

**Town of Milford
Zoning Board of Adjustment
September 19, 2019
Case #2019-23
Elizabeth Duggan
Equitable Waiver Request**

Present: Joan Dargie, Vice Chair
Michael Thornton
Rob Costantino
Tracy Steel
Karin Lagro, Alternate

Lincoln Daley, Director of Community Development
Paul Dargie, Board of Selectmen Representative

Absent: Steve Bonczar, Chair
Wade Scott Campbell, Alternate

Secretary: Peg Ouellette

Elizabeth Duggan, Tax Map 11, Lot 19, 98 Wilton Road, Milford, NH. Equitable Waiver Request
Application from the Milford Zoning Ordinances, Article V, Section 5.08.5.B to allow the construction of
a single-family residence within the 15-foot side and rear dimensional setbacks in the Integrated
Commercial-Industrial "ICI" district.

**ZBA MINUTES OF 09/19/19 DUGGAN EQUITABLE WAIVER CASE #2019-23 WERE APPROVED
11/07/19**

1 J. Dargie, Vice Chair, opened the meeting and introduced the Board members. She informed all of the
2 procedures of the Board. She read the notice of hearing.

3
4 Elizabeth Duggan and Susan Robinson, came forward. S. Robinson said E. Duggan purchased the
5 property in December with the intention of putting up a house. It was supposed to be 32 x 40 as shown
6 on the plan. It was well within that. It was actually 28 x 32.

7
8 L. Daley said Ms. Duggan was before the Zoning Board previously for a Special Exception for the same
9 situation. At that time, the Chair concluded that an Equitable Waiver was the more appropriate form of
10 relief. While constructing the foundation, the son relied upon some existing property pins, which he was
11 told were the edge of the property. Unfortunately, the pins were set by someone else or improperly set. It
12 was discovered when they hired a surveyor. As a result, the surveyed plan displays a portion of the house
13 foundation within the rear and side setbacks. The closest distance to property was 11.2 ft from the side
14 setback and 13 ft. from the eastern side setback. In talking with the son, it was accidental and not done
15 with malice or ill-intent. He relied upon the pins, but found out they were not set by any surveyor.

16
17 M. Thornton said his concern was there was previous knowledge that a survey was required and it was
18 done after the fact.

19
20 L. Daley said the son relied on the survey of the property. Mr. Duggan relied on pins in the field to locate
21 a foundation and it was purely accidental.

22
23 M. Thornton asked the question a different way. When he filed a building plan and stipulated he was
24 putting a foundation in a spot, did it stipulate that or did it go somewhere else. Was there a benefit to that
25 error?

26
27 E. Duggan said no benefit. There was a railroad to the south and a fence to the right. She asked if they
28 could put up another fence. She said they would be side by side and she said you could do that. He put
29 up streamers and stakes and re-measured. He thought he had it perfect.

30
31 L. Daley said once the son discovered there was an error in the location of the foundation, he reached to
32 the adjacent property owners saying he erred and what could he do. It was handled.

33
34 M. Thornton asked if the Town was affected.

35
36 L. Daley said not in any way.

37
38 J. Dargie said the house was on the front end and could be set back.

39
40 L. Daley said her existing drive served those properties.

41
42 J. Dargie asked for any questions from the Board. None. She opened public comment. None. She
43 closed public comment.

44
45 J. Dargie proceeded to discussion of the criteria for Equitable Waiver.

- 46
47 **1. Explain how the violation was not noticed or discovered by any owner, former owner,**
48 **owner's agent or representative, or municipal official, until after a structure in violation**
49 **had been substantially completed, or until after a lot or other division of land in violation**
50 **had been subdivided by conveyance to a bona fide purchaser for value:**

1
2 J. Dargie said in this case the structure was substantially completed.
3

- 4 **2. A. Explain how the violation was not an outcome of ignorance of the law or Ordinance,**
5 **failure to inquire, obfuscation, misrepresentation, or bad faith on the part of any owner**
6 **or owner's agent or representative, but was instead caused by either a good faith error in**
7 **measurement or calculation made by an owner or owner's agent, or by an error in**
8 **Ordinance interpretation or applicability made by a municipal official in the process of**
9 **issuing a permit over which that official had authority:**

10 **OR**

11 **In lieu of 2.A, demonstrate that the violation has existed for 10 years or more, and that no**
12 **enforcement action, including written notice of violation, has been commenced against**
13 **the violation during that time by the municipality or any person directly affected:**
14

15 J. Dargie believed it would seem so.
16

17 R. Costantino said intent was to be in boundaries and they erred.
18

19 K. Lagro said there was an effort to meet the requirements.
20

21 J. Dargie said it was done in good faith.
22

- 23 **3. Explain how the physical or dimensional violation does not constitute a public or private**
24 **nuisance nor diminish the value of other property in the area, nor interfere with or**
25 **adversely affect any present or permissible future uses of any such property:**
26

27 M. Thornton said that was why he asked his specific question.
28

29 J. Dargie didn't believe it caused public or private.
30

- 31 **4. Explain how that due to the degree of past construction or investment made in ignorance**
32 **of the facts constituting the violation, the cost of correction so far outweighs any public**
33 **benefit to be gained, that it would be inequitable to require the violation to be corrected:**
34

35 J. Dargie said this fit this condition, having to take out the foundation and re-pour it.
36

37 M. Thornton asked L. Daley if when he first pulled the building permit for his garage complex
38 he had to do a drawing.
39

40 J. Dargie said the actual property line how far he was setting back the footprint of the structure
41 and showed construction detail and complied with all regulations, etc. That was done. He
42 didn't understand.
43

44 L. Daley said, not having the building plan in front of him, you cannot explain the process
45 completely. In this case the person relied on the survey and drew in what he thought was right.
46 Recently when he went to the field that was not correct.

1
2 M. Thornton didn't see harm or benefit that may be a causative factor.
3

4 J. Dargie moved on to vote on the Special Exception:
5

6 **VOTE: On Equitable Waiver:**
7

- 8 **1. Was the violation not noticed or discovered until after a structure in violation had**
9 **been substantially completed or until after a lot had been sub-**
10 **divided by the conveyance?**
11

12 K. Lagro – yes
13

14 T. Steel – yes
15

16 R. Costantino – yes
17

18 M. Thornton – yes
19

20 J. Dargie – yes
21

- 22 **2. Was the violation not an outcome of ignorance of the law, or ordinance,**
23 **failure to inquire, obfuscation, misrepresentation, or bad faith but was instead**
24 **caused by either a good faith error in ordinance interpretation or applicability**
25 **made by a municipal official?**
26

27 M. Thornton – yes
28

29 R. Costantino – yes
30

31 T. Steel – yes
32

33 K. Lagro – yes
34

35 J. Dargie – yes
36

- 37 **3. Does the physical or dimensional violation not constitute a public or private**
38 **nuisance, nor diminish the value of other property in the area, nor interfere with**
39 **any future uses of such property?**
40

41 T. Steel – yes
42

43 R. Costantino – yes
44

45 K. Lagro – yes
46

47 M. Thornton – yes

1
2 J. Dargie – yes
3

- 4 **4. Due to the degree of past construction or investment the cost of correction so far**
5 **outweighs any public benefit to be gained, that it would be inequitable to**
6 **require the violation to be corrected.**
7

8 R. Costantino – yes
9

10 M. Thornton – yes
11

12 T. Steel – yes
13

14 K. Lagro – yes
15

16 J. Dargie – yes
17

18 J. Dargie informed the applicant that the Equitable Waiver was approved and informed her of the
19 30-day appeal period.
20

21 E. Duggan asked if the appeal period only applied to the abutter on the right. She was informed
22 that it applied to all abutters.