

## NORTH BERWICK, MAINE 03906

### MINUTES OF ZONING BOARD OF APPEALS SEPTEMBER 23, 2013

**Present:** Chairman Kevin Mayfield, David Cutter, Todd Hoffman, Louis Thibodeau, Craig Linscott, Lawrence Huntley, CEO

**Also Present:** Michael Dumas

**A. Roll Call:**

Chairman Kevin Mayfield called the meeting to order at 6:31 pm.

**B. Old Business:**

No old business at this time.

**C. New Business:**

Chairman Mayfield stated that the first item on the Agenda was for an Application for a setback variance for single family dwelling for Michael Dumas at 258 Diamond Hill Road in North Berwick.

He stated that this meeting falls under the jurisdiction of the North Berwick Zoning Board of Appeals Section 6.8.2.C.2 Variance Appeals.

Chairman Mayfield moved David Cutter and Todd Hoffman to full member status so they will be able to vote tonight.

Michael Dumas from 258 Diamond Hill Road stepped forward to discuss his application. He stated that he is trying to add 8 feet to the back of his property for a proposed deck. He stated that the deck they had was totally in line with the gable end of the house. He stated that if there was a nice breeze they could not get out in it because they were trapped behind the house. He is basically trying to improve his property and give himself a little more room on the deck.

Chairman Mayfield asked Lawrence Huntley, CEO for his input. Mr. Huntley stated that Mr. Dumas had come to him a couple of months ago to discuss the addition of his deck and they found that he actually lives in North Berwick and Berwick. His lot is a grandfathered lot of record and it is not large enough for the Farm and Forest zone which requires 4 acres and when his house was built it was conforming. Now it is not for any additions that need to be added. Larry stated that by doing a Category 3 survey, they found he could do the addition if he gets a 20% variance.

Craig Linscott asked if all of the abutters had been notified and Mr. Dumas stated that they had all been sent certified letters regarding the meeting. Chairman Mayfield verified with Mr. Huntley about whether Mr. Dumas absolutely needed this variance to complete this expansion and Mr. Huntley stated he did. Chairman Mayfield also asked if a variance would be needed if he were just replacing the existing deck and Mr. Huntley stated that he would not. The applicant needs it because he is expanding the deck. Louis Thibodeau stated that it was only about a 2 foot difference.

Chairman Mayfield was wondering about the comment under 2A in the applicant's justification for a variance which stated: "Additionally the proposed construction will provide the primary mode of egress from the second floor in case of emergency." Mr. Dumas stated that the deck wraps around and is underneath the kitchen window, so if there was a fire in the kitchen and the family could not get out through the front door, this would allow an additional area to escape from. Mr. Linscott asked if there was an apartment on the second floor and Mr. Dumas stated that there was not. The house is a raised ranch.

Todd Hoffman asked Mr. Dumas if he had talked to any of the neighbors regarding this matter. He stated that he had and there didn't seem to be any opposition from those that he spoke with. Mr. Linscott asked what was behind Mr. Dumas' property. Mr. Dumas stated that there is an abutting property. He stated that it was a family owned lot that they broke up between a brother and a sister. He states that the brother is out behind him and the sister is to the left of him. He stated that there was two access roads. There is an abutting driveway to the right of him and one to the left of his property as well.

David Cutter motioned to grant Michael Dumas the 20% variance. Chairman Mayfield stated that they first had to review the statements under Conclusions on the Notice of Setback Variance Decision for Single Family Dwelling.

Chairman Mayfield read the conclusion statements as follows:

1. The need for a variance is due to the unique circumstances of the property and not of the general conditions of the neighborhood. The Board's answer: Yes – 5 No - 0
2. The granting of a variance will not alter the essential character of the locality. The Board's answer: Yes – 5 No – 0
3. The hardship is not the result of action taken by the applicant or a prior owner. The Board's answer: Yes – 5 No – 0
4. The granting of a variance will not substantially reduce or impair the use of abutting property. The Board's answer: Yes 5 No – 0
5. That the granting of a variance is based upon demonstrated need, not convenience and no other feasible alternative is available. The Board's answer: Yes – 5 No – 0

Chairman Mayfield stated that based on the above facts and conclusions on September 23, 2013, the Board of Appeals has voted to approve the application for a variance. They are granting a full 20% variance. Chairman Mayfield instructed Mr. Dumas to pick up the paperwork from Lawrence Huntley and it needs to be filed with the Registry of Deeds in Alfred.

Todd Hoffman asked the rest of the Board if it had to be Yes or Correct to all five conclusions in order to grant the application. Mr. Huntley stated that it did have to be yes to all of the statements.

**D. Minutes:**

Chairman Mayfield asked if there were any previous minutes that needed to be reviewed. Mr. Huntley was not aware of any.

**E. Correspondence:**

Nothing to review.

**F. Other Business:**

Chairman Mayfield also stated that they needed to vote on officers for the 2014 year. He felt they should do it now in case they do not have another meeting before year end. Todd Hoffman nominated Kevin Mayfield for Chairman. Craig Linscott seconded the nomination. VOTE: Unanimous

Craig Linscott nominated Louis Thibodeau for Vice Chairman. Todd Hoffman seconded the nomination. VOTE: Unanimous

Craig Linscott had a question for David Cutter. He asked Mr. Cutter to explain his thinking in meanings for convenience and happiness. Mr. Cutter stated that happiness is something that you want to do as an individual and convenience is more or less that it is something convenient or easier for a person. Mr. Hoffman and Mr. Linscott stated that wouldn't you have to be happy to be convenient? Mr. Linscott stated that this case was a slam dunk. He should have received a variance. Mr. Cutter stated that he felt bad that the applicant had to spend \$127 and come here for this. Mr. Linscott stated that unfortunately it was a rule and they were here to enforce the rules not make them. He stated that he struggles with this rule because it does state that it should not be granted for convenience reasons but for demonstrated need. He just wants to be consistent in how they interpret it. Mr. Cutter stated that most of the people that are coming in for a variance are doing it for convenience. They want something outside of the regular rules so it would be convenience for them. Mr. Linscott disagrees. He states that they have a set of rules to go by and if they come to the Board with something that is outside of those set of rules, then the Board has an obligation to enforce the rules. There were further discussions among the Board as to what is considered a demonstrated need versus convenience. Larry Huntley stated that he has had many discussions with the Attorney regarding this matter. The Attorney had stated that the Board needs to be careful about the precedent that they set. Larry stated that if they would have had a variance

for 30% that would not fall under the 20% variance so the Board would be looking at a whole different criteria. He stated that one of the criteria is the land in question cannot yield a reasonable return without this variance. Chairman Mayfield asked what they would consider a reasonable rate of return for this. Mr. Huntley stated that it has been a question in the courts many times.

**G. Adjournment:**

Craig Linscott motioned to adjourn the meeting at 7:00 pm. Louis Thibodeau seconded the motion. VOTE: 5-0

Lawrence Huntley, CEO  
Planning Coordinator

Respectively Submitted,  
Susan Niehoff, Stenographer

Chairman Kevin Mayfield

Louis Thibodeau

Craig Linscott

Julie Fernee

R. Todd Hoffman

David Cutter

