



TOWN OF LITCHFIELD

LITCHFIELD ZONING BOARD OF ADJUSTMENT
Litchfield, New Hampshire December 11, 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 7:02 pm. He took attendance. Alternate, Thomas Clooney was appointed by the Board.

II. CHAIRPERSON OPENING REMARKS

Richard Riley reviewed the schedule for hearings. He indicated that there are three members sitting on the Board this evening. He noted that applicants have the option to continue.

Mr. and Mrs. Lane agreed to go forward with three members on the Board.

Attorney Walter Mitchell explained to the applicants that it takes three affirmative votes to approve the variance.

Al Guilbeault commented this case can go either way. He suggested a continuation of the case and to hold a special meeting when there are more Board members.

Richard Riley explained with three members sitting on the Board an applicant cannot appeal if the case is not approved.

Mr. Lane felt confident that their request will be granted.

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.

Case Number: 2019-14

Name of Applicant: Greta Lynch

Owner of Property: Greta Lynch

Location of Property: 338 Charles Bancroft Highway, Litchfield, NH 03052, Map 15 Lot 19

Appeal Requested

The Applicant seeks a variance from Section 310.00 to allow a lot line adjustment between lots 19 and 20 to increase the area and frontage of lot 20.

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 called Case #2019-13. He read aloud the requests for variance from the Litchfield Zoning Ordinances.

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.

Recap from November 13, 2019:

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. 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 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.

Board members requested 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.

Richard Riley asked Attorney Mitchell to assist in this case. He invited Peter Dionne, Litchfield Building Inspector, and John Gilcreast, former interim Building Inspector, to answer questions. He allowed applicants to present any additional information or documentation and instructed attendees to direct questions to the Board.

Mr. Lane indicated they are asking for a variance from Section 502.03 to continue the building of the addition to accommodate their growing family. The front corner of the addition is 7'3" in the setback.

Mrs. Lane reviewed the timeline submitted with the revised application.

- Last week of April: Josh Lane spoke to Mr. Gilcrest about locating the addition square to the house rather than angling it
- Applicant told that the front setback was 50 ft. from the edge of the road
- Josh Lane measured and found it to be 58' 9" from the edge of the road
- Josh Lane returned to the Building Department and was told by Mr. Gilcrest that as long as the addition was not closer than 50 feet from the road an amendment could be made to the permit and shown on the plot plan
- 5/2/19 building permit for addition approved
- 5/6/19: foundation completed - Josh Lane called for foundation inspection
- 5/7/19: Mr. Gilcrest was expected to inspect the foundation, but never came to the property and did not provide a stop work order at that time
- Building continued
- Beginning of June: found small note on inspection report on the ground stating the building was not per plan and could be in the setback
- Josh Lane called Kevin Lynch and spoke with him as Mr. Gilcrest was no longer the Building Inspector
- Mr. Lynch clarified that the setback is from the property line and not the side of the road - plot plan provided by the town does not show the property line
- At this time, structure was built, roofed and windows installed
- Realized had to apply for variance since the front corner of garage would be in the setback
- 11/18/19: scheduled a hearing with the Zoning Board - case continued to gather more information
- When received copies from the Building Department file, saw note in file dated 6/18/19 stating foundation was approved (never received this before this time)
- Drainage ditch runs from 3A through backyard, which validated the change in positioning of the addition to be straight against the house
- Property surveyed again and new plot plan completed by Jeffrey Land Survey
- Plot plan shows the corner of the garage is 7' 3" into the setback.

Al Gilbeault commented that the drainage ditch is not reflected on the plot plan.

Mr. Lane indicated it is shown on the town map. He noted that the original town plot plan shows the road, but not the property line.

Al Gilbeault asked when it was discovered that this was not accurate, did the applicant call the town first before contacting Mr. Lynch.

Mr. Lane indicated that he did first call the town.

Mr. Gilbeault asked if that was when the town informed the applicant there was no building inspector.

Mr. Lane responded in the affirmative.

Richard Riley felt that there was no need to go through the request criteria. He noted a structure was constructed in the original plan that showed a foundation in one area and the applicant's information shows the foundation is in another area.

Mrs. Lane indicated there are letters of support from abutters in the packet as well.

Mr. Lane indicated the house is on an angle on the property and when the plot plan was redone on the CAD program and overlaid on the original plan, we found the structure would have been 9" to 13" into the setback.

PART I

The applicant read their responses to the variance criteria.

- The variance will not be contrary to the public interest because the impact is 7' 3" on the front corner of the garage. There is no environmental impact and neighbors are not adversely affected.
- The spirit of the ordinance is observed because the ordinance states "all structures must be setback a minimum of 50' from the front lot line and the public rights of way". By impacting the setback by a few feet it does not change the spacing between neighboring properties and not over the lot line.
- Substantial justice is done because the variance will not cause harm or change the character of the neighborhood.
- The values of surrounding properties are not diminished because the appearance of the addition coincides with other properties in the neighborhood.
- Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship because the positioning of our home is angled toward the curvature of the road. The lot has a high slope and putting the structure further back would encroach on that slope. Angling the addition would have encroached on the drainage ditch. The addition is significantly completed.

Richard Riley read letters from abutters:

Nicole and Orlando Quintana, 21 Riverview Circle, are in agreement with granting the request for a variance for the applicants and indicated that there was a generous distance between properties.

Joanna Martineau, 27 Riverview Circle, is in agreement with granting the applicants' request for a variance. She is a direct abutter and indicated there is plenty of distance between the properties.

Richard Riley asked John Gilcrest, former Building Inspector to share his testimony regarding the applicants' case information.

Mr. Gilcrest indicated that he went to look at the property and saw that if it were built it would cause a problem with the setback. The applicants were not home at the time. He noted that he did not know there was a drainage ditch on the property, but had he known, he would have given it more consideration. He stated that he was shocked when he saw property and that the plan had been changed.

Richard Riley asked if it is difficult to get a certified plan.

Mr. Gilcrest indicated it is not difficult, but it is not required. He commented he did not see a problem with their plan.

Richard Riley asked if there were a certified plan that appears it will work and then it is discovered that the project is in the setback, who would be responsible.

Mr. Gilcrest indicated the homeowner is responsible. He commented one of the questions the applicants had was there is a 25' right of way on the road. You need to consider the 25' ROW from the middle of the road and then measure. He noted many people think the property starts where the road ends.

Richard Riley commented that he approved the initial permit.

Mr. Gilcrest indicated he approved the plan to angle the addition and was not aware of a drainage ditch at the time. He commented he had been to the property a few times and felt that if the addition came straight off of the house there would be a problem.

Richard Riley asked in terms of the inspection process, who did the foundation site denial?

Mr. Gilcrest indicated he placed the stop work order on top of the foundation pole because that is the first place it would have been seen.

Richard Riley asked if Mr. Gilcrest recognized the second approved permit.
Mr. Gilcrest indicated he did not.

Al Gilbeault asked Mr. Gilcrest if he knew that the addition would impact the setback 14".

Mr. Gilcrest indicated he did not and was surprised that was stated.

Al Gilbeault asked if there has ever been a time in Litchfield where a project was "red tagged" and we stopped the building right there.

Mr. Gilcrest indicated he would go out and talk to those people normally, but in Litchfield he was scheduled only two days per week at the time and did not get the opportunity to do so.

Al Guilbeault asked if it would be a big problem seeing that they changed the plans.

Mr. Gilcrest indicated that it would be a problem because there are rules for everyone and he does not give homeowners a break.

Al Guilbeault asked why there were not notifications regarding a problem with the foundation in all the time you went to see them.

Mr. Gilcrest indicated that they were not home.

Mr. Lane indicated that the "stop work" note was not visible. He noted that his wife found it in a puddle a month later and there were no phone calls.

Richard Riley asked if the applicants reached out to the town in the course of that month.

Mr., Lane indicated they did, but the calls were not returned.

Al Guilbeault asked if the applicant got a signature on the permit for the foundation.

Mr. Lane indicated he did not but any information is put in the file in the building department.

Mr. Peter Dionne, current Litchfield Building Inspector was asked to provide testimony.

Al Guilbeault asked if Mr. Dionne was the inspector on June 18.

Mr. Dionne indicated his first day was September 9.

Al Guilbeault commented that no one knows why Mr. Dionne signed an inspection he did not even see.

Richard Riley asked Mr. Lynch to provide testimony. He asked if the "Kevin" referenced on the June inspection report is Mr. Lynch. He asked if he spoke with Mr. Lane.

Mr. Lynch indicated he did speak with Mr. Lane and indicated that he did not consider the road, but that the draignage in the back caused a problem.

Richard Riley asked Mr. Lynch if he signed the June 28 inspection report. Mr. Lynch indicated that he did not.

Al Guilbeault asked Mr. Dionne if he was aware that the addition is framed.

Mr. Dionne indicated that he is aware and that the only conversation he had with Mr. Lane was at the fire station when he told Mr. Lane to continue building at his own risk. He noted he never issued a stop work order or approval to keep building. He commented that the building should have been halted.

Al Guilbeault asked if Mr. Dionne would issue a stop work order on the addition today and have the applicant wait 30 days. Mr. Dionne indicated if it is the will of the Board, he would.

Al Guilbeault asked about the measurement of the drainage ditch and if the excavator ran over the drainage pipe.

Mr. Lane clarified it is 9' and it is not a pipe; it is a swale.

Al Guilbeault asked if there is a catch basin in the backyard and one at the road.

Mr. Lane indicated it is not a catch basin; it is a swale as water stills runs out to the bottom near the road. He noted the old driveway is where the new garage is situated and the original garage was under the house. He commented there was barely any excavation with the exception of the front wall.

Al Guilbeault was worried about potential issues with the Department of Transportation if the Zoning Board grants a variance with a ROW and drainage on the property.

Mr. Lynch clarified the drainage ditch does not contain a pipe. He indicated it is a french drain that is rock based. He noted that if there were a drainage system it would have shown up in the deed and it is not there as a ROW easement.

Richard Riley referred to the denial letter in the file. He was not sure a denial letter is the right thing in this case because it would be denying a building permit and certificate of occupancy. He asked if Mr. Dionne was asking for a certificate at that time.

Mr. Dionne indicated the addition will need electrical and insulation. He noted he did not get too involved after that because building has begun and he let it run its course.

Richard Riley asked Attorney Mitchell if the Board is treating the case properly and if this is a variance

request.

Attorney Mitchell indicated that while it is normal for the Board to want to know what has gotten us to this point is really background information. There are questions that the town caused or contributed to the problem, but even if that is a convincing case that does not form the basis for the Board to give relief. He indicated that in this case the situation does not exist where the town leads people by giving a decision or bad advice; only a judge has authority to decide that. He explained the two things that seem to be driving the Board is there appears to be a violation of the ordinance and an application for a variance. He advised the Board to go through the application for variance and the standards in the statute and make a decision upon if those standards have been met. He indicated the question of what makes the literal enforcement standard the toughest one is that the applicants have to show there are special conditions of this property that distinguish it from others in this area and only if the answer is yes do you go on and decide whether there is no fair and substantial relationship existing between the general purpose of the ordinance and the specific application of that provision to the property.

Al Guilbeault commented that if the applicant had come to the Board with a 14" impact in the setback the Board could have advised the applicant to change the size of the project by that amount. He indicated the applicant now not only comes to us with a plan that was approved, but then built it differently. He asked if that is something for the Board to judge on or if the building department should make that ruling.

Attorney Mitchell indicated those are two different situations under the spirit of the ordinance.

Al Guilbeault commented if he built according to the original plan that was approved and then changed the plan on his lot, that is a Zoning Board issue.

Attorney Mitchell indicated it is not a Zoning Board consideration. He explained there is a violation and the applicant is asking for relief. He noted according to the statute you have an application for variance in front of you and you need to make a decision.

Richard Riley asked the attorney if, while looking at the request and criteria, the Board also has to acknowledge the fact there was initially a building permit and plan submitted that would not require relief, or does the Board ignore that fact.

Attorney Mitchell indicated that the Board ignores that when performing the function as a Board member. He explained if the town is interested in seeking fines for the violation that is not a Zoning Board responsibility.

Richard Riley was concerned about setting a precedent by granting a variance for a project that was not built according to the original plan.

Attorney Mitchell indicated if the request meets the statutory tests then it is the responsibility of the Zoning Board to grant approval of that request.

Richard Riley commented during a past zoning board training course there was some time spent on self-imposed hardship. He asked if that is still a term used by zoning boards.

Attorney Mitchell explained over the years the law has changed through many court decisions, which is why the legislature decided they would put this into a statute. He indicated if someone decided to bring a claim directly against the town to stop enforcement of the ordinance, the fact that the issue was self-imposed would be considered by the court, but not with this case.

Richard Riley referred to the foundation denial and noted approximately one month later there is something on file from a different person. He asked Mr. Dionne if it concerned him there was an approval when he wrote the denial letter.

Mr. Dionne commented he had not dug deeply into the whole case and that the Zoning Board was his first contact on this case, and then he wrote the denial letter and started compiling information.

Mr. Lynch mentioned that in between inspectors, the town contracted with MRI and the inspector only came to Litchfield three times a week and was very inexperienced.

Richard Riley directed focus on the legal documentation. He asked how there can be an approved plan, a denied foundation inspection, an approved inspection and a plan change.

Mr. Lane commented even if the foundation were approved, we know it is in the setback.

Attorney Mitchell explained it is not within the Zoning Board's jurisdiction to figure that out. He indicated only the variance relief is the Zoning Board's jurisdiction.

Mr. Lane commented that the Zoning Board is stuck on the wrong issue. He indicated that he and his wife are requesting relief from a variance and the old paperwork is irrelevant at this point.

Attorney Mitchell agreed with Mr. Lane's assessment.

Al Guilbeault asked if the Zoning Board grants the variance, can it be granted with a 30 day grace period stipulation.

Attorney Mitchell indicated if a variance is granted it is up to the applicants to take the risk because someone can file a motion to place a stay on it. He noted the 30 day period cannot be eliminated from the statute.

Tom Clooney commented this is no different than a normal variance.

Richard Riley opened the meeting to public input.

Kevin Lynch commented that he ran across this situation when he was the building inspector and it is not uncommon. He noted sometimes the lot lines are not correct. He indicated this is not an intentional error. He shared that he also had a situation where there was a filing within the 30 day period and it was found (6 months later) there was no justification for the filing.

Al Guilbeault asked all three building inspectors present if they ever experienced this type of situation in Litchfield.

Mr. Lynch indicated even if things are followed through in that situation, it is not uncommon.

Mr. Dionne commented that if there were a major change he would not approve it unless it still works within the setback.

Richard Riley commented in the 20+ years he has been on the Board, this is only the second time someone built differently than what was approved.

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

Al Guilbeault made a motion to close public input. Thomas Clooney seconded. The motion carried 3-0-0.

PART I

The Zoning Board deliberated on the case.

- The variance will not be contrary to the public interest because it does not alter the character of the neighborhood or impact the other homes.
- The spirit of the ordinance is observed because it still maintains the character of the neighborhood and does not change the spacing between homes.
- Substantial justice is done because the variance will not impact immediate abutters.
- The values of surrounding properties are not diminished because it does not impede on any neighboring properties and the appearance of the addition coincides with other properties in the neighborhood.
- Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship because the positioning of the home is angled toward the curvature of the road and the location of the drainage ditch. The proposed use is reasonable.

Board members discussed if additional time is needed to review the information. Al Guilbeault asked if there was a way to verify if the drainage ditch is a DOT swale or if there are any wetland delineation.

Richard Riley called for a five minute recess to research the original town lot map.

Al Guilbeault made a motion for the Board to recess the meeting at 8:35 p.m. to look for the town lot map. Thomas Clooney seconded. The motion carried 3-0-0.

The meeting reconvened at 8:45 p.m.

Richard Riley called the meeting to order. He indicated they located the map that shows the drainage and utilities from the original subdivision plan. He noted the map shows that the original drainage for Lot 20 was rediverted toward the corner of the driveway and shows the flow of the water and that it comes close to the back of the property. He commented based on the information ascertained from the map, special conditions include rising elevation at the back of the property and close proximity of the drainage. He noted this is a reasonable condition.

Al Guilbeault felt that the motion to grant the variance should include a 30 day stipulation.

Richard Riley indicated the Board cannot legally bind him from going forward at his own risk.

Al Guilbeault commented there are no up to date inspections. He indicated perhaps the building department should visit the property and inspect before the applicant proceeds.

Attorney Mitchell commented that it is likely Mr. Dionne will follow up.

Mr. Dionne indicated that we are not in a situation where further inspections are needed.

Al Guilbeault made a motion to grant a Variance from Article 310.00 to allow a garage addition which has been constructed 7'3" within the minimum setback. Thomas Clooney seconded.

Richard Riley amended the motion to grant a Variance from Article 310.00 to allow a garage addition which has been constructed 7'3" within the minimum setback of 50 feet. Al Guilbeault seconded. The motion carried 3-0.

Richard Riley called Case #2019-14. He read aloud the requests for variance from the Litchfield Zoning Ordinances.

Case Number: 2019-14

Name of Applicant: Greta Lynch

Owner of Property: Greta Lynch

Location of Property: 338 Charles Bancroft Highway, Litchfield, NH 03052, Map 15 Lot 19

Appeal Requested

The Applicant seeks a variance from Section 310.00 to allow a lot line adjustment between lots 19 and 20 to increase the area and frontage of lot 20.

Kevin Lynch, 312 Charles Bancroft Highway represented Greta Lynch. He testified that a plan was submitted for the Board that shows the existing home on Lot 20 has 45' of frontage on Route 3A. He indicated that Mrs. Lynch is requesting 85' of frontage by increasing the lot 40'. He noted that a garage will be built on Lot 20, which will require 150' of frontage; however, the existing home is exempt from the zoning requirement for 150' of frontage.

PART I

The applicant's representative read the responses to the variance criteria.

- The variance will not be contrary to the public interest because we are improving the lot and the lot line adjustment will make the lot more conforming.
- The spirit of the ordinance is observed because we are improving the frontage from 45' to 85' and still meeting the zoning criteria of the town.
- Substantial justice is done because the variance will not cause harm or change the character of the neighborhood and because we are improving the lot for the future.
- The values of surrounding properties are not diminished because the lot adjustment will only help the values of the property as we will be installing a driveway on that lot.
- Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship because we cannot change what is already there. The lot would become a conforming lot, but not in total compliance.

Richard Riley commented that Mr. Lynch mentioned a garage. He indicated that the garage cannot be built without the lot adjustment and cannot be built where the leach field is located. He noted that the intent for the garage would be meeting the setback requirement if the lot adjustment is granted.

Mr. Lynch indicated that is correct.

Richard Riley asked if there is any negative impact on Lot 19 if the lot line is adjusted.

Mr. Lynch indicated there is no negative impact.

Richard Riley opened the meeting to public input. Hearing none, he asked for a motion to close public input.

Al Guilbeault made a motion to close public input. Thomas Clooney seconded. The motion carried 3-0-0.

PART I

Richard Riley and the Zoning Board reviewed the variance criteria and agreed that the request is reasonable and meets all five criteria.

Al Guilbeault made a motion to grant a Variance from Article 310 for a lot line adjustment to add 40' of additional frontage to Map 15, Lot 20 for a total of 85' of frontage where 150' is required. Thomas Clooney seconded. The motion carried 3-0.

IV. COMMUNICATIONS AND OTHER BUSINESS

There was no additional communications or business

V. ADJOURNMENT

Al Guilbeault made a motion to adjourn the meeting and Thomas Clooney seconded the motion. The motion passed 3-0-0.

The meeting was adjourned at 9:17 p.m.

Respectfully submitted,
Michele E. Flynn