

**Town of Milford  
Zoning Board of Adjustment  
February 7, 2013  
Case #2013-01  
Frank and Kathleen Stetson**

Present: Fletcher Seagroves  
Zach Tripp  
Bob Pichette  
Kevin Taylor

Absent: Laura Horning  
Len Harten

Frank and Kathleen Stetson, owners of Map 47, Lot 43, 416 Melendy Rd. in the Residence "R" district, are requesting an equitable waiver of dimensional requirements from Article V, Section 5.04.5:B, for an existing mobile home located fourteen (14) feet +/- from the side setback line where fifteen (15) feet is required.

Motion to Approve: February 21, 2013

Fletcher Seagroves, Chairman, opened the hearing by stating that the hearings are held in accordance with the Town of Milford Zoning Ordinance and the applicable New Hampshire statutes. He informed all of the members of the procedures of the Board. He read the notice of hearing into the record. The list of abutters was read. The applicant Frank Stetson of 416 Melendy Rd was present.

F. Seagroves informed the applicants that there are only four Board members present and applicant has the right to be heard by a full five-member board. He informed applicant of the option to proceed with the hearing before the four-member Board or request a postponement. The lack of a full Board cannot be grounds for an appeal if he is denied. The applicant decided to proceed with the hearing before four members and signed the waiver.

F. Seagroves asked the applicants to explain the reason for requesting an equitable waiver.

F. Stetson stated he bought the land at the corner of Rte. 13 and Melendy Rd about a year and a half ago. He has cleared some trees. There was doubt about the boundary location. He put in a double-wide trailer. When putting in the concrete forms, it was set up too close to the septic tank and he asked to have it moved. One corner is 14 feet from the back boundary instead of the required 15 feet. The concrete was already poured; it wasn't done correctly the first time and an additional 27 yards of concrete was poured on top.

F. Seagroves then read the application.

The names of the abutters were read. No abutters were present.

F. Seagroves asked the Board members if they had any questions.

Z. Tripp asked when they noticed the slab was too close to the septic.

F. Stetson said originally it was about three inches too close.

Z. Tripp asked if the concrete was poured (at that point)?

F. Stetson said only the forms when he noticed it was too close.

Z. Tripp asked what is directly behind the house. He could see a driveway. Is there any fence or shrubbery or are there trees there.

F. Stetson stated it is grass down to the side of a right of way which is a driveway used for access to a machine shop in the back.

K. Taylor asked whether the property was surveyed before the foundation was poured.

F. Stetson responded it was not.

F. Seagroves asked the reason for the foundation.

F. Stetson said the state requires a foundation to put up a trailer.

F. Seagroves said, and to tie it down?

F. Stetson said yes. There are all sorts of rules.

F. Seagroves said he had experience with that with a family member.

B. Pichette asked if there was a trailer there prior to Mr. Stetson's.

F. Stetson said there was a 1957 trailer there and the man who lived there passed away. It was smaller and came out but wasn't close to the boundary line.

B. Pichette asked if it was on a pad.

F. Stetson said it wasn't. He replaced the trailer and the septic system so everything is new now.

F. Seagroves stated that about two or three years ago the ruling came down that all trailers must be on slabs and tied down. That was one of his questions.

F. Seagroves asked for any other questions from the Board. There were none.

F. Seagroves opened the meeting for public comment. There was none; he closed the public comment portion of the meeting.

F. Seagroves stated the applicants are seeking an equitable waiver of dimensional requirement. He referred to page 243 of the zoning ordinance for an explanation. For example, a violation was not noticed or discovered by any owner, former owner or owner/agent or representative or municipal official until after the structure in violation was completed. He asked the applicant who noticed it.

F. Stetson responded the surveyor, Meridian.

Z. Tripp asked if the survey was done as part of the permitting process; the process required a survey after it was finished?

F. Stetson said yes, in the fine print. He had not been aware of it but it required an "as built" survey. After everything was up and they were ready to move in the building inspector asked for the survey. Then they found out it was too close.

F. Seagroves stated that was a reason he read section A, because one of the qualifications is that they did not know about the violation before.

F. Stetson said he if he had, he would have had it surveyed ahead of time.

F. Seagroves said that answers B, that the violation was not an outcome of ignorance of the law or ordinance. Applicant said he didn't know it had to be surveyed.

F. Stetson said it was just plain ignorance, not realizing. The as-built survey cost him \$650.

F. Seagroves continued, "the dimensional violation does not constitute a public or private nuisance"

Z. Tripp said the only way would be the boundary varying in which it violates the setback. The right of way to the machine shop. No nuisance there.

F. Seagroves referred to the ordinance, "the cost of the correction outweighs any public benefit or gain He didn't see the public gain.

F. Seagroves asked if any members of the Board wanted further discussion or had any questions.

Z. Tripp said all his comments were covered. He didn't see any gain by moving it a foot.

**1. That the violation was not noticed or discovered until after the structure in violation had been completed or after the lot had been subdivided:**

**Z. Tripp – yes**

**B. Pichette – yes**

**K. Taylor – yes**

**F. Seagroves – yes**

**2. That the violation was not the outcome of ignorance of the law or ordinance, failure to inquire, obfuscation, misrepresentation, or bad faith on the part of any owner or 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 the official had authority.**

**B. Pichette – yes**

**Z. Tripp – yes**

**K. Taylor – yes**

**F. Seagroves – yes**

**3. 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.**

**K. Taylor – yes**

**B. Pichette – yes**

**Z. Tripp – yes**

**F. Seagroves – yes**

**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 it would be inequitable to require the violation to be corrected.**

**Z. Tripp – yes**

**B. Pichette – yes**

**K. Taylor – yes**

**F. Seagroves – yes**

K. Taylor moved to accept Case # 2013-01.

Z. Tripp seconded the motion.

**Final vote:**

**Z. Tripp – yes**

**B. Pichette – yes**

**K. Taylor – yes**

**F. Seagroves – yes**

**Equitable waiver was unanimously approved.**

F. Seagroves mentioned the 30-day appeal period but said he couldn't tell the applicant not to build in the meantime, since it was already done.