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Planning - Zoning - Economic Development - Conservation

Memorandum

Date: October 21, 2015

To: Fran L'Heureux, Chair, & Members, Zoning Board of Adjustment

From: Timothy J. Thompson, AICP, Community Development Director

Subject: **Patricia M. Panciocco, Esq. of Baroff P.A. (petitioner) and Carol Maggio, Valley View Revocable Trust (owner) –** Equitable Waiver of Dimensional Requirements under Section 3.02(A) of the Zoning Ordinance to permit an existing front stoop along the front of a residence 47 ft. from the front property line whereas 50 ft. is required. The parcel is located at 15 Valleyview Drive in the R (Residential) District. Tax Map 5C, Lot 142. Case # 2015-38.

The following information is provided to aid in your consideration of the above referenced case. Additional background and application materials are included in your packet.

Background:

The Petitioner seeks relief to allow a recently constructed single family home (in particular, the front stoop) to remain 47 feet from the front property line whereas 50 feet is required per Section 3.02 of the Zoning Ordinance. Because of the specific circumstances of this petition, an Equitable Waiver of Dimensional Requirements (under RSA 674:33-a) is being sought. The Petitioner was only made aware of the encroachment during a survey of the property for purposes of creating a certified plot plan as required for the issuance of a Certificate of Occupancy.

The subject property is located at 15 Valleyview Drive (Tax Map 5C, Lot 142). The property is comprised of 1.942 acres of land according to survey information provided by the petitioner. The property is located within the R (Residential) District and is serviced by Merrimack Village District water and an on-site septic system. The lot conforms to the minimum dimensional requirements with the exception of the front setback that relief is being sought for.

Standard of Review: It is the burden of the Petitioner to demonstrate that the requirements for the granting of an Equitable Waiver of Dimensional Requirements under RSA 674:33-a have been met to allow the stoop to be 47 feet from property line whereas 50 feet is required per Section 3.02 of the Zoning Ordinance.

Since the home and improvements were recently constructed, they do not meet the 10 year requirement of Part II of the statutory requirements. Therefore, in order to grant the Equitable Waiver, the Board must make each of the following findings stated in RSA 674:33-a:

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.

cc: Correspondence & Zoning Board File

ec: Patricia M. Panciocco, Esq, Petitioner
Carol Maggio, Valley View Revocable Trust, Owners
Tony Basso, Keach Nordstrom Assocaites
Carol Miner and Fred Kelley, Building Department