

Town of Milford
Zoning Board of Adjustment Minutes
Case #2017-02
February 16, 2017
Badger Hill Properties
Equitable Waiver

Present: Kevin Johnson, Chairman
Mike Thornton, Vice Chair
Joan Dargie
Jason Plourde
Steve Bonczar
Rob Costantino, Alternate

Absent: Tracy Steel
Katherine Bauer – Board of Selectmen representative

Secretary: Peg Ouellette

Badger Hill Properties, for property located at 181 Timber Ridge Drive, Milford, NH, Tax Map 51, Lot 26-170 in the Residence R (Res-R) district, is seeking an Equitable Waiver per the Milford Zoning Ordinances Article V, Section 5.04.5.A to allow the reduction of the front yard setback for the single family dwelling under construction. Proposed location met the setback requirements. The As-Built drawing certifies that the foundation was poured within the front yard setback line.

Minutes Approved on April 20, 2017

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 introduced the Board and continued by informing all of the procedures of the Board. He read the notice of hearing into the record. The owner of Badger Hill Properties, as well as Jon Lariviere, Manager at Badger Hill Properties, were present.

The owner said they designed and built, meeting town requirements and setbacks. Pins were set when the hole was dug and then reset the one in question at front right-hand corner, figuring it was well within margin to the setbacks. With the hole being dug larger, it made it turn larger, etc.

Because of two jogs, those corners extended 1.3 ft into the front yard setback.

The owner said this should not have occurred. No neighbors aside or across. He stated he still owned all those properties. Anybody buying them would see those conditions prior to coming in.

No effective abutter at this point other than himself. This was not a mistake taken lightly. That was purpose in seeking Equitable Waiver. Cost to repair mistake would be out of alignment with any greater justice.

K. Johnson asked the current status of progress on the property.

Owner said they stopped as soon as they realized the mistake. It was not a sold house.

S. Bonczar asked it if was basically just twisted and turned.

Owner, referring to diagram in packet, said front right-hand corner was the one in question. When they situated the house to do the hole, they dug cellar hole larger than the foundation, which they always do. When they went back and reset the stake they thought in question they figured it would be sufficient for foundation guys to work from. They turned footings when they poured them quite a bit. Because of the radius the lot curves in. Because of nature of the turning and those two jogs the corners were over the line – each by the 1.3 ft.

S. Bonczar commented there wasn't much that could be done about it.

Owner said he was asking for Equitable Waiver for something he wished he didn't need to be.

Didn't set out to put the house over the setback lines. Doing everything they can to mitigate it.

Haven't moved forward or made the problem bigger.

S. Bonczar asked if it then became a nonconforming residence. Anything else owner did, would have to be considered nonconforming.

J. Plourde appreciated way they went about it and stopped right away on noticing problem.

K. Johnson agreed. Showed good faith. The way the foundation was set one would think you try to make house sort of parallel to the road. Could see what had happened.

Owner said they set a single point in the hole and should have been multiple ones. Training issue.

This happened once before that he could think of. They work to not have it happen.

K. Johnson commented that he'd been on the Bd. many years and this was the third foundation issue he recalled.

J. Dargie, referring to what S. Bonczar had said, for a deck and porch, would all of that be within setbacks?

Owner said no farmer's porch and detached steps were allowable within front setback.

There being no other questions from the Bd., K. Johnson opened the case for public comment.

There was none. He closed the public portion of the meeting.

K. Johnson then asked if the Bd. wanted him to read the requirements for Equitable Waiver.

Primarily, condition that it was not due to ignorance, failure to check it, or intentional error or to hide it. (Page 244 of Ordinance). Bd. agreed to not reading it.

K. Johnson thought it seemed this was such a minor encroachment into the setback the cost to remedy it would far outweigh public gain. There was value to having setbacks, but in this case, if the reverse were true and there was only 1.3 ft setback left, that would be a whole different situation. This was not the case. This was a minimal error. He asked for any other comments from Bd. members.

J. Plourde said it was beneficial that there were no real abutters on either side to raise issue. When anybody does move it, it is a pre-existing condition.

K. Johnson said it was not as though it would be obstructing the sight radius of the street.

There were no other comments.

K. Johnson called for a vote on the criteria for 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.

J. Dargie – yes S. Bonczar – yes J. Plourde – yes M. Thornton – 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.

J. Dargie – yes J. Plourde – yes S. Bonczar – yes M. Thornton – 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. Thornton – yes J. Plourde – yes S. Bonczar – yes J. Dargie – yes K. Johnson - yes

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

S. Bonczar – yes J. Plourde – yes J. Dargie – yes M. Thornton – yes K. Johnson – yes

K. Johnson asked for a motion to approve the Equitable Waiver request for Case # 2017-02 for property at 181 Timber Ridge Drive.

M. Thornton made the motion to approve Case #2017-02

J. Dargie seconded the motion.

Final Vote -

J. Dargie – yes

S. Bonczar – yes

J. Plourde – yes

M. Thornton - yes

K. Johnson – yes

K. Johnson informed applicant he was approved by a unanimous vote and reminded the applicant of the thirty day appeal period.