

**TOWN OF CORNISH, NEW HAMPSHIRE
ZONING BOARD OF ADJUSTMENT
SEPTEMBER 7, 2022**

The Cornish Zoning Board of Adjustment met on Monday, September 7, 2022, at 6:30 PM in the Cornish Town Offices. Members present were Michael Fuerst, Chair, Bill Balch, Jason Bourne, and Kate Freeland; Caroline Storrs, Clerk; and Karim Chichakly and Troy Simino, Alternates.

Also in attendance was Patrick Howard, applicant, and Bonnie Kebalka and David Kebalka,

Michael Fuerst called the meeting to order at 6:30 PM. Mr. Fuerst designated voting members. Caroline Storrs took the roll call, collected the fees, read the notice and reviewed the posting and abutters' notices.

Case 22-04

Voting members: Michael Fuerst, Chair, Bill Balch, Jason Bourne, Kate Freeland, and Caroline Storrs

BACKGROUND

Patrick Howard has applied for a variance concerning Article V, Section A, *Dimensional Standards*, of the Cornish Zoning Ordinance. Mr. Howard is requesting a variance that would allow the building of a garage within the minimum side setback requirement of 30' from the property line. The applicant's property is located at 920 Town House Road, Cornish, NH, Tax Map 2, Lot 18, in the Rural Zone.

Mr. Fuerst discussed how a variance is a deviation from the terms of the ordinance and reviewed the five criteria for a variance.

Mr. Howard stated that he would like to build a 26 x 30 foot garage on his property. He asserted that the proposed location was the only site on the property where a garage could be located. The existing well, the proximity to the property line, and grade on the opposite side of the house preclude construction in other locations. Mr. Howard currently cannot store his belongings on his property, and he stated that he needs a garage of the size proposed so he can store these things on his property under cover. If he cannot get the variance, he intends to immediately list the property.

Mr. Howard explained to the Board that the proposed structure could fit on one location on the property, but one corner of the would be within two feet of the 30' boundary line setback. The front of the garage is 40' from the road setback.

David Kebalka, abutter, asked about the abutter's list. Mr. Kebalka stated that he had no problem with the applicant putting the building right up to his property line. Mr. Kebalka also asked how abutters were determined. Caroline Storrs explained that abutters can be across the road. Mr. Kebalka reiterated that he supported the application and was happy with the proposal. He hoped the Board would approve the application. Mr. and Ms. Kebalka left the hearing.

Mr. Fuerst asked Mr. Howard to demonstrate to the Board how the proposal met the variance criteria.

1. *The variance will not be contrary to the public interest;* Mr. Howard explained that he did not see how the proposal would be contrary to the public interest. He had spoken with abutters, and none had a problem with the proposal. He stated that spending \$45,000-\$50,000 to improve the property could be contrary to the public interest and that the construction would increase the value of the property. Mr. Howard said that he has have put a lot of money and time into the property, and no one has said that the improvements have ruined the look of the town. He added that it would improve the look of the property to move items currently stored outside under cover.
2. *The spirit of the ordinance is observed;* Mr. Howard said that he has spent hours trying to find an alternate location on the acre of land. About 80% of the property is a steep hill. The only other flat area of the property are occupied by the house and the well. Mr. Howard added that sliding the garage closer to the house would impinge on the leach field. As a licensed septic installer, Mr. Howard said that he identified the leach field when he ran into inch and a half stone. The building cannot go any closer without comprising the leach field. Caroline Storrs said that having an adequate septic system was within the spirit of the ordinance.
The Board discussed the setback from the road right of way. Mr. Howard stated that moving the garage forward would keep the back corner within the setback. Mr. Howard said that no matter how much closer to the roadside setback the building is located, the back corner would encroach the setback. Caroline Storrs asked about the ditch and culvert along the road since Town House Road is a state road. Mr. Howard said that there is no problem with the state.
Mr. Howard reiterated that he could not move the location of the garage in any way. Kate Freeland asked if he could reduce the dimensions of the garage. Mr. Howard said that he needed all the space in the garage to fit his belongings.
3. *Substantial justice is done;* Mr. Howard said that he had spoken to his abutters and all were fine with the plans. He felt that the proposed structure would be an improvement on the property, and that nobody driving by would see it differently.
4. *The values of the surrounding properties are not diminished;* Mr. Howard said that he had spoken to abutters, and none felt that their property value would be diminished.
Mr. Fuerst asked Mr. Howard to describe the acreage owned by the Kebalkas which lies on either side of his property. Mr. Howard described a brook in the distance and no structures on either side of the house. Mr. Howard estimated there was about an acre on either side of his property. Mr. Howard said that he could not see how the proposal would diminish the values of surrounding property.
5. *Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.* Mr. Fuerst asked Mr. Howard to speak specifically to the nature of his property. Mr. Howard stated that the proposed site was the only place that the garage could fit. On the west side of his house, the property is so elevated that there is no way to approach the garage without bottoming out the vehicle. This side of the property also contains a well. Mr. Howard also described a shared spring on the property where the area is wet and virtually unbuildable. Mr. Howard pointed out the location of the spring.

Mr. Howard continued to the back section, which is extremely steep. Mr. Howard circulated photographs of this section showing the ledge, the spring and the steep grade. Mr. Howard also showed the proposed area of the garage. The grade is much gradual in the proposed location than any other section of his property. Mr. Howard also showed the location of the leach field.

Kate Freeland asked if Mr. Howard was concerned about impacting the leach field. Mr. Howard replied that in the proposed location he had no concern for the leach field.

Mr. Howard showed that there was no room to build in front of the house. Kate Freeland asked what the Kebalka property grade adjacent to the proposed site. Mr. Howard showed the Board where the abutting property became steep.

Mr. Fuerst asked Mr. Howard if what he was trying to do would not encroach on any other structure. Mr. Howard said that the surrounding land was not buildable but served as a buffer.

Mr. Fuerst asked if there were special conditions of the property that distinguished it from other properties in the area. He asked Mr. Howard if because of nature of the land and natural features, he could not reasonably use his property. Mr. Howard reiterated that the garage could not be located anywhere else on the property and why he wanted to have the garage so that he could have a place to store his belongings. Mr. Howard said that he wanted to feel like he has completely moved out of his parents' house. He needs to construct a garage or find another property where it will work.

Troy Simino asked how the property line was marked between Kebalka's property and Mr. Howard. Mr. Howard said that there were four pins and that trees are also blazed around the property. A stone wall also runs along the boundary line. Troy Simino asked if he was confident that the line was two feet, and added that two feet could be within the margin of error. Mr. Howard replied that he had measured from the pin. Mr. Fuerst noted that the parcel is 0.87 acres.

Mr. Fuerst closed the meeting to public comment.

SUMMARY AND DELIBERATION

Mr. Fuerst summarized that the lot is a 0.87 grandfathered lot. The lot currently has a house on it. The portion to the north and west is steep and unbuildable and also contains a well and a spring right. The area to the front of the house is steep. The only location for the garage is to the east of the house and the septic system, which also sits east of the house. The proposed garage is a 26x30 foot two-bay garage. The northwest corner of the garage would extend five feet into the 30-foot boundary setback. There are no structures directly east of the property. The garage cannot be turned in any fashion without affecting the leach field. Ten percent of the structure might be in the setback area. Jason Bourne added that the area behind the home is too steep to build.

Jason Bourne felt that it was a reasonable use of the property that fit with the character of the surrounding homes. He agreed that it would be a benefit to the public to improve the

property. A small incursion into the setback with a vast majority compliant fit within the spirit of the ordinance.

Caroline Storrs said that she felt the garage was a reasonable size. It fit with the character that property, did not overwhelm the property, and was within the spirit of the ordinance.

Bill Balch stated that the neighbors did not have the same hardship and that the hardship Mr. Howard had described was unique.

Kate Freeland said that the property was a small piece with challenges, and Mr. Howard had shown that the proposal was the only feasible location. To say a person cannot build a garage on their property would be unnecessarily harsh.

Mr. Bourne stated that the improvements thus far had improved the surrounding property values, and this proposal would do more to do so.

Mr. Fuerst asked that the board take up each of the criteria individually.

1. All members were in agreement that the variance would not be contrary to the public interest.
2. All members were in agreement that the spirit of the ordinance would be observed
3. All members were in agreement that substantial justice would be done;
4. All members were in agreement that the values of the surrounding properties are not diminished; and
5. All members were in agreement that literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.

Mr. Fuerst asked for a motion to approve the variance to allow for a garage to be built at 920 Town House Road of no more than five feet from the northeast corner of the proposed garage. Motion made by Jason Bourne and seconded by Kate Freeland. Mr. Fuerst called for a vote and the motion carried 5-0. Mr. Fuerst signed the approval.

Jason Bourne made a motion to adjourn. Michael Fuerst seconded the motion, and the vote of the Board was in the affirmative. The meeting was adjourned at 7:45 PM.

Respectfully submitted,
Heidi M. Jaarsma