

TOWN OF LYNDEBOROUGH

Zoning Board of Adjustment

Meeting Minutes

August 20, 2019

Approved on October 2, 2019

7:00 PM Call to Order & Roll Call

Members Present: Chairperson Karen Grybko, Vice Chair Rick Roy, Tom Chrisenton and Linda Anderson

Public Present: Art Siciliano, Harry Herbert, Gary Herbert Bob Rogers and Building Inspector/Code Enforcement Officer Leo Trudeau

New Business:

Case 2019-2 – Equitable Waiver from 702.3

Harry and Donna Herbert, Map 207, Lot 3 on Osgood Road

Harry and Donna Herbert are requesting an Equitable Waiver from Zoning Section 702.3 regarding setbacks in order to have the foundation of their single-family home at 43.2 feet from the property line because an error was made when the foundation was poured. Lyndeborough Zoning Ordinance requires a 50 feet setback from the property line.

Land Surveyor Art Siciliano presented the case.

Criteria #1: Does the request involve a dimension requirement, not a use restriction?

The applicant selected “Yes”, an error was made when pouring the foundation.

Criteria #2: Explain how the nonconformity was discovered after the structure was substantially completed...AND how the violation was not an outcome of ignorance of the law or bad faith but resulted from a legitimate mistake.

The owner wanted to relocate the house from the position shown on the septic design. The new location was moved closer to the property line to the west. This site is an open field and the owner moved the location of the foundation too far to the west. He thought his measurements were correct but there was an error. The foundation is 6.8 feet into the 50 foot building setback.

Mr. Siciliano said this was an honest mistake. There was a stake to mark the property line but the stake used in preparing the foundation was the wrong one. The mistake was discovered during the as-built phase and after the foundation was poured.

Criteria #3: Explain how the nonconformity does not constitute a nuisance nor diminish the value or interfere with future uses in the area.

This is a private residential property on a dead end street. The public driving by will see a house in a field, which is a normal view from the street. This is a residential property in a residential neighborhood. Similar uses in the same area will not diminish values.

Criteria #4: Explain how the cost of correction far outweighs any public benefit to be gained.

It would be too costly to remove the foundation and install a new one. The property is just over 5 acres which has a 50 foot setback requirement.

Mr. Siciliano showed the septic design to the Board.

Chair Grybko asked why house is located so close to the setback to begin with instead of further from the lot line. Harry Herbert explained this area is an open field. It is wood in the rest then it drops off.

Chair Grybko asked if this is the best location to put the house. Mr. Herbert said it is. It's opened about 250 feet back. It is a dead end road and the lot is lower than the road.

Rick Roy asked who discovered the error. Mr. Siciliano said he did.

Rick Roy asked who staked the foundation. Mr. Herbert said he picked out a stake marker he thought was the 50 foot marker. He tried to pivot it because of the drop in the land. He was worried about the leach field so he split the difference. He didn't want the house facing the logging road. It has been a year since the property was marked and he thought he had the correct stake.

Building Inspector/Code Enforcement Officer Leo Trudeau asked if he could make a comment. He wanted it on record that the area in violation is an "arrow head" corner. The landowner used the wrong stake as the anchor point to pivot the foundation. If he used the right anchor to pivot then the foundation would have stay on that 50 foot line. Mr. Trudeau believes it was an honest mistake and since he required an "as built" drawing, the owner contacted Mr. Trudeau as soon as the mistake was discovered.

The lots on Osgood Road are on a cul-da-sack and the lots are pie shaped. The closer the lot is to the road, the narrower it is. Mr. Chrisenton mentioned that Osgood Road is the only paved road in that area of town.

Linda Anderson reported she looked at lot and felt it would not interfere with neighbors.

No abutters were present.

Bob Rogers gave opinion as a neighbor. In his opinion, he can't see how approving this would in any way harm abutter Kingsbury Timber now or in the future for the use of their land.

ZBA Member Lisa Post wrote a letter which was read into the minutes.

August 20, 2019 Sent via email from List Post to all ZBA Members and Secretary at 2:00pm

Karen & Rick:

Since I cannot be at the meeting tonight, I wanted to pass along my thoughts as Linda Anderson did with the last case as I found that helpful.

With the information provided us by Kathleen, I believe we should grant them the their request to leave the foundation as is, which is only 6.8" off, and we recently granted a foundation to be built with a larger overage to the property line.

I think these cases were similar in the fact that the foundations were near their property lines next to an open field. In this case, the abutting property (LOT 207/4) is owned by the |Society for the Protection of NH Forests and will not be affected by the 6.8" placement of the foundation.

Lisa C.M. Post

ZBA Member Town of Lyndeborough

VOTE: Rick Roy moved that the positon of the foundation was in error and not intentional and to ask for the landowner to move the foundation would be excessively erroneous financially and the Board should accept the Equitable Waiver. It was the landowner who brought up the discrepancy in the "as built" plan. Linda Anderson seconded the motion. Motion passed 4-0.

Chair Grybko informed Mr. Herbert that the written decision will be available for pickup on Thursday afternoon from Citizen's Hall.

Mr. Herbert paid the remaining \$30 with check #167

ZBA Application Update

It was discussed the application is outdated and has erroneous information on it such as a line noting the Girl Scouts. It was also discussed to add an "Office Use Only" section to keep track of the timeline and documents for the application. A proposed application will be worked on.

VOTE: Tom Chrisenton moved, Linda Anderson seconded to eliminate the Girl Scout text line from the ZBA application. Motion passed 4-0.

Correct: Equitable wavier, change to A, B, C, D as the State law does instead of 1-2-3-4.

VOTE: Tom Chrisenton moved, Linda Anderson seconded to make the changes mentioned above. Motion passed 4-0.

Other Business Not on the Agenda:

Leo Trudeau asked the Board asked how to know if it's an equitable waiver or variance. The Board had a discussion with Mr. Trudeau. Mr. Chrisenton explained if a violation as discovered and if it does not exceed 10 years, it would become before the Board. If 10 years later before find out then it will not come before the Board. He suggested to add a requirement on the building permit application, that the boundaries and building should be clearly flagged.

Minutes:

VOTE: Rick Roy moved, Tom Chrisenton seconded to approve the minutes as amended. Motion passed 4-0.

VOTE: Tom Chrisenton moved, Rick Roy seconded to adjourn at 7:43pm. Motion passed unanimously.

Respectfully submitted

Kathleen Humphreys
ZBA Secretary