



Town of Hill
Zoning Board of Adjustments
30 Crescent St. Suite 1
Hill, NH 03243

NOTICE OF DECISION

Attention: Melanie Thomson
NH Rt 3A
Hill, NH 03243

RE: Application for Equitable Waiver of Dimension

Dear Mrs. Thomson,

03/20/2020

Background –

The applicant is before the ZBA having filed an application for Equitable Waiver of Dimension. The applicant has previously appeared before the Town of Hill Planning Board for a Site Plan Review. The Planning Board approved the site plan and Plat plan having a Right of Way (ROW). The applicant proceeded with a Building Permit application that was approved by the Town of Hill Selectmen. The applicant has performed significant development of the property and construction of the primary residence is well under way. Unbeknownst to the applicant, the lending institution of the loan employed an independent surveyor. The Surveyor advised that location of the primary residence infringes upon the ROW setback according to the Town of Hill Zoning Ordinance. The Lending institution, thereby seeks an Equitable Waiver of Dimension to satisfy any concerns of the residence being concluded. The applicant seeks remedy to satisfy the requirements of the lending institution in order to proceed.

SCOPE – In order for the Zoning Board of Adjustment to approve an Equitable Waiver certain and specific grounds must be established as per below.

674:33-a Equitable Waiver of Dimensional Requirement. –

I. 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:

(a) 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 been 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;

(b) 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;

(c) 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

(d) 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.

II. In lieu of the findings required by the board under subparagraphs I(a) and (b), the owner may demonstrate to the satisfaction of the board that the violation has existed for 10 years or more, and that no enforcement action, including written notice of violation, has been commenced against the violation during that time by the municipality or any person directly affected.

III. Application and hearing procedures for equitable waivers under this section shall be governed by RSA 676:5 through 7. Rehearings and appeals shall be governed by RSA 677:2 through 14.

Waivers shall be granted under this section only from physical layout, mathematical or dimensional requirements, and not from use restrictions. An equitable waiver granted under this section shall not be construed as a nonconforming use, and shall not exempt future use, construction, reconstruction, or additions on the property from full compliance with the ordinance. This section shall not be construed to alter the principle that owners of land are bound by constructive knowledge of all applicable requirements. This section shall not be construed to impose upon municipal officials any duty to guarantee the correctness of plans reviewed by them or property inspected by them.

Source. 1996, 226:4, eff. Jan. 1, 1997.

DECISION

The Board of Adjustment, finding sufficient grounds for approval, hereby GRANTS the applicants request for Equitable Waiver of Dimension pursuant to NH RSA 674:33 (a). The Board finds an Equitable Waiver is appropriate as construction of the property is significant enough that the burden to adjust the location of the structure, at this stage, would be overly burdensome. Additionally, the ROW that is minimally infringed upon provides access to and from a lot of the same owner. Further, the presence of stone ledge, that initially effected the adjustment of the structure's parallel to the ROW, is too significant to be removed. The degree of adjustment is minimal, such that waiver of dimension has little impact on the Zoning Ordinance of 30 ft set back from a ROW. Therefore the application for Dimensional Waiver is approved.

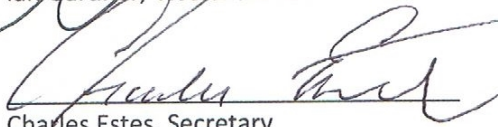
Best Regards,
Town of Hill Zoning Board of Adjustment



Stephen Thomson, Chairman



Ian Gardner, Vice Chairman



Charles Estes, Secretary