

SOMERSWORTH ZONING BOARD OF ADJUSTMENTS
MINUTES OF MEETING
December 2, 2020

MEMBERS PRESENT: Matt Keiser Chair, Glenn Garvin-Alternate, Keith Perkins, Brad Fredette and Richard Brooks, Kenneth Vincent, Alternate (7:11)

Excused Members: Coty Donohue

STAFF PRESENT: Michelle Mears, Director of Development Services, and Dana Crossley
Planning Secretary

The meeting was called to order at 7:00PM.

Keiser stated due to the COVID-19/Coronavirus crisis and in accordance with Governor Sununu's Emergency Order #12 pursuant to Executive Order 2020-04, this Board is authorized to meet electronically. The public has access to watch to this meeting through the Local Government Cable Access Ch. 22 (Comcast), and streamed live through the City's website at www.somersworth.com. Although this is a public meeting, the public is encouraged not to attend and instead to leave comments or concerns at the following phone number # 1-603-841-2936, by emailing ZBA@somersworth.com or by sending written comment to Zoning Board of Adjustment, 1 Government Way, Somersworth NH 03878. Comments must be received no later than 4pm the day of the meeting. The public can access the meeting and listen live by telephone and then adding the webinar I.D.

Roll call attendance was taken. **Perkins and Brooks** were in attendance in City Council Chambers. **Fredette, Keiser, Garvin, Vincent (7:11)** were in attendance remotely and alone. Director Mears and Secretary Crossley were also in attendance remotely and alone.

Keiser appointed Garvin as a full voting member for the meeting.

1) Approval of the minutes:

Brooks **MOVED** to accept the October 7, 2020 minutes as presented.

Garvin seconded the motion.

The **MOTION CARRIED** by a 4-0-1 roll call vote. (Fredette abstained)

2) OLD BUSINESS

No old business.

3) NEW BUSINESS

- A) David Francoeur of Upland LLC on behalf of Bradford Connolly and Dorothy Larkin, is seeking an equitable waiver to allow the front porch to remain within the front setback of a property located at 10 Sandlot Lane, in the Residential Single Family (R1) District, Assessor's Map 54 Lot 01-9, ZBA#10-2020 PUBLIC HEARING**

Keiser opened the public hearing at 7:04 PM

Mears stated the applicant is seeking an equitable waiver for the porch that was built within the 15' front setback.

David and Colin Francouer of Upland LLC were in attendance to represent the application remotely.

D. Francouer stated he is the developer of the subdivision with the roads known as Sandlot Lane and Whippoorwill Drive. He stated this lot was sold to the property owner with a contract for them to construct the house. He stated during this process they worked with the engineer on several occasions to site the foundation plan on the lot. He stated the error that happened is when they were in this process they dropped the house plan and just sited the foundation plan at some point and time. He stated because this house has a front farmers porch, along with all of the houses in the subdivision, it got lost during this process. He stated typically in this subdivision it would have not mattered but this is the shallowest lot in the development. He stated there is also a sharp curve in the cul-de-sac and this makes the frontage different on it as well. He stated there is one lot that has a similar frontage curve but that lot is a larger lot.

D. Francouer stated he has spoken with the direct neighbor to this lot and they expressed that they had no issue with the encroachment. He stated they did not submit a comment but were willing to. He stated the house with the encroaching porch is farther back than its neighboring house because they are staggering the houses. He stated the frontage has a sharp in-turn because its location on the cul-de-sac. He stated they are making an attempt in this subdivision to make sure the houses do not look stacked. He stated this house goes front to back and the leach field and tank are in the back yard and makes the lot tight. He noted this is a Conservation Subdivision. He stated they plotted the foundation on the lot and did not use the house plan. He stated when they built the house with the farmers porch and encroached on the front setback.

D. Francouer stated that the land was sold to Conolly-Larkin, Upland LLC built the house, the property owner went back to the bank to close on financing and the bank requested a copy of the foundation certification. He stated they had submitted the foundation certification to the City, no one caught the encroachment, not the engineer, builders, City or himself the developer. He stated it was something he did not catch and it was not noticed until they were sending the plan to the bank. He stated he understands how an issue like this can come back to bite them in the future if they attempt to sell and is now seeking the equitable waiver to make everything legal. He stated it is an honest mistake and they are looking to correct it.

D. Francouer stated this house does not stick out like a sore thumb in the neighborhood. He stated it is not a noticeable encroachment. He stated the City Engineer spent extra time at this lot due the curve in the cul-de-sac for the driveway. He stated they did not notice the encroachment either, even with the plot plan. He stated he does not think this would be an issue again for any other of the lots and he is on top of checking for this in the future. He stated he has supplied answers to the Equitable Waiver criteria and is happy to answer any questions.

Keiser opened for public comment.

Mears stated there were no abutters comments received via mail, email or phone.

Brooks asked if the farmers porch requires any footings, sonotubes or anything that would need to be below the frost level.

D. Francouer stated the door is located adjacent to the encroachment and so the staircase is located in the encroachment. He stated per code any staircase requires something below frost level and they have three sonotubes located there but not a full foundation.

Brooks stated it was fair to say part of the foundation is within the setbacks.

D. Francouer stated the entire foundation meets setback requirements.

Brooks stated the sonotube is part of the foundation system.

D. Francouer stated no, it does not connect and is just a sonotube it could be a piece of concrete if code allowed.

Brooks questioned if they have had issues siting other houses because of the small lots being this is a Conservation Subdivision.

D. Francouer stated they are very aware that they cannot set all houses sideways like most subdivisions. He stated most of the lots have plenty of depth on them. He stated this is probably the shortest lot in the development because of the cul-de-sac curve. He stated they are making an effort to separate the houses as much as possible on these small lots. He stated this house could have been built where it met all setbacks but they had in error in

placement. To alieve the encroachment they would have to rip the house apart and would be a burden to everyone and not a simple fix.

Fredette stated even if they pulled the farmers porch off of the house, they would still need stairs, that would be within the setback to reach the door.

D. Francouer stated that is correct and they would still have to put some sort of footings there for the stairs.

Fredette clarified a door would have to be moved if they were required to comply with the 15' setback.

D. Francouer stated yes and he would unsure how they would enter the house at this point and time.

Garvin asked how far the porch encroaches into the setback.

D. Francouer stated the farmers porch comes out 6' from the house, but it is only the corner of the porch that is within the setback. It is about 5.6' into the setback.

Garvin inquired if he had an approved building permit.

D. Francoeur stated yes.

Garvin asked if the City received the same plan.

D. Francoeur stated the Building Inspector received a full building permit packet, prior to building they receive the lot verification, full package includes house plans. He stated everyone had it.

Garvin clarified the plan was part of building package.

D. Francoeur stated yes, but the engineer did not plot the entire house, he only plotted the foundation for the verification. He stated once the foundation is in the engineer verifies the foundation location (foundation cert) to ensure there are no encroachments before building. He stated they did that and it was submitted to the City.

Garvin clarified the plan did not show the porch that the City got.

D. Francoeur stated the building permit included the porch, but the foundation certification did not. He stated the foundation certification would not show a set of stairs.

Garvin stated he is trying to ask if it was provided to the City.

D. Francoeur stated yes it was.

Keiser stated he drove by the location. He asked what the rock and marker were in the front yard area.

D. Francoeur stated he believed that is the water main.

Keiser stated this house is approximately 22' from the edge of pavement to the farmers porch.

D. Francoeur stated yes.

Keiser closed the public hearing at 7:27PM.

Vincent stated his view on this, with experience as a builder is that oversights do happen. He noted that the applicant has not been factious and brought it to the City. He stated he would encourage the Board to grant this equitable waiver. He stated the applicant is up front about the issue, it has virtually no impact to the neighbors or road. He stated he would encourage the Board to pass this request.

Brooks stated he agrees with Vincent, but looking back three years ago when this subdivision plan came before the Board a variance was needed for the sewer because they are a mile and half from it. He stated that request came from the previous property owner, not Francouer, and they were presented a plan of 14 houses and granted the variance. He stated he is learning something with experience and conditions are important to put on approvals. He stated the 14 lot subdivision increased to a 28 lot conservation subdivision and feels they failed the City by not limiting this subdivision to 14 houses. He stated at the same time he realizes this is an honest error but feels it highlights that these Conservation Subdivision crowds the land even with the open space area. He stated he feels these subdivisions open the door for issues like this. He stated for the whole picture he is not happy with how things have turned out. He stated he does realize it is likely an honest mistake.

Fredette stated he would echo Brooks' statement. He stated he would expect more from a seasoned developer but there is also a homeowner mixed into this now. He stated he hopes this is a lesson for everyone involved with the importance of triple checking and honest mistakes happen. He asked where the location of the stairs is. He inquired if the stairs encroach farther than the deck.

Keiser asked the applicant to address the location of the stairs.

D. Francouer stated there are stairs and they come just about to the dotted line on the plan. He stated they are over to the left a little bit, not the corner of the porch.

Keiser clarified that the stairs might infringe upon the setback but not anymore than the porch is.

D. Francoeur stated not more than the corner but maybe inches more than the porch but with the curve of the cul-de-sac not more than the corner.

Fredette questioned if they were to grant this request should they allow for an extra foot of encroachment should they future home needs to fix future steps.

Keiser stated he would suggest if they approve it 'as built'.

There was a brief discussion of the previous variance requests and number of lots approved for subdivision.

Keiser stated an equitable waiver is designed for a situation like this, where there was an honest mistake in the construction of the house, it is an existing issue and they are seeking the waiver. He stated he feels the applicant has demonstrated that he meets the criteria for an equitable waiver to be granted. He stated he is in support of granting this approval.

Brooks inquired if the stairs had been built.

Keiser stated he believes they have been built.

Brooks clarified that this subdivision is within the Well protection district.

Garvin asked if the house could have been moved back 6'.

Keiser stated the Board did not have a choice in the location but the applicant stated there was a septic system behind the house and limited room to move the house farther back.

Garvin clarified there is no sight line issues due to the encroachment.

Keiser stated he drove by the property and it is not obvious that the porch encroaches into the setback. He stated there is 22' from the porch to edge of pavement. He stated it does not appear like an over crowded development. He stated it sits naturally in there.

Garvin stated since it is within the setback, no issue with the encroachment, no sight line.

MOTION: Brooks stated, after review of the application, the file and all the information presented to the Board, I feel that all conditions have been satisfied, as per the discussion and testimony, and I move that the request of David Francouer of Upland LLC on behalf of Bradford Connolly and Dorothy Larkin for an equitable waiver to allow the front porch and stairs to remain as built within the front setback be GRANTED.

Fredette SECONDS the MOTION.

The MOTION CARRIES by a 5-0 roll call vote.

B) Any other new business that may come before the Board.

Mears stated the 2021 meeting schedule and deadlines has been shared.

Keiser stated they have not heard more from Daniel Vincent.

Mears stated he has hired an attorney and expects them to be re-submitting for the January meeting.

Fredette **MOVED** to **ADJOURN** the meeting. Brooks seconded the Motion. The **MOTION CARRIED** 5-0 by a roll call vote and the meeting **ADJOURNED** at 7:36 PM.

Respectfully Submitted,

Dana Crossley, Planning Secretary