

BOARD OF ADJUSTMENT
DEERFIELD, NEW HAMPSHIRE

DECEMBER 27, 2011
MINUTES OF MEETING

PRESENT: Board members Joshua Freed, George Thompson, Sandra Logan. Alternate member Anthony DiMauro, secretary Jane Boucher. Prospective members Katherine Alexander and Darlene Cummings were also present.

Chair Joshua Freed called the meeting to order at 7:15PM and appointed Anthony DiMauro a voting member.

CORRESPONDENCE

Chair Joshua Freed advised of a letter received from Linda Royer who owns property in both the Towns of Northwood and Deerfield requesting that the portion of land in Deerfield be re-zoned to the Town of Northwood. Copies of an e-mail from Governor Lynchs office suggesting that Ms. Royer contact the ZBA in Deerfield and a copy of a letter from the Town of Northwood advising Ms. Royer that the action she is requesting is not a change in zoning but changing the Town lines was also received. Mr. Freed advised that he had contacted Ms. Royer and advised her that this request was not under the authority of the ZBA.

APPROVAL OF MINUTES

George Thompson moved and Anthony DiMauro seconded to approve the minutes of November 22, 2011 as printed. Voted in favor with Sandra Logan abstaining.

APPOINTMENT OF MEMBER AND ALTERNATE

Alternate member Anthony DiMauro indicated that he preferred to sit as an alternate for the time being.

Joshua Freed moved and George Thompson seconded to recommend the appointment by the Board of Selectmen of Katherine Alexander, 2 North Road # 8, Deerfield NH as a member of the Board of Adjustment for a three year term and appoint Darlene Cummings, 37 Pleasant Hill, Deerfield, NH as an alternate member of the Board. Voted in favor. The secretary was instructed to write to the Board of Selectmen advising of this vote noting that Ms. Alexander had attended three meetings of the ZBA and Ms. Cummings had attended two meetings, the third required meeting was waived.

7:30PM CASE # 11-06 JASON DIONNE

Jason Dionne, Mrs. Dionne and Harriet Cady were present.

Clerk Sandra Logan read the Notice of Public Hearing by which

Jason Dionne, 28 Meetinghouse Hill Road (Map 209 Lot 9) has applied for an equitable waiver from Article VII, Section 704 and 704.1, setback requirements.

Chair Freed introduced members and explained procedure.

Chair Freed also noted that a four member board was seated, not a five member board, and the applicant can request an extension to when a five member board is seated.

Sandra Logan moved to accept Case # 11-06. George Thompson seconded. Voted in favor.

The applicant, Jason Dionne, commented that he would like to proceed with the four member board.

Jason Dionne addressed the Board commenting that there have been other discrepancies between he and Mrs. Cady which are not relevant at this time. He said he had received a letter complaining about a previously built shed on his property encroaching her property. Mr. Dionne advised that he had removed approximately one foot of the concrete and corner of existing building from Mrs. Cady's property.

Mr. Dionne noted that he was here for an equitable waiver because the building was there when he purchased the property and he had no idea it encroached another piece of property. He said that the Code Enforcement Officer had visited his property and Mr. Pelletier had advised him to apply for an equitable waiver.

Joshua Freed questioned how old the building was. Mr. Dionne was not certain, because no permits had been issued, but thought approximately 10 years old.

Jason Dionne reviewed the requirements for an Equitable Waiver of Dimensions (RSA 674:33 a. Section a) "The violation was not noticed by any owners until after the structure in violation had been completed. I meet this requirement because I purchased this property in January, 2011 and was unaware that the shed was even too close to the property line, never mine crossing it. I also was unaware of the Deerfield Town Ordinance of side setbacks at time of purchase or until I spoke with Rick Pelletier about the complaint that had been filed by Mrs. Cady. Mrs. Cady did not bring this to my attention until, July, 2011. This also meets the sections of definition for the simple fact that the structure was built long before either Mrs. Cady or I owned the abutting properties."

Section b " Section b says that the violation was not the

outcome of ignorance of the law of ordinance, failure to inquire, obfuscation, misrepresentation, or bad faith on part of any owner. My shed meets this waiver requirement as well. This shed was built long before I purchased the property. I didn't and don't know who built it, I don't know when it was built, and I certainly don't know the intention of the persons who did erect it."

Section c "Section c says that the physical or dimensional violation does not constitute a public or private nuisance to anyone in the area or why it would diminish the values of properties in the area. I am not an expert in variances and how they affect values but I can't see how my shed sitting a foot off the property line would be a nuisance to anyone in the area or why it would lower or raise any property values in the area. It has little effect on the use of the abutting properties. nor should it affect future use of the abutting property because although my improvement in violation was unintentionally built too close to the property line any future improvements made to either or any of the properties in question would have to conform to the current setback requirements.

Section d "Section d says that due to the degree of past construction, the cost of correction so far outweighs any public benefit to be gained, that it would be inequitable to the violation to be correct. My current situation certainly meets this requirement as well. Although I do not have exact costs, I do know that I would have to have another large concrete pad poured and pay for manpower to empty, safely move the shed to the very expensive new pad, and refill the shed once moved. Then the cost of breaking up and disposing of the old concrete would add to the already pricey endeavor. I would definitely consider these costs to be a hardship."

Sandra Logan questioned the size of the building. Mr. Dionne replied the main part of the shed is 16 x 16 feet. He said that he has been told it was constructed as a horse stall. Mr. Dionne showed members where the building was depicted on the plan.

Chair Freed asked if anyone would like to speak in favor. No one spoke.

Chair Freed asked if anyone would like to speak in opposition.

Harriet Cady commented that would like the structure moved farther away from the property line. She said she does not want Mr. Dionne trespassing onto her land and wants the structure away from the property line so this does not happen. Mrs. Cady gave background of the property and provided plans showing the

original proposed senior housing development and subsequently an open space development proposed by John Giantopoulos.

George Thompson questioned how far away from her land does Mrs. Cady feel the building should be moved. Mrs. Cady replied that four feet would be adequate for Mr. Dionne to be able to get behind the shed without trespassing onto her land.

Jason Dionne stated that there is no portion of his shed on Mrs. Cady's land. He added that the shed is now 12 1/2 to 13 inches off her property line.

8:05PM The Board went into deliberative session at this time.

Joshua Freed questioned if this appeal satisfies the requirements in the statute.

George Thompson agreed noting that the building is only 12 1/2 inches from the property line. He reference the statute and someone else property rights. Mr. Thompson said he would be uncomfortable granting the appeal.

Joshua Freed agreed noting that he does not see a good faith error.

Joshua Freed also stated that, although the land in question is going to be a road, if someone were to build a house there the shed would be definitely considered a nuisance.

George Thompson said that he feels that the applicant has not met the requirements of the statute by supplying sufficient information. He added that he would be uncomfortable in granting the appeal and if the Board did grant, it was unclear as to what they were granting.

George Thompson moved to deny the appeal for an Equitable Waiver for Jason Dionne. Joshua Freed seconded. Chair Freed called for a vote on the motion. George Thompson and Joshua Freed voted in favor. Sandra Logan and Anthony DiMauro voted opposed.

Anthony DiMauro moved to grant the appeal for an Equitable Waiver for Jason Dionne. Sandra Logan seconded. Chair Freed called for a vote on the motion. Anthony DiMauro and Sandra Logan voted in favor. George Thompson and Joshua Freed voted opposed.

The Appeal for an Equitable Waiver for Jason Dionne (Case # 11-06) 28 Meetinghouse Road (Tax Map 209 Lot 9) is DENIED.

Chair Freed advised Mr. Dionne that he can appeal the decision

BOARD OF ADJUSTMENT 12/27/11

based on the discovery of new evidence or procedural error by the ZBA in the way the case was heard.

The meeting was adjourned at 8:30PM

Recorded and transcribed by Jane Boucher
Pending Approval by the Board of Adjustment