



Town of Merrimack, New Hampshire

Community Development Department

603 424-3531

6 Baboosic Lake Road

Fax 603 424-1408

Town Hall - Lower level - East Wing

www.merrimacknh.gov

Planning - Zoning - Economic Development - Conservation

Memorandum

Date: April 20, 2016
To: Fran L'Heureux, Chair, & Members, Zoning Board of Adjustment
From: Timothy J. Thompson, AICP, Community Development Director
Subject: **Joshua Naughton, Trustee (applicant) for 53 Pearson Street Realty Trust (owner)** – Equitable Waiver of Dimensional Requirements under Section 2.02.7(A)(4) of the Zoning Ordinance to permit a 4 foot encroachment of front stairs and porch in the 40 foot wetland setback. The parcel is located at 53 Pearson Road in the R (Residential) and Wetlands Conservation Districts. Tax Map 7D, Lot 011-01. Case # 2016-20.

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 stairs and porch) to remain approximately 36 feet from the wetlands whereas 40 feet is required per Section 2.02.7(A)(4) 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 53 Pearson Road (Tax Map 7D, Lot 011-01). The property is comprised of 4.747 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 petitioner did receive a variance for the wetland setback for the rear portion of the home to encroach within the wetland setback, however, that variance did not contemplate the encroachment at the front of the home for the stairs as is before you with this petition.

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 stairs to be 36 feet from wetland whereas 40 feet is required per Section 2.02.7(A)(4) 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: Joshua Naughton, Trustee, 53 Pearson Street Realty Trust, Petitioner/Owner
Sandford Survey
Building Department Staff