

DRAFT, SUBJECT TO REVIEW, CORRECTION AND APPROVAL

DUNBARTON ZONING BOARD OF ADJUSTMENT  
MONDAY, JUNE 8, 2020 – 7:00 p.m.  
VIRTUAL ZOOM MEETING

The regular monthly meeting of the Dunbarton Zoning Board was held at the above time and date with Chairman John Trottier presiding at a ZOOM Virtual Meeting.

John Trottier, Chairman, called the meeting to order at 7:00 p.m. and read the Order as follows:

As Chair of the Dunbarton Zoning Board, due to the COVID-19/Coronavirus crisis and in accordance with Governor Sununu's Emergency Order #12 pursuant to Executive Order 2020-04, I find that an emergency exists and that this Board is authorized to hold a meeting electronically and no physical quorum of the public body is necessary.

Please note that there is no physical location to observe and listen contemporaneously to the meeting, which was authorized pursuant to the Governor's Emergency Order. However, in accordance with the Emergency Order, this is to confirm that we are:

*a) Providing public access to the meeting by telephone, with additional access possibilities by video or other electronic means;*

We are utilizing the Zoom platform for this electronic meeting. All members of the Board have the ability to communicate contemporaneously during this meeting through the Zoom platform, and the public has access to contemporaneously listen and, if necessary, participate in this meeting through dialing the following phone #1-312-626-6799 and password

946711, or by clicking on the following website address: <https://tinyurl.com/yavop89l>.

*b) Providing public notice of the necessary information for accessing the meeting;*

We previously gave notice to the public of how to access the meeting using Zoom, and instructions are provided on the Town of Dunbarton's website at [www.dunbartonnh.org](http://www.dunbartonnh.org).

*c) Providing a mechanism for the public to alert the public body during the meeting if there are problems with access;*

If anybody has a problem, please call 603-831-8670 or email [building@dunbartonnh.org](mailto:building@dunbartonnh.org).

*d) Adjourning the meeting if the public is unable to access the meeting.*

In the event the public is unable to access the meeting, we will adjourn the meeting and have it rescheduled at that time.

Please note that all votes that are taken during this meeting shall be done by Roll Call vote.

Let's start the meeting by taking a Roll Call attendance. When each member states their presence, also please state whether there is anyone in the room with you during this meeting, which is required under the Right-to-Know law.

John Trottier, Chairman, verified by a Roll Call Vote of members as follows: All members stated there was no one else present in the room with them.

John Trottier, Chairman – Present, No one in the room with him  
 Alison Vallieres, Secretary – Present, No one in the room with her  
 John Herlihy, Vice Chairman – Present, No one in the room with him  
 James Soucy – Present, No one in the room with him  
 Dan DalPra – Present, No one in the room with him

Other Attendees:

Town Offices:

Michael Cumings, Building Inspector  
 Donna White, Building Department

Applicant and Applicant Representatives:

Jacques Belanger, Surveyor  
 Marie Dolder, Attorney for the Applicant  
 Justin Rioux, Applicant

APPROVAL OF PREVIOUS MEETING MINUTES – Monday, February 10, 2020

John Trottier, Chairman, stated that he had several minor changes to the minutes as presented but felt the Board should approve the minutes at the next meeting in order to utilize time accordingly. The Board agreed with this recommendation.

ELECTION OF OFFICERS:

Secretary – John Herlihy made a motion that the Dunbarton Zoning Board of Adjustment elect Alison Vallieres as Secretary. Dan DalPra seconded the motion. The motion passed unanimously with the following Roll Call Vote:

Trottier – Yes  
 Herlihy – Yes  
 DalPra – Yes  
 Soucy – Yes  
 Vallieres – Abstained

Vice Chairman – Dan DalPra made a motion that the Dunbarton Zoning Board of Adjustment elect John Herlihy as Vice Chairman. James Soucy seconded the motion. The motion passed unanimously with the following Roll Call Vote:

Trottier – Yes  
 DalPra – Yes  
 Soucy – Yes  
 Vallieres – Yes  
 Herlihy – Abstained

Chairman – John Herlihy made a motion that the Dunbarton Zoning Board of Adjustment elect John Trottier as Chairman. Dan DalPra seconded the motion. The motion passed unanimously with the following Roll Call Vote:

Herlihy – Yes  
 DalPra – Yes  
 Soucy – Yes  
 Vallieres – Yes  
 Trottier – Abstained

**2020-ZBA-002 - Terry Tolman, 275 Stark Highway North, requests a Variance to Article 4, Section D. Paragraph d. to allow construction of garage to encroach into the side setback.**

John Trottier, Chairman, noted that the Terry Tolman request for a Variance had been withdrawn and will not be heard this evening.

**2020-ZBA-003 – Gary Road, LLC, 18 ½ Gary Road, requests an Equitable Waiver (Article 15. Section D. 4.) of dimensional requirements to allow the house that has been substantially constructed to be located at a maximum of 3.7' into the front setback.**

At this point in the meeting, John Trottier, Chairman, noted that both Marie Dolder, Attorney, and Jacques Belanger, Surveyor, will be representing the applicant. Justin Rouix, Applicant is also present.

Marie Dolder, Attorney for the applicant explained the reasons for the request for the Equitable Waiver.

Marie Dolder, Attorney for the applicant, addressed the necessary criteria for the granting of an Equitable Waiver as follows:

- (a) That the violation was not noticed or discovered by any owner, former owner, owner's agent or representative, or municipal official, until after a structure in violation had been substantially completed, or until after a lot or other division of land in violation had been subdivided by conveyance to a bona fide purchase for value:

*Answer: After the foundation was poured and the house was between 90 & 95% completed, the building inspector requested a plot plan. The Applicant had the plot plan prepared as requested.*

*It was only after the plan was prepared that the Applicant found out that the house had been constructed within the front yard setback.*

- (b) That the violation was not an outcome of ignorance of the law or ordinance, failure to inquire, obfuscation, misrepresentation, or bad faith on the part of any owner, owner's agent or representative, but was instead caused by either a good faith error in measurement or calculation made by an owner or owner's agent, or by an error in ordinance interpretation or applicability made by a municipal official in the process of issuing a permit over which that official had authority;

*Answer: Prior to having any work done on the property, the boundary pins were set by Jacques Belanger. Before both the footings and the foundation were laid, the Applicant met with the building inspector at the property and measured the setbacks several times to make sure the house location was outside the setbacks. The excavator also measured the setbacks several times to make sure the house location was outside the setbacks. The excavator also measured the setbacks again prior to starting the work. All of the measurements showed that the house location was outside the required setbacks. This error was a good faith error in measurement after proper inquiry.*

- © That the physical or dimensional violation *does not constitute a public or private nuisance, nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of any such property, and;*

*Answer: The use of the property is for a single family home. The home meets the side and rear setbacks and therefore, is not encroaching on any setback that would affect an abutting property. The encroachment is into the front setback that is facing the road and does not create any public or private nuisance. Even with the encroachment, the home is still situated at least 21.3 feet away from the road.*

- (d) That due to the degree of past construction or investment made in ignorance of the facts constituting the violation, 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.

*Answer: By the time that the Applicant learned about the encroachment, the house was already about 95% complete. Prior to having any work performed on the property the Applicant and its agents took numerous measurements to make sure that the setbacks were being met. Given that the violation was not made due to ignorance or a failure to inquire, but instead was a good faith error in measurement, the cost to tear down the entire house to correct the encroachment far outweighs any public benefit that would be gained and such a result would be inequitable.*

Marie Dolder asked that this Board grant this request for an Equitable Waiver and allow this house to remain on the site. Marie Dolder noted this error was made in good faith and they did their proper inquiries for physical evidence and it was not done because of ignorance.

At this point in the meeting, John Trottier, Chairman, asked the members if they had any comments at this time.

Alison Vallieres stated no comments at this time.

Dan DalPra stated no comments at this time.

John Herlihy stated no comments at this time.

Jim Soucy stated he was orienting himself to the site and the plan and what the narrow rectangular area that is sticking out into the setback is. There are no photographs and what that part of the structure is designed for and where is the driveway?

Attorney Dolder referred this question to Justin Rouix.

Justin Rioux stated that the area referred to is part of the garage and the master bedroom with two closets.

John Trottier noted that he had an issue with the chain of events. There is a contradiction. On January 9, 2020, the Building Inspector spoke with Justin Rouix and followed up with an e-mail that the Town needed a Certified Plot Plan. It appears to me that it was requested. The e-mail stated:

*"This lot is small and when I was there today I was only able to locate one property pin. Being a small lot with the close proximity for the foundation, well and septic to the property lines, I want to have you get me a certified plot plan for the site with what is in place now, The septic system needs to be in the location depicted on the septic design. You should also contact the road agent for the driveway and to be sure the town road easement is respected. Noted on the print-out of the email "Need Certified Foundation Plan".*

John Trottier stated it appears to me that the Certified Plot Plan was requested.

Marie Dolder, Attorney, noted she got her information from her client and will defer to him.

Justin noted they were only able to find one property line. The Certified Plot Plan for the site is what is in place now.

It was noted that Mike Cumings, Building Inspector, on January 8 did an inspection prior to backfilling the foundation. The Building Inspector followed up with an e-mail

requesting the applicant to provide a Certified Plot Plan. Building Department has shared with us as to the timeline. (see attached)

John Trottier, Chairman, noted that as far as the setting of the pin on May 20, asked Jacques Belanger, Surveyor, for his input.

Jacques Belanger noted there was a survey done by Keach Norstrom previously which showed one pin on the back line that could be seen on the ground. We haven't done anything on the site on the front line.

Justin stated they were pulling from the pins in the front. Tim Jacques used them. He stated that as to who set them, we thought Jacques had set them. I think we all understood that this was where they were.

Jacques Belanger stated we did the work last fall. There was a pipe on the other side of the road. We had not set the pins.

John Herlihy stated after listening to the attorney and now we are hearing this, I can't believe that you would do this and hope that you would be right. I have a problem with what was done. I can't believe that you would do that to this town and the people of this town. It isn't right.

Alison Vallieres – Stated she sort of agreed with John Herlihy and noted that the Building Inspector was trying to get a Certified Plot Plan for at least five times and it never happened and it all ended up like this.

Dan DalPra – I am curious as to how this affects the installation of the septic system. The way I am reading this was the septic system was not inspected before it was backfilled. No fewer than five times, the Building Inspector made a request for the Certified Plot Plan. It never materialized.

Donna White – Stated the septic has been inspected and approved by the State but has not been backfilled at this point because we asked them to stop all work on the site.

John Trottier asked about the As Built location on the 24" x 16" plan. Is this the septic design?

Donna noted that is the "as built location".

Jacques Belanger stated no one contacted him until he talked with Justin towards the end of February to talk about the line. Never drafted it up. No one called for it.

Dan DalPra noted he had no further questions.

Jim Soucy asked do we have any clear information as to when the Certified Plot Plan was actually generated. There is chronology and there seems to be a good number of months before it had been generated. It doesn't seem like it ever happened. Do we know when that was generated?

Donna White noted it was May 28, 2020.

Jacques Belanger stated he was asked to add things from the plan in an updated version.

Donna stated May 18, 2020 was the first time we saw the Certified Plot Plan. We asked them to locate the septic system on the plan and that plan was May 28, 2020.

Justin stated we were pulling from the pins from the front. Tim Jacques said they were the pins that he used for his line. Three professionals felt they were the correct pins. They were there. As to who set them, I thought Jacques Belanger set them and we all understood that where the lines were pulled from.

John Trottier noted the Building Inspector did not do any measurements. I can explain to you what he should do. I am confused about what had been presented with the timeline.

Jim Soucy stated he has not heard from the Building Inspector to determine that the chronology is accurate and if there are any measurements as to the front pins. Are they just pins or grade stakes, etc.

Mike Cumings noted that the time line is accurate. I made five requests to get this Certified Plot Plan.

Justin – There were actual metal posts put in. They were not granite posts. Tim Jacques thought Jacques Belanger put them in. I did meet with Mike Cumings and did measure the stakes and we measured the stakes twice. We thought we were okay. He did stress us to get a Certified Plot Plan due to the lot being very small. I called Jacques and asked that he do the plan. We both took the measurements.

Mike Cumings noted this was after the foundation was in. He stated he said "You may be okay but you need to get a Certified Plot Plan". I stressed that you should get the Certified Plot Plan.

John Herlihy asked Jacques Belanger – Why did you take so long to get the Plot Plan?

Jacques Belanger noted that they were never finished. We were just very busy.

John Herlihy asked Justin how many houses have you built.

Justin noted he has built two houses, his own and one on White Tail Court in Dunbarton.

Mike Cumings stated he asked you for the Certified Plot Plan.

Justin noted he should have been calling Jacques for the Certified Plot Plan.

John Trottier noted there is a contradiction in the timeline. I am having a hard time. Again, when it comes to pulling off the right pins, etc.

Jim Soucy – Because we have a chronology time line, I guess what I would ask the applicant if there are any errors in the timeline in this document. Are there e-mails that relate to the timeline?

John Trottier – Would request that you look at their records for something that is contradictory.

Marie Dolder stated she has not seen the timeline. In order to be fair to the applicant, would need the timeline.

Donna White will provide the timeline to Marie Dolder.

Jim Soucy – There may be something else I would like to know about the application. .... Nor does it have step by step and picture of the chronology. We should give Mike's timeline to Marie and she can look at it.

Marie Dolder asked if the Board would be tabling the application until we provide further information for the next meeting.

John Trottier noted the Board would be tabling the application and that will give the applicant an opportunity to look at the record.

**MOTION:**

**John Herlihy made a motion that the Dunbarton Zoning Board of Adjustment continue the Public Hearing for the Gary Road, LLC request for an Equitable Waiver**



until the next meeting on Monday, July 13, 2020. Dan DalPra seconded the motion. The motion passed unanimously with the following Roll Call Vote.

Alison Vallieres – Yes  
Dan DalPra – Yes  
John Herlihy – Yes  
Jim Soucy – Yes  
John Trottier – Yes

**MOTION:**

John Herlihy made a motion that the Dunbarton Zoning Board of Adjustment Adjourn the meeting at 7:48 p.m. Dan DalPra seconded the motion. The motion passed unanimously with the following Roll Call Vote.

Alison Vallieres – Yes  
Dan DalPra – Yes  
John Herlihy – Yes  
Jim Soucy – Yes  
John Trottier – Yes

Respectfully submitted,

Alison R. Vallieres, Secretary

TOWN OF DUNBARTON  
DEPARTMENT OF BUILDING, HEALTH, PLANNING, AND ZONING  
1011 SCHOOL STREET DUNBARTON NH 03046  
PHONE: 603-774-3547 EXT 106 FAX: 603-774-5541  
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May 29, 2020

Zoning Board Members,

I am submitting this memo in response to statements made on the Gary Road, LLC. application for an Equitable Waiver of Dimensional Requirements. I have also attached a timeline of communications with the applicant for your review. Full email details are available in the building permit file.

(a) "After the foundation was poured and the house was between 90 and 95% completed, the building inspector requested a plot plan." **See timeline, January 9, 2020**

(b) "Prior to having any work done on the property, boundary pins were set by Jacques Belanger." **See timeline, May 20, 2020**

"Before both the footings and the foundation were laid, the Applicant met with the building inspector at the property and measured the setbacks several times to make sure the house location was outside the setbacks." **The building inspector did not do any measurements with the applicant prior to the start of construction.**

(c) No rebuttal

(d) "By the time that the Applicant learned about the encroachment, the house was already about 95% complete." **See timeline, January 9, 2020, applicant informed of concern**

Respectfully submitted,



Michael Cumings  
Building Inspector

**Summary of actions on 18 ½ Gary Road, K1-12-16, relative to timeframe and plot plan requests**

October 24, 2019	Building permit issued; based on documentation submitted & building envelope depicted on septic system design
December 30, 2019	Footings inspected; later the same day, foundation rebar & forms inspected; Justin Rioux was reminded to contact Jeff Crosby re: driveway location
January 8, 2020	Foundation inspected prior to backfill; contractor was informed foundation drain was to be relocated.
January 9, 2020	Inspector spoke with Justin Rioux; followed up with an email (excerpt from that email: <b>This lot is small and when I was there today I was only able to locate one property pin. Being a small lot with the close proximity for the foundation, well and septic to the property lines, I want to have you get me a certified plot plan for the site with what is in place now. The septic system needs to be in the location depicted on the septic design. You should also contact the road agent for the driveway and to be sure the town road easement is respected.)</b> Noted on the print-out of the email <b>"Need Certified Foundation Plan"</b> .
January 16, 2020	Inspector emailed Justin Rioux re: multiple items (excerpt from that email: <b>I'd like to get a certified plot plan for the foundation, well and septic locations.)</b>
January 30, 2020	Inspector emailed Justin Rioux with subject line: <b>18.5 Gary certified foundation;</b> (excerpt from that email: <b>I did mention on January 9, 2020 I need a certified foundation plan to be sure you're not in the setbacks. This is a small lot and I need you to know you're compliant with the zoning setbacks. I would recommend that you get this done soon in your own interests before you put yourself at risk being in the setback.)</b> Mr. Rioux responded: <b>"I believe Jacques did that, I will shoot him an email right now."</b>
February 4, 2020	Inspector emailed Justin Rioux, subject line: <b>certified foundation plan;</b> (entire email: <b>Make sure you talk to Jacques to get the certified foundation location plan. It looks like he's got some of the points already for the survey. He hasn't heard from you.)</b>
April 2, 2020	Inspector emailed Justin Rioux re: a call from a neighbor re: stonewall damage; (excerpt from that email: <b>When were you getting a certified foundation location plan done?)</b> Mr. Rioux responded: <b>"As for the plot plan I will talk to Jacques, he was supposed acquire one."</b>
April 28, 2020	Donna emailed Jacques Belanger, asking if he was working on a plan for Justin Rioux. Mr. Belanger responded: <b>"yes, just spoke to Justin about doing the plot plan for Gary Road."</b> Donna responded: <b>"ok, thanks. Mike has been asking since January and wants it done before they start the septic since it's so tight on the lot."</b>

May 14, 2020

Inspector was at a different Rioux property for inspection, Justin Rioux told him the septic installer had a copy of the certified plot plan and the system had been installed. We did not have a copy of the plot plan at that point.

May 20, 2020

Donna emailed Jacques Belanger, subject line: Gary Road lot, asking if he set bounds on the Rioux lot; **Mr. Belanger responded "No we haven't. The right rear is in and I think that's it for now."**