

TOWN OF LYNDEBOROUGH
Zoning Board of Adjustment
Meeting Minutes
November 27, 2023

Approved Nov. 30, 2023

7:07 PM Call to Order & Roll Call
Meeting held at Citizens' Hall

Members Present: Acting Chairperson Rick Roy, Karen Grybko, and Ray Humphreys

Rick Roy will act as chairman for tonight's meeting.

Not present: Lisa Post, Jon Lavoie, and Alt. Pam Altner

Public Present: Applicant Daniel Bishop, Carrie Mims, Owners Ken & Kathleen Lavallee, abutter Leslie Roach, and abutter Don Roach

New Business:

Case 2023-06

Map 205, Lot 02

1972 2nd NH Turnpike

Variance 702.03

Owners Ken & Katheen Lavallee

The applicants are seeking a variance from 702.03 to build in the setback.

The Board asked for clarification which zoning the applicant is applying for because the application listed both setbacks and a special exception. Daniel Bishop said that he is not sure and Dawn Griska in the town office helped him out. He selected 702.03.

The lot is under five-acres.

Daniel Bishop filed the application is speaking on behalf of the property owners.

The Five Variance Criteria

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

Daniel Bishop read that the building is an existing barn on the property. They propose a 20-ft. long addition that will be out 18-ft. from end of barn. The current barn is 24-ft. from rear lot line. The new barn addition will follow same set back as the original barn.

Mr. Bishop showed photographs of the downhill slope and swampy area down behind the back of the barn. They did not submit a photo of the existing barn.

The addition will come off the barn 20-ft. and will drop the roof line off an addition 2-ft. and follow the same pitch line. Access will be from inside the old barn.

Mr. Bishop said the abutting property is not buildable and has forest designation. Karen Grybko asked if it is under a conservation easement. She was informed it is privately owned. The applicants said that nobody will build on it, it is swamp land.

Ray Humphreys asked about page 3 that reference a 93-ft. setback and that is not a concern. There is a lot of details about the building but not a lot about the property, which is needed. Leo Trudeau said in the package that Dawn Griska prepared, there is a document that shows the property. There was an aerial image. It was unclear if it was 20 ft. or 30 ft. because the information was not clearly legible. Both Daniel Bishop and Leo Trudeau felt that should be listed as 20-ft. The application was missing the map/lot number on the front page. Ray Humphreys said this document is filed into the town's records and needs to be legible and accurate.

Leo Trudeau said the information from the town, referring the drawing that D. Griska provided, shows delineated wetlands. He added that Dawn Griska said there are no wetlands within 50 feet of the proposed structure and the drawing she put together defined that. Ray Humphreys said that NHGRANIT shows a wetland there. The location was discussed.

Daniel Bishop said the elevation of the proposed structure is 8-10 feet higher than the abutting property. Ray Humphreys said, yes, you mentioned it's downstream. The purpose of the Wetland Ordinance is that structures are not built close to the wetland that could have hazardous material which could contaminate the wetlands. Example, gas and oils. The Planning Board and town officials worked on the new ordinance, which was supported and enacted by a positive town vote of the residents of Lyndeborough.

The purpose of the addition is to provide a dry and secure area for the property owners to store belongings from the house. The setbacks and wetlands were discussed.

Property owner Ken Lavallee approached the table and said the marshy area is 100 ft. then opens then about 100 yards before it is developed. The wetlands come from a spring in his yard. There is a bushy area in their yard. He showed a cell phone photo of a small section of the barn.

Abutter Leslie Roach, from Sharp Road, approached the table to view Mr. Lavallee's photo and asked which direction the building will be going. Mr. Lavallee explained they are going out 18-ft. and the direction they are building. Leslie Roach asked if they are going into the other property. Ken Lavallee said that property behind us is wetlands and won't be build on.

2. Deviation from the strict requirements of the Ordinance is consistent with the spirit of the Ordinance because:

Daniel Bishop read from the application that the abutting property is not buildable and is designated as a forest. Basically, the barn and the addition can't be seen from other areas behind there. They will maintain the 20-ft. setback from where the original barn is.

3. Granting the Variance would do substantial justice because:

Daniel Bishop read from the application that no one will be affected by the 18-ft. addition. It will provide clean and dry storage for property owners, which they need.

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

Daniel Bishop said the abutting lot is not buildable and the complete parcel is designed as a forest. They are only asking to put an 18 ft. addition on.

Mr. Lavallee said their taxes will go up, their land will be more desirable, and this will improve our property.

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:**

The property abuts forest land which the area of interest sits a 100-year-old barn. They are proposing to come out 18-ft. with the old barn's setbacks. Ken Lavallee added they will be at 21-ft. of the setback.

- (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 read, the existing barn with a minimal addition of 20x18 ft. would cause no hardship to abutters or the forest land.

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

The proposed addition will provide a clean and dry storage area for the Lavallee's and cause no harm to anyone.

Acting Chair Rick Roy asked for comments from the audience.

Abutter Leslie Roach wanted to see the picture because she is having a hard time visualizing it. Now that she the see where the addition is coming off, she does not think it's a big deal. Her only other concern is if it is going out to the adjacent property. She was informed that is not going to happen.

Acting Chair Rick Roy asked for comments from the Board.

Ray Humphreys said he looked up the wetlands. He asked about a hardship regarding building in those areas inside the setbacks. Daniel Bishop said the proposal is not

doing anyone any harm. It is the most convenient place to build. It's right off the barn; 16-ft. off a 70-ft. barn.

Ray Humphreys said he is wrestling with 1303.00 and read the ordinance for non-conforming use of a building. "Can continue in present use unless...extended and enlarged... (see ordinance for entire language). He is not seeing a hardship here. The applicant did not apply for a Special Exception under 1303.00.

Ray Humphreys said the ZBA can't make a lot further non-confirming under zoning with a variance and no hardship. Discussed continued. The Code Enforcement's letter and assistance from the town office directed the applicant what to apply for.

Ray Humphreys said it would be a lot cleaner to withdraw the application without prejudice then resubmitted a new application under Zoning Ordinance 1303.00.

Karen Grybko asked Jay Minkarah which variance is correct. He said it seemed they applied for the correct variance and it's appropriate. They applied for what the building inspector gave them. Ray Humphreys asked Jay Minkarah if they referenced 1303.00, would it be stronger and that would be the hardship.

Jay Minkarah would argue that is not a non-conforming use of the property. The use is allowed. They have a building that they are seeking to extend and seeking a variance from the setback requirement. He feels they are appropriate. He is not sure what they would gain by being told to come back with a new application.

Leo Trudeau read Zoning Ordinance 1303 which says, "When no alternative is deemed reasonable by the ZBA". Daniel Bishop said they are we are not asking to build a new building in the 20-ft. setback, they are looking to build on something that is there. Ray Humphreys said he agrees with that but there have been many discussions about setbacks in the last year. The town voted to strengthen the setbacks. Mr. Bishop asked for a compromise and said he does not agree with this. The process for a new application was discussed.

VOTE: Rick Roy made a motion, Ray Humphreys seconded, to close the public hearing at 7:47 p.m. Motion passed 3-0.

The process and options were discussed.

VOTE: Ray Humphreys made a motion that the applicant withdraws their applicant for a variance under Zoning Ordinance 702.03 and return with a Special Exception under Zoning Ordinance 1303.00. Also request since they were directed by town employees, that no additional abutter fees, application fees, or public notice fees will incur. Noone seconded the motion. Motion failed.

Daniel Bishop said he is not worried about the fees.

Question #1:

VOTE: Karen Grybko made a motion, Rick Roy seconded, to accept the applicant's answer for question #1. Motion failed 2-1-0.

Three positive votes are required to grant a variance. Ray Humphreys voted no.

The Board and Code Enforcement Officer discussed the situation. Jay Minkarah explained to the applicant/property owners that if they do not take one of those two options this application will be denied. The options are to reschedule the meeting to when more Board members are present or withdraw the application and return for a Special Exception application.

VOTE: Karen Grybko made a motion to reconsider Mr. Humphreys' previous motion which was, to move that the applicant withdraws the application without prejudice for a variance under Zoning Ordinance 703.03 and return with a Special Exception under 1303.00. Also request since they were directed by town employees, no additional abutter fees, application fees, public notice fees will incur. Rick Roy seconded the motion. Motion passed unanimously 3-0.

Jay Minkarah said the Special Exception application would not have to answer the five questions but requires the applicant states what they are asking for.

The motion passed but the decision is up to the applicant how they want to proceed.

VOTE: Karen Grybko made a motion, Ray Humphreys seconded to come out of the non-public discussion at 8:11 p.m. Motion passed 3-0.

Jay Minkarah said he can help guide the applicants with the new application for a meeting date certain. Leo Trudeau was not sure if this Board has the authority to do away with fees. The applicant will withdraw their application and return with new one.

VOTE: Ray Humphreys made a motion, Rick Roy seconded to continue tonight's meeting date certain to Thursday, November 30, 2023 at 7:00 p.m. at Citizens' Hall for Case 2023-06, Map 205, Lot 02 at 1972 2nd NH Turnpike. Motion passed 3-0.

The applicant and property owners were asked to supply additional photos of the barn and location for the next meeting.

Ray Humphreys said he walked the property today and it's wet.

Other Business

Rules of Procedures

The Rules of Procedure discussion will be moved to the Nov. 30, 2023 agenda allowing more members to participate.

Approve Minutes:

January 5, 2023 Minutes

VOTE: Karen Grybko made a motion to accept the minutes of January 5, 2023. Ray Humphreys seconded the motion. Motion passed unanimously 3-0.

November 2, 2023 Minutes

Will be moved to the Nov. 30, 2023 agenda allowing more members to review them.

Adjournment:

VOTE: Rick Roy moved, Karen Grybko seconded to adjourn at 8:31 p.m. Motion passed 3-0.

Respectfully submitted,

Kathleen Humphreys
ZBA Minute Taker