

**Kennebunkport Zoning Board of Appeals**  
**32 North Street, Village Fire Station**  
**May 20, 2013 @ 7:00 P.M.**

A meeting of the Kennebunkport Zoning Board of Appeals was held on Monday, May 20, 2013. The meeting convened at 7:00 p.m. in the North Street Fire Station.

1. Attendance

Members Present: Mr. Mark Messer (Chair), Herb Cohen, Christopher Perry, Paul Cadigan, Thomas Shore

Others Present: Brian Shaw, Ralph Austin

2. Approval of minutes from the April 22, 2013 meeting, as well as any minutes not previously approved.

Mr. Perry made a motion to approve the minutes of April 22, 2013. Mr. Perry, Mr. Messer, Mr. Cadigan and Mr. Cohen voted in favor of the motion. Mr. Shore did not attend the April 22, 2013 meeting and abstained from voting.

Mr. Messer made a motion to approve the amended minutes from the May 6, 2013 meeting. Mr. Cadigan seconded the motion and the vote was unanimous.

3. **David K. Young, Jr. / Ralph Austin, Authorized Agent** - The Applicant is seeking a variance from lot size and setback requirements from wetlands to enable him to build a single family residence on this currently unbuildable lot. The Variance Request for Undue Hardship is available for review in the Code Enforcement Office at the Kennebunkport Town Hall. The property location is 3 King's Lane, Tax Map 41, Block 005, Lot 08 in the Goose Rocks Zone.

Mr. Messer introduced the Application noting the Board has a quorum requiring a vote of 4-1 to pass a motion.

Attorney Ralph Austin, representing Mr. Young addressed the Board stating the property originally consisted of two lots from a plan approved in the late 1960's and they are asking for a variance to separate the lots and designate them as buildable lots.

Mr. Austin highlighted the following points in his presentation:

- Mr. Young's parents purchased lot 2 in 1969
- Mr. Young's parents purchased lot 1 in 1972 with the intent for Mr. Young or his sister to build a house on it
- Both lots are now non-conforming
- Lot 1 is less than 20,000 sq. ft. and lot 2 is approximately 15,000 sq. ft.
- The setback requirements render both lots unbuildable.

Mr. Austin also listed the four criteria for granting a variance which are:

1. That the land in question cannot yield a reasonable return unless a variance is granted;
2. That the need for a variance is due to the unique circumstances of the property and not to the general conditions of the neighborhood;
3. That the granting of a variance will not alter the essential character of the locality, and
4. That the hardship is not the result of action taken by the applicant or a prior owner.

Mr. Austin also stated one of the reasons why this application should be granted a variance is because this property has 2 sets of wetlands but is not waterfront property so it cannot be used as such for putting in a dock or launching watercraft.

Mr. Austin concluded by addressing the question of whether it is a self-created hardship since a building permit was issued in 1981 to add an additional bay on the garage showing the 2 lots were combined. Mr. Austin explained the designer completed that application not Mr. Young's parents; adding that his parents always intended to build another house on that lot for him or for his sister and never intended to merge the lots.

Mr. Messer explained to the Board they should address the merger of the lots before considering granting a variance. Furthermore, Mr. Messer stated the Board cannot grant a variance for a house on a lot that already has a house on it. Mr. Austin responded they are looking to recreate lot 1 of the subdivision plan citing Article 8.7e of the Land Use Ordinance.

Mr. Perry stated the Board needs to resolve the issue of whether the property is one lot or two adding for the past 30 years it has been one lot as well as on the tax maps.

Mr. Austin explained the Board would be granting a lot size variance, arguing it is the Shoreland zoning that causes lots 1 and 2 to be merged.

Mr. Messer instructed the Board to grant the variance would require 4 separate votes to the 4 criteria.

Mr. Messer opened the Public Hearing.

Mr. Perry read into the record the following two letters:

- Letter from Robert Osthus and Beth Davis dated 4/5/13 opposing the application;
- Letter from Mike Morse, Assistant Shoreland Zoning Coordinator of the Bureau of Land and Water quality, Department of environmental Protection dated April 4, 2013 to Mark Messer and the Members of the Zoning Board of Appeals.

Mr. Bob McCrillis, a property owner in the area and friend of the Applicant addressed the Board in support of Mr. Young.

Mr. Messer closed the Public Hearing.

Mr. Cadigan questioned whether the permit would have been granted to build an additional garage bay if the lots were not merged in order to meet the setback requirements and square footage requirements.

Mr. Shore offered his opinion that the Applicant's hardship is created by the passage of a law which is not grounds for granting a variance. Mr. Austin argued the hardship was caused by the change in the zoning ordinance which requires a variance relief.

Mr. Messer summarized some of the main points of the Application are:

- Applicant is seeking to create two lots
- There is a merger provision
- Both lots were used in 1981 to obtain the necessary square footage for an add-on.

Mr. Messer reminded the Board it can only grant a variance for lot size, lot width, frontage, height, lot coverage, and setbacks.

Mr. Cadigan expressed his opinion that the Applicant received the benefit from the building permit being issued in 1981 and can't argue today their architect was not acting on their behalf.

The Board agreed unanimously a variance is not appropriate to address the lot merger provision.

Mr. Shore made a motion the lot merger provision cannot be challenged by the Application for a variance. Mr. Cadigan seconded the motion and the vote was unanimous.

Mr. Cadigan made a motion that the Board renders a decision on each of the four criteria for a variance as outlined in the Ordinance. Mr. Perry seconded the motion and the motion passed with 4-1 vote. Mr. Messer voted against the motion.

Mr. Cadigan made a motion that the Board find that the land in question cannot yield a reasonable return unless the variance is granted. Mr. Perry seconded the motion. The Board voted unanimously in opposition to the motion.

Mr. Cadigan made a motion the Board find a need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood. Mr. Perry seconded the motion and the Board unanimously voted in against the motion.

Mr. Cadigan made a motion that granting a variance will not alter the essential character of the locality. Mr. Perry seconded the motion. The board voted unanimously in opposition to the motion.

Mr. Cadigan made a motion that the hardship is not the result of action taken by the applicant or a prior owner. Mr. Perry seconded the motion and the Board unanimously opposed the motion.

**Adjournment:** A motion was made to adjourn, it was seconded and the vote was unanimous.

**Submitted by:** Patricia Saunders, Recording Secretary