

**Town of Milford
Zoning Board of Adjustment Minutes
April 7, 2011
Case #3-11
Buchanan Construction, LLC
Equitable Waiver**

Present: Kevin Johnson – Chairman
Fletcher Seagroves – Vice Chairman
Laura Horning
Zach Tripp – Alternate
Michael Unsworth - Alternate

Absent: Steven Bonczar
Steve Winder
Katherine Bauer – Board of Selectmen representative

Secretary: Kathryn Parenti

The applicant, Buchanan Construction Corporation, Inc., owner of 30 Summer Street, Map 22, Lot 90-1 in the Residence “A” district, is requesting an Equitable Waiver of Dimensional Requirements from Article V, Section 5.02.5:A, 0 for a foundation constructed six (6) +/- feet within the thirty (30) foot front setback, in accordance with Article II, Section 2.06.

Motion to Approve: _____

Seconded: _____

Signed: _____

Date: _____

K. Johnson, Chairman, opened the meeting by stating that the hearings are held in accordance with the Town of Milford Zoning Ordinances and the applicable New Hampshire statutes. He continued by informing all of the procedures of the Board; he then introduced the Board. He read the notice of hearing into the record as well as the list of abutters; James Buchanan, applicant and owner of 30 Summer Street and Dawn and Edward Spurlin, 35 Summer Street were present. He then invited the applicant forward to present his case.

J. Buchanan stated he had constructed the house in question and he pulled the front measurement from the edge of the road. There are no sidewalks in this area so he added an additional five (5) feet to the thirty (30) foot measurement and dug the foundation there. He thought the property began from the edge of the road. When he received the certified plot plan from Meridian Land Services, he saw the mistake. He did note other houses on the street are placed within the front setback and this house was placed further back on the lot than most of the houses on the street. He passed some photographs of the neighboring homes around to the board.

F. Seagroves asked where the property line was.

J. Buchanan replied it was within where the sidewalk would go. The sidewalk on the street ends before the property begins so there is still room to extend the sidewalk up the street.

Z. Tripp asked what the jog was on the front of the house that was shown on the plot plan.

J. Buchanan replied it was the garage and the front porch and the rest of the house is in line with that.

K. Johnson noted the applicant was not the first person to come before the board for an equitable waiver. He felt this was an issue that needed to be addressed with the planning department. Once the applicant is issued a building permit, the certified plot plan is when the applicant may find the measurement is off; he felt it would be better to know sooner, if there is a mistake so it can be corrected.

J. Buchanan noted he had just finished construction on 31 Highland Avenue and did not encounter any issues there.

K. Johnson stated he had driven by the project and the applicant's statement is correct that there are several houses in the area that were built within the front setback. The house, as it sits, does fit in with the character of the neighborhood.

J. Buchanan stated he found a corner pin sixteen (16) inches deep in the ground, after the fact. He showed the plan he was working from, dated from the 1800's.

K. Johnson asked if there were any comments from the board; there were none so he asked if there were any comments from the audience and there were none. He then asked the applicant to go over the criteria for an equitable waiver.

K. Johnson noted the request should be an equitable waiver from Article V Section 5.02.5.

Explain how the nonconformity was discovered after the structure was substantially completed or after a vacant lot in violation had been transferred to a bona fide purchaser:

J. Buchanan stated this was discovered by Meridian Land Services, Inc. upon his request for a certified plot plan.

...and how the violation was not an outcome of ignorance of the law or bad faith but resulted from a legitimate mistake:

J. Buchanan stated he honestly thought the property line was the edge of the pavement on Summer Street. He noted parcel 22/91 and 22/90-1 have no sidewalks.

3. Explain how the nonconformity does not constitute a nuisance nor diminish the value or interfere with future uses of other property in the area:

J. Buchanan stated all the surrounding homes are currently closer to Summer Street and does not diminish the value nor does it interfere with any abutters.

4. Explain how the cost of correction far outweighs any public benefit to be gained:

J. Buchanan state the home still sits back further than many abutters on Summer Street and there is not public benefit to be gained by correction.

K. Johnson read from Article II, Section 2.060 of the Town of Milford Zoning Ordinance: “*Equitable Waiver (2008). All equitable waivers of dimensional requirements shall be governed by RSA 674:33-a (as amended) as stated below. 1. When a lot or other division of land, or structure thereupon, is discovered to be in violation of a physical layout or dimensional requirement imposed by a zoning ordinance enacted pursuant to RSA 674:16, the zoning board of adjustment shall, upon application by and with the burden of proof on the property owner, grant an equitable waiver from the requirement, if and only if the board makes all of the following findings: 1. 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 be substantially completed, or until after a lot or other division of land in violation had been subdivided by conveyance to a bona fide purchaser for value; 2. 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; 3. 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 4. 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 would be inequitable to require the violation to be corrected.*”

K. Johnson asked if the board had any comments or questions; they did not so they discussed the criteria for an equitable waiver.

1. That the violation was not noticed or discovered until after a structure in violation had been substantially completed or until after a lot had been subdivided by the conveyance.

F. Seagroves, M. Unsworth agreed the violation was not discovered until the structure had been substantially completed.

Z. Tripp agreed and stated the foundation was poured and the shell was up – the house is complete.

L. Horning agreed.

K. Johnson noted once the foundation is poured, the cost of removal would be tremendous. In addition, most of the other surrounding properties are closer to the street and there would be no public benefit to correcting this violation.

2. That the violation was not an outcome of ignorance of the law, or ordinance, failure to inquire, obfuscation, misrepresentation, or bad faith but was instead caused by either a good faith error in ordinance interpretation or applicability made by a municipal official.

Z. Tripp agreed; the applicant testified he measured thirty five (35) feet from the street; there was intent to be beyond the setback.

L. Horning agreed; this was not discovered until the certified plot plan was completed.

M. Unsworth agreed; this was definitely a good faith error.

F. Seagroves stated there is room on the property to the rear so there was room to move the foundation back. He could have put the house beyond the setback; this was definitely an error in measurement.

K. Johnson agreed and stated it is easy to make this assumption based on the abutting properties. Based on the original plot plan, it is difficult to find the original measurements

3. 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 any future uses of such property.

Z. Tripp stated yes, the setback is similar to parcels, 22/91 and 22/90-1. This would not create a nuisance.

M. Unsworth stated there would be no nuisance; the house is setback like the abutting properties.

F. Seagroves agreed and there is still enough room to extend the sidewalk.

L. Horning agreed; the photographs show several houses that are placed closer to the road.

K. Johnson agreed for all the reasons stated.

4. That due to the degree of past construction of investment 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.

M. Unsworth stated the cost to correct would be too great since the house is already up.

F. Seagroves agreed; the house is there and would be hard to move.

L. Horning agreed and felt deconstruction of the house would be more of a nuisance.

Z. Tripp agreed and stated he could not see how the public would benefit if the house was moved.

K. Johnson agreed; most of the other houses in the neighborhood are closer to the road, there would be no public gain if the house was to be moved and it would be a significant cost to do so.

K. Johnson asked if the board had any additional comments or questions; they did not so he called for a vote.

1. That the violation was not noticed or discovered until after a structure in violation had been substantially completed or until after a lot had been subdivided by the conveyance.

F. Seagroves – yes M. Unsworth – yes L. Horning – yes Z. Tripp – yes

K. Johnson - yes

2. That the violation was not an outcome of ignorance of the law, or ordinance, failure to inquire, obfuscation, misrepresentation, or bad faith but was instead caused by either a good faith error in ordinance interpretation or applicability made by a municipal official.

L. Horning – yes Z. Tripp – yes F. Seagroves – yes M. Unsworth – yes

K. Johnson - yes

3. 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 any future uses of such property.

M. Unsworth – yes Z. Tripp – yes L. Horning – yes F. Seagroves – yes

K. Johnson - yes

4. That due to the degree of past construction of investment 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.

L. Horning – yes F. Seagroves – yes Z. Tripp – yes M. Unsworth – yes

K. Johnson - yes

K. Johnson asked if there was a motion to approve Case #3-10.

L. Horning made the motion to approve Case #3-10.

Z. Tripp seconded the motion.

Final Vote

F. Seagroves – yes L. Horning – yes Z. Tripp – yes M. Unsworth – yes

K. Johnson - yes

Case #3-10 was approved by a unanimous vote.

K. Johnson reminded the applicant of the thirty day appeal period.