer to upgrade Kettle Rock road to a class 5 road which would have allowed a building permit to be issued. The Selectmen for the Town of Deerfield made it clear they did not want that to happen. The only option for reasonable economic use of this lot is the issuance of a variance from this board to obtain a building permit on the class 6 road.

There is a clear precedence from this board to grant this request. The abutting lot on the North boundary line, was subdivided from this lot some years ago. It is a 4 to 5-acre lot with 277 feet of road frontage also on the same class 6 road. The abutting lot was subdivided from the parent parcel owned by my LLC which is the subject of this variance request. That abutting lot owner requested and was granted a variance to build on that lot. There is now a single-family home there. Granting this request would be completely in keeping with the history of this board and this property.

In NH lots of record in existence prior to zoning rules being implemented are entitled to "grandfathered" status for uses that were conforming uses, prior to the implementation of new rules that render them ineligible.

NH gives legal rights to substandard lot owners which state that the owner cannot be deprived of the viable economic use of the property. To deny such use constitutes "Takings". The use requested here is a conforming use.

The criteria for granting this variance is to demonstrate hardship to this board. Applicants for a variance may establish unnecessary hardship by proof that:

1. A zoning restriction as applied to their property interferes with their reasonable use of the property.
2. No fair and substantial relationship exists between the general purposes of the zoning and the specific restriction on the property.
3. The variance would not injure the public or private rights of others.

Granting this variance request will allow for the reasonable economic use of the property. A denial of this request would effectively preclude viable economic use of the property.

George F. Kelly IV