

1 **TOWN OF LYNDEBOROUGH**
2 **Zoning Board of Adjustment**
3 **Meeting Minutes**
4 **December 7, 2022**

5 *Draft 2*

6
7
8 **7:30 PM Call to Order & Roll Call**
9 **Meeting held at Citizens' Hall**

10
11 **Members Present:** Chairperson Karen Grybko, Lisa Post, and Jon Lavoie

12 **Not Present:** Ray Humphreys, Alt. Pam Altner and Vice Chair Rick Roy

13 **Public Present:** Attorney Frank Quinn, Code Enforcement Officer/Building Inspector
14 Leo Trudeau, Selectman Bob Howe, Mike Decubellis, Jill Dinsmore, Tiffany Christman,
15 John Dishong, Robert Senior, and Astrid Senior.

16 **New Business:**

17 **Case 2022-05**

18 **Owner Joseph Kling, Map 210, Lot 12 on Mountain Road**
19 **Variance 802.03**

20 The applicant is seeking a variance from Zoning Ordinance Section 802.03 to permit
21 construction of a new two-bedroom single-family home on an existing non-conforming lot
22 within the required front, side, and rear setbacks in Rural Lands 2.

23
24 The lot size is .7 acres.

25
26 A variance was granted in 2013. The house proposed tonight is different in size and other
27 aspects than the approved home in 2013.

28
29 Present: Owner's father, Frank Kling and Attorney Frank Quinn from the Law Office of
30 Thomas F. Quinn, P.C. *Authorization to represent form has been filed, dated 10-4-22,*
31 *signed by Joseph Kling..*

32
33 Abutters present: Mike Decubellis, Jill Dinsmore, Tiffany Christman, and John Dishong,
34 all from Mountain Road.

35
36 Dimension of the proposed house is 40x28 feet. The approved house was 24 feet wide.

“It is 7 feet closer off the road”, according to Mr. Kling. The foundation is in the center of the lot. The house would be 15 feet off the side and 25 off the front and rear of the lot line. The rotation of the house is also different and is facing the street more.

Documents submitted tonight

-Deed from 1898 (*typo in original application to say 1989*)

-Planning Board’s driveway approval with the conditions listed dated August 2, 2022
Retroactive Notice of Decision. (see document and below)

Issue: Appeal of declined driveway permit for sight distance, Map 210, Lot 12 on Mountain Road.

Action: The Planning Board approved the Driveway permit for Map 210, Lot 12 with the following conditions:

1. *Applicant shall pay for a “Blind Driveway 200 Feet” sign to be erected on Mountain Road and installed 200 feet south of the driveway*
 2. *No vehicles shall back onto Mountain Road. The Driveway shall include a turning stub that will be available to all parked vehicles and shall be kept clear at all times.*
 3. *The applicant/homeowner shall ensure that no vegetation reduces sight distance.*
- Signed by Chairman Charlie Post*

The lot is located in Rural Lands 2 (RR2) in which current zoning requires 5-acres with 2-acres of contiguous dry land with 500-feet of frontage. 802.03 require all structures be set back 50-feet.

Mr. Kling informed the Board it is a non-conforming lot created by deed to Bradley and Mary Scaley, October 1, 1898. This predates Town Zoning. Due to the very small lot size, it’s not possible to construct anything on the lot within the setbacks. The lot has 80-feet of road frontage and is 100-feet deep. The applicant proposes a 2-bedroom single family house, approximately 40x28 feet, which would be 2,024 sq. feet. It would be two stories tall and have a garage. The septic is proposed for the rear and the well is designed to be constructed in the front of the house.

The current well design has the well radius going into the road and under an abutting property. It was noted Selectmen have discussed their concerns that the well could be contaminated because this section of Mountain Road is heavily salted.

Attorney Quinn referenced Glenn Malachy vs Town of Chichester

The Board reviewed the five criteria. (*see application*)

Abutters Jill Dinsmore, Tiffany Christman, Mike Decubellis, and John Dishong spoke in opposition of an approval to build a home on such a small lot.

The Five Variance Criteria

1. Waiving the terms of the Ordinance will not be contrary to the public interest because:

Attorney Quinn referenced Glenn Malachy vs Town of Chichester.

85 **2. Deviation from the strict requirements of the Ordinance is consistent with the**
86 **spirit of the Ordinance because:**
87

88 The applicant felt the variance would not alter the essential character of the neighborhood,
89 in a residential zone. This is not a subdivision but to construct a single-family dwelling on
90 a legally existing non-conforming lot consistent in the Zoning Ordinance.

91
92 The single-family dwelling will be served by a private well and approved septic design.
93

94 **3. Granting the Variance would do substantial justice because:**
95

96 The applicant wrote, "Perhaps the only guiding rule is this factor is that any loss to the
97 individual that is not outweighed by a gain to the general public is an injustice" Malachy
98 Glen Assoc., Ibid.
99

100 The property will need the variance in order to build a residential unit due to the setbacks.
101 It's a very small lot.
102

103 A denial of a variance would result in no ability to use the property for virtually anything.
104 It is a huge burden on the applicant. It's a modest proposal in a district that allows that
105 use.
106

107 Lisa Post asked if the septic design is done. Frank Quinn said it has been updated to this
108 year's new rules. Chair Grybko asked where the septic will be located. She noted there
109 is a concern for Town officials because that area of Mountain Road, in front of this lot, is
110 heavily salted and the well most likely could be contaminated. F. Kling said the well is
111 planned to be 10 feet from the road. Some members wondered if the well and septic
112 could swap locations. Mr. Kling does not think that is possible due to rocks. They would
113 be willing to sign a Waiver of Liability.
114

115 **Abutter Comments:**

116 Jill Dinsmore, 423 Mountain Road, expressed her concerns for a house to be built on this
117 lot. Her property abuts the Kling lot. Jill Dinsmore said there is 10-feet between that
118 other property and the house which is being situated above on the hill where it is reducing
119 the area of the land and increases more run-off going down the mountain to the stream.
120 Ms. Dinsmore submitted photo of the property. She said her concern is runoff from that
121 and possible from septic being a possibility of leaching into the stream.
122

123 Lisa Post asked about the type of stream and if it's only a stream when it rains. The
124 location was shown to her. The stream runs over the road.
125

126 Attorney Quinn said they we went over salting concerns and are willing to sign a Release
127 of Liability form and record it. The State approved the design and will inspect the
128 construction of the septic and give a permit for operation and that is the State certification
129 the well has been built in the intent of the design and that is to keep the affluent from the
130 design.
131

The stream that goes to the Dinsmore property was discussed. The grade of the slope is steep.

Jill Dinsmore said, "As far as the character of the neighborhood the comments people living in our area, most have larger pieces of property, and we are fairly well-spaced apart and that is why people want to live out in Lyndeborough for peace and quiet and that house will be close to my house. I will look out and see it. That is another concern of mine. That is why people are moving out there for and if I want to resell my house, that will be a concern, someone might not want a neighbor that close. It does impact the character of the neighborhood as far as I'm concerned".

Lisa Post noted there are some trailers on that road that can be seen from the road.

Wetlands were discussed and noted they were not shown. Frank Kling said wetlands are not on his property.

Stephane Christman of 405 Mountain Road read a letter to the Board. *(see letter)* She said that property owners are against this. She felt she is obligated to speak out for herself but also for the many neighbors who expressed grave concern it's becoming over-populated. She mentioned RSA 684:33 allows the ZBA relief if the five requirements are met. She feels it is contrary from public interest because it will be an eye sore. Mountain Road gets hit with a ton of salt every winter and it will ruin their well which will be 7.5 feet from the road.

There should be 75 feet of separation

She discussed an 8,000 sq. foot lot and the setbacks. Residents voted for 500-foot road frontage. She mentioned the recent issues on Chase Road, which is over-built and didn't follow the setbacks. Simply put they ruined the land and the view. This would be doing a major dis-service to the people who settle before us. Who else brought these same issues before and got denied. It's a slippery slope. She respectfully opposed the approval

Frank Kling asked if she is an abutter. She has a lot and does not want to build there. There was a house there in the 90s

Attorney Quinn went back to Glenn Malachy vs Town of Chichester to refute her agreement. He said if the ZBA denies the applicant any reason use of their land and that is "a taking" and the town would be obligated to pay for that land under current prices.

4. The value of surrounding property will not be diminished because:

It's a single-family use. It won't affect traffic because it's not a condo or subdivision

5B: Literal enforcement of the provisions of the ordinance is an unnecessary hardship:

(i) **The following special conditions of the property distinguish it from other properties in the area:**

Look at the zoning map, just off the top and across is 25-acres, next to that is 40-acres, 38-acres, 12-acres, 5-acres, that neighborhood is largely consistent of large lots. Most lots are over 10-acres in size our lot is 80x100 that of items distinguishes from other property. This lot is the only non-conforming lot by size in this area.

(ii) No fair and substantial relationship exist between the general purpose of the ordinance provision and the specific application of that provision to the property because:

The applicant wrote, "The purpose of setback requirement is to prevent the construction of structures and improvements too close to property lines in order to prevent encroachment across property lines and to prevent unattractive developments where structures on abutting properties are located too close to one another creating a crowded appearance...but strict enforcement of the setbacks requirements is not necessary in this instance due to the ways the abutting properties have been developed."

The applicant felt it won't create a problem because this is the only small lot.

(iii) The proposed use is a reasonable one because:

"The proposed use of the property is reasonable. Attorney Quinn said they don't now what is more reasonable in a residential neighborhood than a single-family home. The hardship exists because of special conditions that distinguish it from other properties in the neighborhood. It can't be used without a variance. Without the relief, nothing can be built and that amounts to a taking.

Attorney Quinn said folks who are non-abutters are allowed to speak and they will have to show they are impacted differently.

Mike Decubellis of Mountain Road is not in favor. He talked about meeting obligations that because that is his only ingress from my property. To say it's a grandfather lot from 1800s is not true, it was an animal lot, that is why it's so small. It became a grandfather lot because it was deeded. Just because it's grandfathered does not guarantee a variance to build. That does not hold water in the State. We have zoning provisions even for non-conforming lots. It does have to meet the setbacks. It is not "a taking". The burden does not flip over to the Town because you bought a lot that does not have setback. That's a fact. State will stand up for that. The Criteria for giving a variance in question #1 and 2 you mentioned it will be fine and its safe. That lot does not have property sight distance. Buses go by there. Winter on that mountain is dangerous. Safety is a huge concern there.

Attorney Quinn said the applicant went to the Planning Board and they have a driveway permit. They deiced a driveway can be constructed safely. He added, Landowners have every right to buy a property knowing it needs a variance to use. M. Decubellis said the burden is not on the town, it's not automatic that you get a variance. Attorney Quinn agreed the applicant have the burden. This discussion continued.

225
226 Mike Decubellis argued that safety is a big issue. The well and salt usage is a liability
227 for the Town. Just because you sign the waiver, what about the next owner and the
228 next owner? Mr. Kling will sign the waiver and the next person won't know about. *(Any*
229 *waiver will be required to be recorded at the HCRD). Discussion continued.*
230

231 Leo Trudeau said this is a good opportunity for compromise. The zoning clearly states
232 in Zoning Ordinance 1302 a lot of record with less area and/or frontage at the effective
233 date of zoning can be used for a single-family dwelling. The Planning Board did grant
234 the driveway permit but they didn't think it was safe. They put conditions on the
235 approval. They did because the issue of denying the property owner reasonable use of
236 the land is reasonable. Mike Decubellis added, he already had the variance at that
237 time. *(See above for the NOD from the Planning Board for the driveway)*
238

239 Mr. Trudeau asked if a compromise would be for a smaller house. Why over a 2,000 sq.
240 ft. house on such a tiny lot? The garage is roughly 20x28 ft. Footprint is over 1,100 sq.
241 ft., occupied of the land.
242

243 John Dishong from 496 Mountain Road said his concern is Mr. Quinn will say there is
244 no negative impact on abutters. They would they have impact on me or Jill. What
245 license do you have to make those statements?

246 Mr. Dishong has a concern the 2,300 square ft. will sell for less and because of lack of
247 comps in that area. There is no calculation that will take 5 acres and bring it up or back
248 from .1 acres all the way back up to 5 acres, it's meant to make slight variances, not to
249 go from .2 to 5 acres so there is a negative impact for everyone on the road. He added,
250 this is an absolute travesty. There is no hardship here. The lot has been around since
251 1898 it was used to house animals. It's negatively impact my property values. Unless
252 they want to offset those values, this is denied.
253

254 Attorney Quinn said a driveway permit was approved in 2019 and it does have the
255 conditions on it and we will abide by those conditions
256

257 Leo Trudeau asked in light of the amount of controversy surround this tonight, would it
258 be reasonable for the full board to be here?
259

260 Lisa Post voiced her concerns about part of their job is to look at everything and weight.
261 It all. Everyone's has property rights. Jill Dinsmore said this section of road is the most
262 dangerous part of Mountain Road. This was discussed.
263

264 Jay Minkarah reminded the Board to continue to a date certain and that a variance was
265 already granted for this lot to build a single-family home. The reason this is here, they
266 are changing the house.
267

268 The Board felt there is a lot of information here and would like time to consider it and to
269 also have the full board present for a vote. It was suggested to continue the hearing,

VOTE: Lisa Post made a motion, Jon Lavoie seconded to continue Case 2022-05 for Mr. Kling, Map 210, Lot 12 on Mountain Road to date certain on Thursday, January 5, 2023 at 6:45 p.m. Motion passed 2-0.

Case 2022-06

**Owners Robert & Astrid Senior of Bullard Drive
Section 703 to permit an Airbnb rental**

Code Enforcement Officer Leo Trudeau verified it met the Accessory Dwelling Unit (ADU) requirements. He said the bedroom count is sufficient for the approved ADU septic design and it will handle the bedrooms. The applicant would like to use the ADU as an Airbnb

Section 703.B. Mr. Trudeau said those conditions need to be met in Section 703.b. He also asked about a license.

They have two parking spots. The lot is 20 acres.

VOTE: Lisa Post made a motion, Jon Lavoie seconded to grant the Special Exception for the ADU with the conditions that are on this page, that it will be operated by the owners, 2 occupied, two off street parking. The ADU is already permitted and will be by town regulations. Motion passed 3-0.

The chairman advised the applicant to apply to the Planning Board for a Site Plan Review.

Case 2022-07

**Owners Robert & Astrid Senior of Bullard Drive
Section 703 to permit allow overnight camping on two platform sites, aka Glamping**

Leo Trudeau asked for the definition for campground. Campgrounds are not permitted in all zones.

The applicants already constructed two queen-sized glamping tents, which are on platforms. Water is brought to the site, uses portable showers and portable self-contained toilets. The applicant said their builders informed them that local permits were not needed. They apologized for not knowing that campgrounds were not allowed in Lyndeborough.

There was a discussion that agricultural farm regulations might allow camping.

Robert Senior requested to withdraw their application for Case 2022-07 without prejudice.

Application closed.

Approve Minutes:

November 28, 2022

See changes by Ray Humphreys. No other amendments were suggested.

**VOTE: Jon Lavoie moved, Lisa Post seconded to approve the amended minutes.
Motion passed 3-0**

Adjournment:

**VOTE: Jon Lavoie moved, Lisa Post seconded to adjourn at 9:58 p.m. Motion
passed 3-0.**

Respectfully submitted,

Kathleen Humphreys
ZBA Secretary