

**DUNBARTON ZONING BOARD OF ADJUSTMENT  
DUNBARTON TOWN OFFICES  
MONDAY, JULY 27, 2020 – 7:00 P.M.**

The regular monthly meeting of the Dunbarton Zoning Board of Adjustment was held at the above time, date and place.

John Trottier, Chairman, called the meeting to order at 7:00 p.m.

The following members were present:

John Trottier, Chairman  
John Herlihy, Vice Chairman  
Alison Vallieres, Secretary  
Dan DalPra  
James Soucy

Other Attendees:

Donna White, Building Department  
Michael Cumings, Building Inspector  
Maria Dolder, Attorney for Rioux  
Justin Rioux, Applicant  
Ashley Rioux, Applicant  
Jacques Belanger, Surveyor  
Tim Jacques  
John Wilt, Applicant  
Braydon Tuscher, Representing Applicant

**Meeting Posting:**

The Chairman verified with the Secretary that the meeting notice had been posted in two public places throughout the Town and published in the Concord Monitor for one day. It was noted the Zoning Board Meeting was posted on the Google Calendar and on the Dunbarton Town Web Site.

**APPROVAL OF PREVIOUS MEETING MINUTES: MONDAY, JUNE 8, 2020, FEBRUARY 10, 2020, JULY 13, 2020**

**MOTION:**

John Herlihy made a motion that the Dunbarton Zoning Board of Adjustment approve the minutes of the February 10, 2020 meeting as written. James Soucy seconded the motion. The motion passed unanimously.

**MOTION:**

Dan DalPra made a motion that the Dunbarton Zoning Board of Adjustment approve the minutes of the June 8, 2020 meeting as written. John Herlihy seconded the motion. The motion passed unanimously.

**MOTION:**

John Herlihy made a motion that the Dunbarton Zoning Board of Adjustment approve the minutes of the July 13, 2020 meeting as written. James Soucy seconded the motion. The motion passed unanimously. John Trottier abstained as he was not present at this meeting.

**CONTINUED PUBLIC HEARING: # 2020-ZBA-003 - GARY ROAD, LLC REQUESTS AN EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENTS TO ARTICLE 4, SECTION C, PARAGRAPH 1c. TO ALLOW THE HOUSE THAT HAS BEEN SUBSTANTIALLY CONSTRUCTED TO BE LOCATED UP TO A MAXIMUM OF 3.7 FEET INTO THE FRONT SETBACK ON THEIR PROPERTY AT 18 ½ GARY ROAD (K1-12-16) IN THE LOW-DENSITY RESIDENTIAL DISTRICT.**

John Trottier, Chairman, opened the Continued Public Hearing and noted that the Board had concerns about the chronological sequence of events regarding the Building Inspector and the applicant.

Maria Dolder, Attorney, appeared on behalf of her clients, Justin and Ashley Rouix, Gary Road LLC. She presented copies of all the building permit issued for the property. We apologize for any discrepancies.

She stated that the Building Inspector had continued to allow the applicant to continue and it was not intentional on the part of her client. The foundation had been poured prior to the plot plan request. We do agree with that. On January 9<sup>th</sup>, it is noted on the printout. Other than that, the chronological printout looks correct.

Maria Dolder stated her clients were not taking this lightly. They have nothing to gain. This delay has set them back a bit. I want to make sure you know that is the case. They did not get the plot plan done in January. They contacted Jacques Belanger to get it. Clearly, my client did not realize it was as urgent as it was. He did continue to get town approval for going forward on the work on the property. The Town continued to let him work on the property. That at least sets the tone. I don't think anyone thought the house was built in the setback. If there was a real basis that there was a zoning violation work would have been halted. He knew he had to supply a plot plan. He did not think it was an urgent matter. I only put that out to you to make sure you realize he was working on it. He asked Jacques Belanger to do it.

During the last meeting which was on ZOOM, made it difficult to talk about and clear up about what we were talking about. If you look at the plot plan Jacques Belanger did, it was his conceptual. Tim Jacques used two stakes on the property across the road. Made an assessment. It was just a misunderstanding of what was being looked at. They were survey stakes for the property across the street

Tim Jacques will explain this to you. They actually took the stakes across the street and put strings on them. They went off those stakes and I will ask him to stand up and explain.

Tim Jacques stated he used the two pins on the back and the two across the street. From which he took two extensive measurements off. Went in the front and the back. Dragging the line over a mound of material in the front and lost some yardage.

Maria Dolder said as previously indicated, her client did not go into this lightly. Tim Jacques did the measurements at the time of doing the house and there was no information to indicate there was an error. We tried to meet the setbacks and have come up with this error. Allowing this house in its current location. It is an older neighborhood. Majority of the other houses on the other side are located close to each other. This house is the furthest house on the street. It would not look out of character. All of the abutting houses are closer to the road. It is a small road and the applicant did put a medium home on the site. It fits in with all the other homes in the area. It clearly could fit in with the neighborhood.

*The letter from Admiral Building Movers, Inc. has stated that moving the house would be cost prohibitive. The process of rigging and jacking the building, then moving it back from the road 5 feet would be very expensive because of the design of the building and the way the garage is connected. Also to extend the garage floor and the foundation itself would be very costly for the homeowner."*

Maria Dolder stated finally, they are not able to just move the house. The way they built the house, they can't move it. This error was made in good faith. Did take steps. They do not have anything to gain. It has not been something they would have wanted to do. The foundation was in prior to the request for the plot plan. I don't think anyone built it thinking it was in violation. Don't think the Town thought it was a violation of zoning. My client just continued on. Had he not had the information prior but everyone was pretty clear this was going to meet the setbacks.

Tim Jacques stated he tried to calculate for the extra material on the lot. Given the fact the house would be a complete tear down would be devastating to this client. We ask that you grant this waiver.

Abutters were read as follows:

American Born LLC c/o Joseph Mullany – Not Present

Adam Bostaph – Not Present

Nicholas Hanson – Not Present

Ryan Johnson – Not Present

Lena McLaughlin – Not Present

Alilia Ballou - Not Present

Jacques Belanger – Surveyor, Present

Maria Dolder – Attorney, Present

John Trottier, Chairman, closed the Public Hearing at 7:25 p.m.

#### Board Questions:

James Soucy stated that in looking back, the pins were not noted on the plot plan. There are two pins along the front and the rear border. Measurements were from the front.

John Trottier stated they were taken from the front pins on the lot across the road.

Dan DalPra stated it appears there is nothing to not believe as to what happened. He believes it was an honest mistake. It was built in the winter? The applicant noted it was built in the winter.

James Soucy noted that according to what we are given in the statutes, the violation was not noticed or discovered. I think that the error could have been discovered, almost should have been discovered but what we have is a standard in the actual discovery or finding out about it. Not exactly clear about how many times a tape was strung out to double check on things. It doesn't seem like this outcome was out of ignorance or throwing caution to the wind. From the documentation presented, it sounds like there were at least efforts made to check the measurements and there is nothing from a real estate company to show us any diminution of property values. It doesn't appear to me that there would be any appreciable diminution in property values and as Dan already pointed out, no advantage in selling price or anything here. There is a letter from a building mover which has been submitted which shows moving the home would be cost prohibitive and very expensive and costly to the homeowner. All of these are relative.

John Herlihy – All Set

Alison Vallieres – All set

John Trottier – It sounds like the applicant came around. I would agree. It has to be a lesson to everybody. This would appear to be an honest mistake. I appreciate your coming around. We were able to get it together. Mike was only doing his job. I don't want to debate it. He kind of thought things were moving along. Let this be a lesson to you. Now that we have heard from all the parties involved as to how they pulled the ties and it was an honest mistake.

John Herlihy- I don't believe he did it intentionally. If he built another house in Dunbarton, I don't want to see him back here.

**MOTION:**

*Dan DalPra made a motion that the Dunbarton Zoning Board of Adjustment grant the request from Gary Road, LLC for an Equitable Waiver of Dimensional Requirements to Article 4, Section C, Paragraph 1 c. to allow the house that has been substantially constructed to be located up to a maximum of 3.7 feet into the front setback on their property at 18 ½ Gary Road (K1-12-16) in the Low Density Residential District.*

*The motion was seconded by John Herlihy. The motion passed unanimously. The Chair voted in the affirmative.*

**PUBLIC HEARING: #2020-ZBA-004, JOHN WILT REQUESTS A VARIANCE FROM SECTION 4, C. NONCONFORMING LOTS, PARAGRAPH 1c. TO ALLOW DIMENSIONAL RELIEF ON THE NORTHERN LOT LINE. APPLICANT IS REQUESTING 7.13' WHERE 20' IS REQUIRED.**

John Wilt, Applicant and Brayden Tuscher of Tuscher Design Group appeared before the Board of Adjustment.

Mr. Tuscher presented the plan for the property and stated he was hired to represent the applicant.

The property consists of a small two bedroom house built in 1958. It is in a state of disrepair. It would be too expensive to rehab it. It needs to come down. We tried to design the house to meet the setbacks for the non-conforming lot. We pared it down and this is the most conservative plan we could come up with for the non-conforming lot. We also designed it to get a house for their needs. This is a two bedroom home. Would like a two stall garage but there was no way to get a two car garage on the lot. The current building meets all of the setbacks.

The existing building is 1380 square feet and we are requesting the building be 1600 square feet. Overall would be 22 – 21% larger. We feel this is a good compromise and it would get the value out of the lot. Don't have septic approval yet. They are pretty backed up. Should be in 3,4 or 6 weeks. Don't have approval from the Shoreland Protection.

John Herlihy stated this could be pending approval from Shoreland Protection.

John Wilt stated we had the discussion about submitting the Shoreland Protection and decided if we submit it now and we change anything, we would have to submit everything again. We wanted to find out what we can do here. We are all ready to go. Addressed the criteria for a Variance as follows:

The questions for the granting of the Variance were answered as follows:

1. The Variance will not be contrary to the public interest because:

*The intent of the ordinance, as it pertains to public interest, is preserved by continuing the use of the property as a Single Family home which matches the character of the existing neighborhood, which is comprised of a mix of seasonal and year round Single Family homes. The portions of Article 4, Section C that pertain to public interest are being satisfied as follows:*

***“Contrary to the Ordinance: character of the Neighborhood”***

***The lot has been used as an existing, year round, Single Family home since 1958 (Article 4, section C 1 a)***

**2. The spirit of the Ordinance is observed because:**

***The Town of Dunbarton Zoning regulations are very clear that the proposed use is well within the overall intent and spirit of the Ordinance by virtue of it being Single Family home in a area that has never know any other use.***

**3. Substantial justice would be done because:**

***The intent of this request is to bring about a fair and equitable solution to the owners and their neighbors that agrees with the principles and intent of the Ordinance. It is through this process that substantial justice will be assured to have occurred.***

**4. The values of surrounding properties are not diminished because:**

***The proposed building will be replacing an unsightly, run down home. By following all of the town regulations regarding size and height, this new proposed building will only help to increase the surrounding property values.***

**5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.**

**(a) For purposes of this subparagraph, “unnecessary hardship” means that, owing to special conditions of the property that distinguish it from other properties in the area:**

***If all of the current Town and State setbacks are applied, this lot becomes very restrictive – to the point of not being viable as a building lot of any real value. It is therefore easy to argue that applying current regulations to this particular site would create an unnecessary hardship that is incurred by the dimensions of the lot itself, which was created long before modern zoning and so therefore is clearly no fault of the owners. They are simply trying to construct a functional and attractive home on this lot. That is not a viable option without the variance relief we are requesting.***

**No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property, and;**

**(i) The proposed use is a reasonable one.**

**Board Discussion:**

**Dan DalPra asked what the square foot was of the existing building and the proposed home. Also what was the height of the proposed new building?**

**Mr. Tuscher stated the existing building was 1380 square feet and the proposed home would be 1600 square feet. The proposed building will be 34.5’ feet tall from ridge to average grade. The existing building is 16’ tall with a low sloped roof.**

**Dan DalPra noted they were doubling the height of the building from the existing building.**

Braydon Tuscher noted this might be an area for compromise.

John Trottier stated when you go down there, the buildings are between 16' and 20' to 24' tall at the most. This is doubling the height of the building. There are not many out there that tall. This building is 2 ½ stories. It is out of character with the neighborhood .

Mr. Tuscher stated the neighbor to the south is a two story home from the ridge to average grade.

John Trottier asked if you were to compromise, what would it be.

Applicant noted they could probably take the roof down a bit in height.

The Board noted that the applicant offered that there could be a compromise.

The applicant also mentioned the possibility of reducing the 2 ½ stories to 2 stories because the attic was not living space, etc. The wall height could also be reduced somewhat.

John Herlihy stated he would like to see it 26' in height at the most.

James Soucy asked if there has been any inquiries about the large trees (silver maples) and how many are going to be coming down. There will likely to be quite a bit of limbing to get to that height. That is a concern to me. In addition to that, I am looking at the existing camp and the proposed building.

It was noted the applicant felt that was the tree they were planning on taking down.

Dan DalPra. When did you realize there was no point of renovating the existing house?

John Wilt, Applicant - Saw the house next door. I thought I could raise the roof similar to that one. All the lumber in the existing house is too small. If you raise the roof, you have to build a new roof. Everything you touch, has to be to the Building code. You are better off knocking the whole house down. We got in touch with a builder and we talked about what we could do. We also consulted an engineer. The existing house has a crawl space. We would like a basement and a two car garage. We settled for a one car garage and a slab. I have always wanted waterfront property. I go fishing off the shore, bring a sandwich and put my canoe in. Donna White has been very helpful. I am not in a rush to do it but I do want a home I can retire in place. I own a 25 acre farm nearby which is a lot of work and someday I am not going to want to do that anymore.

Dan DalPra - You are taking the one story building and jacking it up and have two stories. You should have a similar footprint of the existing building. What happened? The new building is 500' square feet larger and 1000 square feet larger if you count the two stories. It is a big building for that lot. You could make a concentrated effort to try to stay within the footprint. What happened to a two story garage? The new building is 500 square feet into the new building zone, 1000 square feet if you count the two stories.

**Applicant noted it is the garage. The existing garage is a two sided lean-to. Some of the new homes in the area are between 28 – 30’ tall. They are becoming bigger. The big yellow house in the area has been there a while. Noted that they lost 4 feet once property was surveyed. If we built in the present setback, we would just be replicating our boundary issue.**

**John Herlihy noted that the tax maps are only a guide.**

**It was noted the other houses in the area are meeting the setbacks.**

**James Soucy stated we are going from the existing to the proposed. If you take a portion of the living area and slide it to the south setback, would that work? Could the structure go back to the water edge? It was noted the shoreline setback does not appear on the plan.**

**Applicant noted they are right on the shoreline and could not move the line.**

**Donna White stated that we have one home in the process of trying to get a Certified Plot Plan which is going to be similar to this. He is going to be in the same footprint. He may have to come in to the Board. The other ones are within the setbacks. If they are within the setbacks, no Variance is needed.**

**John Trottier noted he felt this proposed home is not in the character of the surroundings.**

**James Soucy stated that I am looking at what we have to apply now. This is what we have to deal with looking at the standard we have to apply. It may be beneficial to take a look at it. They have pushed this building up to the setback for the shoreline.**

**Alison Vallieres stated it reminds her of the quotation “We need a bigger boat”. In this case, we need a bigger lot. The proposed house includes a lake storage, a guest suite, a workshop, a sunset room, study, garage and balcony, etc. along with two bedrooms, kitchen and living room. This seems like a lot of house for this very small lot.**

**Applicant – This is only 200 square feet more than the existing building. That is not a lot. I don’t feel that is an excessive request. Regarding hardship. Modern construction is being applied. We get a very small house. And there is really no good way to get it. A starting home is the only solution.**

**Applicant -It is the whole volume of the structure. This was a known quantity. I don’t think it is an ugly design. The lot is smaller than what we thought. We are upgrading the septic system and this is actually an improvement. Still dealing with the application.**

**John Trottier – Would like to continue and take a ride down there for ourselves. Will look at the surrounding homes. You have heard the comments from the Board. He noted the ceiling on the first floor is 10 feet.**

**Donna White stated that if the proposed home did not have the setback issues, they would be issued a building permit. We can't look at the house and say it is too big. That is a point when someone comes in with house designs.**

**MOTION:**

**John Herlihy made a motion that the Dunbarton Zoning Board of Adjustment continue the request for a Variance from John Wilt until the Dunbarton Zoning Board of Adjustment meets again on August 10, 2020. John Trottier seconded the motion. The motion passed unanimously.**

**Other Business:**

**Donna White, Building Department, stated the Café next door was going to be opening by new vendors. Are the new vendors required to follow the same conditions that the Rouix were given by the Zoning Board of Adjustment?**

**John Trottier stated that if they change any of the conditions of the approval, they would have to appear before the Zoning Board.**

**There being no further business, the meeting adjourned with the following motion:**

**MOTION:**

**Dan DalPra made a motion that the Dunbarton Zoning Board of Adjustment adjourn at 8:45 p.m. John Herlihy seconded the motion. The motion passed unanimously.**

**Respectfully submitted,**

**Alison R. Vallieres, Secretary**