

NOTICE OF DECISION

ZONING BOARD OF ADJUSTMENT TOWN OF WATERVILLE VALLEY, NEW HAMPSHIRE

Case No. 79

On June 21, 2022, the Application for a Variance submitted by Greg and Karen Van De Moere on May 23, 2022, was heard before the Board. The variance requested was from the Zoning Ordinance requirement that no structure in a Low Density Residential zone be closer than 20' from the lot line of an abutting property. See Waterville Valley Zoning Ordinance Art. IV(A)(e)(ii). The Application concerned property located at 17 Tee House Lane, Map 000103, lot 012000.

During construction, the contractor hired to build the foundation, apparently inadvertently, sited the foundation at a skewed angle from the actual site map which had been approved by the Town Inspector. When construction was completed, it was learned that the error by the site work company had resulted in an infringement of 21" of the front porch roof into the 20' setback from the abutting neighbor's property. The actual porch infringed 9" into the setback.

At the hearing, the Board determined that the relief the Applicant sought was, more appropriately, an Equitable Waiver of Dimensional Requirements under the Zoning Ordinance. To grant a waiver, the Board must find that (a) the violation was not discovered until after the structure was substantially completed; (b) the violation was not an outcome of ignorance of the law or bad faith on the part of the owner or agents of the owner; (c) the physical dimensional violation does not diminish the value of other property in the area; and (d) the cost of correction so far outweighs any public benefit to be gained that it would be inequitable to require the violation to be corrected.

The information in the Application, along with testimony from the Applicant, Karen Van De Moere, was sufficient to proceed in a determination as to whether the Application met the criteria for an Equitable Waiver. With regard to the first criteria, (a) above, the Applicant testified that the violation was first discovered by the Bank, after construction was substantially completed, when the Applicant sought a mortgage on the

property. The current Town Inspector testified that the violation was not caught when the foundation was inspected. That inspection went to the structural integrity of the foundation, not its siting, which was presumed to be in accordance with the site survey map. The Applicant testified, as to the second criteria, (b) above, that they were aware of the 20' setback from the lot line and it was clearly marked on the site survey map. There was no evidence of a bad faith attempt to avoid compliance with the zoning requirement. The Applicant noted, as to the third criteria, (c) above, that the infringement on the setback was de minimus, 21" of the porch roof and 9" of the porch itself, such that it would be difficult to find any public or private nuisance. In this regard, it should be noted that the owners of the affected abutting property did not appear at the hearing to contest the Application. Additionally, two other property owners, one abutting and one a nearby neighbor, testified that they did not consider the slight infringement of the setback to have any diminution of the value of their properties.

Finally, as to the fourth criteria, (d) above, the Applicant testified that the structure was built from a kit that had a supporting beam that ran from the front of the porch roof to the rear of the building and they had been advised by the architect that to change (shorten) the porch, and thereby the supporting beam, would undermine the structural integrity of the building. The correction to the violation would be to tear down the building and repurpose the foundation, i.e., to start over from the beginning at an astronomical cost.

At the close of the hearing, the Board moved to deliberation of the Application. Each criteria was discussed and the above testimony was reviewed and considered. All Board members agreed that each criteria had been met.

Therefore, the Board finds that the Applicant, having successfully met the criteria, is granted an Equitable Waiver of Dimensional Requirements pursuant to the Waterville Valley Zoning Ordinance, Art. VIII(D)(5). As such, the structure is considered to be in full compliance with the Zoning Ordinance as to its siting and physical layout.

6-23-22
Date



Jean R. Mullen
Chair, Board of Adjustment