



TOWN OF LITCHFIELD

LITCHFIELD ZONING BOARD OF ADJUSTMENT
Litchfield, New Hampshire November 13, 2019

DRAFT

Regular meetings are held at the Town Hall at 7:00 pm on the 2nd Wednesday of each month.

ZBA Members in Attendance (indent if absent):

Richard Riley, Chairman

Albert Guilbeault

John Devereaux

Thomas Cooney (alternate)

Eric Cushing (alternate)

Greg Lepine (alternate)

Mark Falardeau (alternate)

Laura Gandia, Vice Chairman

I. CALL TO ORDER AND ROLL CALL

Richard Riley called the meeting to order at 7:00 pm. He took attendance. Alternate, Thomas Clooney was appointed by the Board; Greg Lepine was appointed by the Board for a full quorum.

II. CHAIRPERSON OPENING REMARKS

Richard Riley reviewed the schedule for hearings.

Case Number: 2019-10

Name of Applicant: Jill Charbonneau Revocable Trust

Owner of Property: Mel's Funway Park, LLC

Location of Property: 454 Charles Bancroft Highway, Litchfield, NH 03052, Map 20 Lots 14,15,16,17

Appeal Requested:

The Applicant seeks an appeal of decision of the Building Inspector and Town Administrator/Interim Zoning Administrator to modify a site plan to enclose three existing pole barns without the Planning Board reasoning entered into record.

Richard Riley indicated that Case 2019-10 had previously been continued in August until this date. He indicated he received a request from the parties to further continuance the case until January 8, 2020.

Mr. Clooney made a motion to continue Case 2019-10 to January 8, 2020. Mr. Lepine seconded. The motion carried 4-0-0.

Case Number: 2019-12

Name of Applicant: Bryan and Heidi Odum

Owner of Property: Bryan and Heidi Odum

Location of Property: 21 Naticook Avenue, Litchfield, NH 03052, Map 18 Lot 29

Appeal Requested

The Applicant seeks a variance from Section 310.00 to allow construction of a garage and in-law suite and family room. The construction of which would encroach 10 FT. into the side setback requirement of 20 FT.

Case Number: 2019-13

Name of Applicant: Josh Lane

Owner of Property: Amy Ashe Lane

Location of Property: 25 Riverview Circle, Litchfield, NH 03052, Map 06 Lot 59

Appeal Requested

The Applicant seeks a variance from Section 310.00 to allow a garage addition which has been construction within the minimum setback requirement.

III. PUBLIC HEARING AND DELIBERATION

Notices of the Public Hearings were posted and published in the Hudson-Litchfield News. Notice of the meeting and agenda were posted at the town hall and public library.

Richard Riley explained there are only four members in attendance this evening. He asked the applicants if they preferred to move forward with a four person Board or postpone until the next meeting when a five person Board can be assembled. The record indicates all applicants agreed to move forward with a four person Board.

Richard Riley called Case #2019-12. He read aloud the requests for variance from the Litchfield Zoning Ordinances.

Case Number: 2019-12

Name of Applicant: Bryan and Heidi Odum

Owner of Property: Bryan and Heidi Odum

Location of Property: 21 Naticook Avenue, Litchfield, NH 03052, Map 18 Lot 29

Appeal Requested

The Applicant seeks a variance from Section 310.00 to allow construction of a garage and in-law suite and family room. The construction of which would encroach FT. into the side setback requirement of FT.

PART I

Mr. Odum indicated the proposed addition will be in character with the rest of the properties in the neighborhood and does not diminish values of surrounding homes. He noted that they are constructing the in-law suite and family room to be able to take care of their aging parents.

Mrs. Odum indicated the house is situated sideways on the property. Mr. Odum noted the abutters have provided letters of approval that are attached to the case file.

The Board studied the proposed addition drawings that reflects where the addition would be situated.

Abutters Mark and Kim Benoit, 5 Waterview Circle, wrote a letter of support. Abutters Brenda and Michael Douglas wrote a letter of support, dated November 10, 2019, stating they have no conflict with the setback of the project.

A request for Variance from Section 300 Article 310.00 to allow construction of a garage and in-law suite and family

room. The construction of which would encroach 10 FT. into the side setback requirement of 20 FT.

Bryan and Heidi Odum addressed the criteria for granting the variance.

1) The granting of the variance will not be Contrary to the Public Interest because the proposed addition would be in character with the existing homes and would not harm surrounding property values. The proposed project does not pose any safety concerns to the public or the abutters.

2) The proposed use will observe the Spirit of the Ordinance as there are no traffic or safety issues that would arise from the proposed addition.

3) Substantial Justice would be done because it is a reasonable benefit to attempt to care for aging parents.

4) The proposed use will not Diminish the Values of Surrounding Properties because the proposed design is in character with rest of the properties in the neighborhood and adds character and value to the existing home.

5) Literal Enforcement of the Ordinance will result in Unnecessary Hardship on neighbors because the proposed structure keeps with the character of the existing neighborhood and the proposed size is not excessive. The addition does not encroach on the left side of the property lot line.

Richard Riley indicated the response on Number 5 addresses Number 2a of the application. He explained when speaking about “no fair and substantial relationship of the ordinance and application to the property” that speaks to what is unique about the property and would sway the Board to grant the variance. He noted that the way the home is situated on the property makes it unique.

Tom Clooney indicated there was reference to the leach field in the back as well.

Jim Bonin noted that the leach field is on the kitchen patio side and to the right side of that is the leaching field and septic, which is the reason the addition is situated so far forward.

Greg Lepine mentioned that the house is turned slightly and if it were more square it would have lined up better with the lot. He commented the spirit of the ordinance is to prevent crowding. He asked the applicants to explain how the proposed addition does not do that to the neighbor.

Mr. Odum commented that the neighbor’s house is sitting back about 125 feet from the road and is further back when compared to our property. He indicated there is nothing that the addition encroaches on their property and it runs parallel to their driveway.

Greg Lepine noted the uniqueness of property is that the home sits sideways on the property.

Richard Riley asked if the in-law suite meets all requirements for an in-law suite. Mr. Odum indicated it does.

Richard Riley commented that the plans reflect the garage will be 16 feet wide, which is average for a single car garage.

Richard Riley opened the meeting to public input.

Hearing no public input, Richard Riley asked for a motion to close public input.

Greg Lepine made a motion to close public input. Tom Clooney seconded. The motion carried 4-0.

PART I

A request for Variance from Section 300 Article 310.00 to allow a garage and in-law suite and family room. The construction of which would encroach 10 FT. into the side setback requirement of 20 FT.

The Board deliberated on the request.

1) Contrary to Public Interest:

The Board agreed there is reasonable use, no safety concerns, and no harm to surrounding property values.

2) Spirit of intent:

The Board agreed there are no traffic or safety issues that arise from the addition.

3) Substantial justice:

The Board agreed the proposed addition does not harm the general public and provides reasonable benefit for applicant.

4) Diminished Value of Surrounding Properties:

The Board agreed the addition would be in character with the existing homes in the neighborhood and add value and character to existing home.

5) Unnecessary Hardship:

The Board agreed that no fair and substantial relationship exists between the general purpose of the ordinance and the specific application because of the uniqueness of property; the proposed use is reasonable.

Richard Riley made a motion to grant a Variance from Section 300 Article 310.00 to allow construction of a garage and in-law suite and family room. The construction of which would encroach no more than 10 FT. into the side setback requirement of 20 FT. Greg Lepine seconded. The motion carried 4-0.

Case Number: 2019-13

Name of Applicant: Josh Lane

Owner of Property: Amy Ashe Lane

Location of Property: 25 Riverview Circle, Litchfield, NH 03052, Map 06 Lot 59

Appeal Requested

The Applicant seeks a variance from Section 310 to allow a garage addition which has been construction within the minimum setback requirement. The construction encroaches 4 FT. into the road setback requirement of 50 FT.

Richard Riley explained there are only four members in attendance this evening. He asked the applicants if they preferred to move forward with a four person Board or postpone until the next meeting when a five person Board can be assembled. The record indicates all applicants agreed to move forward with a four person Board.

Al Guilbeault asked if the garage has already been built. - is this already built?

Mr. Lane indicated the garage has been built. He explained that the acting Building Inspector, Mr. Gilcreast, misinformed us of the setback requirement and assured us we were well within the setback requirements. The foundation was poured and we waited for the foundation inspection, but we never heard from the Inspector (Mr. Gilcreast). Mr. Lane indicated typically, in his experience, if there is no word from the

Inspector the project can continue. He explained it was backfilled and he built it and roofed it. Mr. Lane indicated three weeks later Mrs. Lane found a note in a puddle in the driveway from the Inspector that said you may be in the setback, do not backfill. He testified he received no phone call or other notification. He claims the process was not followed by the Inspector.

Al Guilbeault commented if the Zoning Administrator stated there was a problem there is no permit for the job.

Mr. Lane indicated there is a building permit.

Al Guilbeault commented so there is a permit for the job, the house is within the setback, but there is no variance on the permit.

Mr. Lane indicated he spoke with the new building inspector and Doug Nicoll at the Fire Department. He added he spoke with Rick Charbonneau about the setbacks and indicated there is no information. He commented it is difficult when you are trying to get in contact with someone when there is no building inspector.

Al Guilbeault asked who issued the denial letter.

Mrs. Lane explained after submitting our application for the variance we received a letter of denial. Mr. Lane indicated all the while, the home is open to the weather and their belongings are getting ruined.

Al Guilbeault mentioned that Peter Dionne is the new Building Inspector. He commented there is new input from the Building Inspector and we are going to approve something that was against the Zoning Administrator/Building Inspector.

Mr. Lane commented before Mr. Dionne was hired Mr. Lane was given the wrong information by two town officials.

Richard Riley commented that with nothing in writing that is considered hearsay evidence. He indicated that the Board does not have the drawings submitted to the town. He noted that the applicant could have brought their copies to this hearing.

Mr. Lane indicated that the Building Department took all the files and he did not receive anything.

Al Guilbeault asked if he has the building permit. Mr. Lane indicated that he does have the permit.

Richard Riley asked if the letter denies the building permit.

Al Guilbeault indicated the concern is the Town allowed a person to put in a foundation and the Fire Inspector said it was okay to enclose it for weather and then go to the Zoning Board for a variance.

Mr. Lane mentioned it is a big lot and the road has been widened, which resulted in the setback adjustment.

Al Guilbeault commented that the applicants have no letter from the previous Inspector.

Mr. Lane explained when we first applied for the permit it was approved by Mr. Gilcreast who was the Inspector. He claims that Mr. Gilcreast provided the wrong information. When we called him, he never returned the calls. Mr. Lane testified when he went to the Town Hall Kevin Lynch was back and was acting

Inspector. He spoke to Mr. Lynch about the project and the setback and he advised to apply for a variance.

Al Guilbeault asked if Mr. Lynch provided a denial. Mr. Lane indicated he did not provide a denial, but just provided input.

Al Guilbeault commented the Intern Inspector provided the building permit.

Mr. Lane indicated the building permit was issued. He explained Mr. Gilcrest left his note on one of the foundation ties, but we never saw the note. He noted that no calls were received from Mr. Gilcrest and there was no other notification about any issue. He commented he continued to build because he did not hear anything. He added typically you will be notified by phone and any other means.

Al Guilbeault commented he does not feel comfortable voting on this without hearing from the Inspector or legal counsel.

Greg Lepine indicated there are three things a zoning board can rule: special exception, ordinances, and dimensional area.

Al Guilbeault commented when they measured to the road, they measured it on the slope, which could actually be longer on the slope.

Mr. Lane indicated a laser measure was used and it is 59.6 feet to the curb.

Richard Riley indicated the variance lacks specifics and asked how many feet into the setback are being requested.

Mr. Lane indicated it is approximately 3 or 4 feet. He explained he called a surveyor to get a new plot plan done. The original drawing showed the house with a 12' breezeway and garage at an angle. He indicated with the information from the former Building Inspector about the setback he decided not to angle the garage due to problems with ice dams and other weather related issues.

Richard Riley commented that we seem to be lacking information.

Greg Lepine commented that he was uncomfortable leaving the applicant with a wide open structure.

Mr. Lane indicated the lack of information is due to the Town.

Richard Riley commented without the information it can work in your favor or not in your favor.

Mr. Lane did not understand.

Al Guilbeault explained if the Board votes not to approve the variance, the applicant has to come back with a new set of circumstances explaining why the Board should grant a variance from the setback. He noted we are not saying we do not want to grant the variance, but there is conflicting information with the permit and a lack of information.

Richard Riley commented from what we have been told there was one plot plan that was approved for the permit, but after the structure was built it is not what was reflected on the plot plan and not approved for the permit. He indicated the Board does not have any of that information. He noted it will be challenging to compel the former Interim Building Inspector to come in and testify to the Board. He indicated all those

things have to be looked into before making a decision.
Mr. Lane asked what he needs to do.

Al Guilbeault commented the Board needs to hear from one of the Building Inspectors as to why it is being denied and why it is being denied after a permit was granted. He indicated the Board also needs to see the initial plot plan when the permit was issued and a plan of what exists now.

Mr. Lane indicated that information should be in the file with the blueprints he provided.

Al Guilbeault commented he is surprised the foundation was put in and backfilled and framing was done with no red tag on the building.

Mr. Lane indicated when they received that letter he went to the Fire Department and spoke with Doug Nicoll and Peter Dionne. He noted Mr. Dionne said there was no stop work order on the job.

Al Guilbeault asked if Mr. Dionne issued the denial letter.

Mr. Lane indicated that he showed Mr. Dionne the denial letter with his signature on it and Mr. Dionne said he did not issue the letter.

Richard Riley indicated if we continue the case, we need to publish the decision and capture the reason, which should trigger the Building Inspector and Planning Board.

Al Guilbeault recapped Mr. Lane went to the Fire Station and met with the Deputy Fire Chief and he said to build it. Then Mr. Dionne read the letter and stated there was no stop work order on the project. Mr. Dionne said to go ahead and build it. Then Mr. Dionne said he did not issue the denial letter.

Richard Riley noted we have the denial letter with the new Inspector's signature on it and he is telling you he did not write the letter.

Mr. Lane indicated that was correct. He commented this would not have happened if the correct information was provided. He noted because of the lack of attention by the Town we have to suffer through this.

Al Guilbeault was concerned if the Board makes a decision without an investigation it will set a precedent. He indicated he would like to motion to continue the case until further evidence or a letter from the Building Department is brought to the Board.

Richard Riley made a motion to continue Case #2019-13 to investigate the previous file that contains the information cited, to hear from the existing Building Inspector and the previous Building Inspector, and to have an option to reach out to legal counsel to guide this Board through the case.

Al Guilbeault commented he would like to see the existing plot plan and the original plot plan that was submitted with the application as the original plot plan may have shown the structure was not in the setback because of the angling of the house.

Mr. Lane wanted to know what the next step will be. He indicated he can get the information as soon as possible, but the Building Department should have this in the file. He testified he was told that there is a folder or file that goes to the Zoning Board.

Richard Riley explained that applicants need to bring any evidence when they come before the Board. He noted his motion would essentially require him to engage the Building Department and get that file, as well as ask the Inspector who wrote the denial letter to come to the meeting, and to compel the previous Inspector to come to the Board. The motion also allows the applicant to organize additional documentation and testimony to submit in this case. He commented to be clear the applicant stated the drawing that was submitted with the original permit was not what was built.

Mr. Lane commented there is a town drain that comes down through the property line and if we angled the garage we would have impacted the drain and would have had to replace it.

Richard Riley indicated it is up to you how much you want to document the case.

Mrs. Lane commented the denial letter was received in October and asked what is it typically in response to.

Richard Riley explained the Inspector could have gone by the property and inspected it; a neighbor could have complained. He indicated a denial letter usually occurs at the time of the application for the permit; however, this did not happen when you applied. He noted an applicant will sometimes get a denial letter if there is an inspection responding to a complaint or request.

Richard Riley rephrased his motion:

Richard Riley made a motion to continue Case #2019-13 until the next scheduled meeting on December 11, 2019, during which time the Litchfield ZBA will reach out to the Litchfield Building Department to request access to the file for this case, request for Mr. Dionne, Building Inspector, to testify and the previous Inspector to testify, and to apply for the applicant to organize for additional documents and evidence for the Board to review. Tom Clooney seconded. The motion carried 4-0-0.

Richard Riley indicated the Board will send a copy of the letter that is being sent to the Building Department to the applicants.

IV. COMMUNICATIONS AND OTHER BUSINESS

Richard Riley announced the Zoning Board has some positions open for alternate members and applications can be requested from the Building Department.

V. ADJOURNMENT

Greg Lepine made a motion to adjourn the meeting and Al Guilbeault seconded the motion. The motion passed 4-0-0.

The meeting was adjourned at 8:29 p.m.

Respectfully submitted,
Michele E. Flynn