

*Gardiner Town Zoning Board of Appeals*  
*Meeting Minutes*  
*July 26,2018*

Present: David Gandin, Joe Katz, Ralph Erenzo, Michel MacElhiney, David Sterman

Meeting called to order: Start time 7:00

First order of Business:

Motion to approve of ZBA minutes of March 29, 2018 meeting.

- Motion to approve- Mr. Gandin
- Seconded- Mr. Katz
- Motion moves unanimously

**New Business:**

**1. Anthony Brown: SBL # 93.4-5-3.100 at 168 McKinstry Road, Gardiner.  
Application for area variance and construction of accessory apartment.**

Mr. Gandin summarized details from letter from Building Inspector dated 7/12/2018.

Applicant explains his plan to build a grandma/grandpa cottage.

Mr. Katz questioned the applicant as to why the 8 feet are important.

Applicant: We are dealing with a septic problem and hoping for a separate well. The building inspector told me the setback is 8 feet.

Discussion as to whether the construction could slide over to the east if setback was different. Applicant agrees that this would work for him.

Discussion of location of the code for setback.

Mr. Gandin referenced codes 220-11, 220-12, & 220-30 stating that setback for accessory structures shall comply with the minimum as the principal building- in this case 30 feet for RA district.

Discussion -Mr. Gandin informs applicant that even if variance is granted, the building project is subject to the county. Clarification that site plan approval from Planning Board is not necessary.

Discussion had as to whether requirements for variance apply to 2-acre lot or 5-acre lot. Mr. Gandin read 5 factors and criteria for area variance.

Resident: asks about the dates of variance acreage change.  
Discussion had with no known answer.

Discussion had to revisit the application when ZBA members and applicant are available which is September.

Mr. Katz suggests the board consult with town attorney, consultant to the planning board and Hank.

**2. Amatai Cohen: SBL #93.1-4-16 at 31 Pioneer Lane, Gardiner.  
Application for area variance and construction of accessory apartment.**

Applicant explains that he wants to build

Various members ask applicant if the existing structure is habitable.

Applicant says he has permits. He was not sure of having an actual permit.

Discussion has as to the size of acreage. The size of the lot is already non-conforming because it is 1 acre.

Discussion as to whether the structure predates the dates of zoning law

Mr. Erenzo: If the existence of the [structure] thing predates law change, there is no problem.

Mr. Gandin asked applicant about residence plans including if full time and how many people. Applicant replied that he and his fiancé would occupy the main building full time and the second building for visiting family.

Mr. Gandin informed applicant that application process is also subject to county septic approval.

Mr. Katz asked the applicant if he had certificates from the County Department of Health.

Applicant stated that he had stamped plans and that Andy said the septic were good for the two structures.

Applicant stated that the previous owner installed one septic for each structure.

Discussion had as to whether applicant has an actual certificate of occupancy.

Mr. Gandin stated that it is presumed the second structure is not habitable, otherwise the applicant would be requesting to the board.

Mr. Gandin stated the two options at this point. 1- to defer as to whether area variance requirement is 2 for 5 acres, and 2- if it is 2-acre requirement to review factors.

Resident George Wicks from 27 Pioneer Road. Stated that he's lived here 37 years. Stated that the second structure has been empty that whole time. Says that the structure is 21 feet from his property line. Asked for clarification that it should be 50 feet. Also stated that he didn't want people "on top of" his property.

Board members review chart with regulations and clarify that it is 30 feet.

Resident Carole Chapelle from 49 Pioneer Road- Stated the history she knew of the trailer at the back of the house- including an elderly man who didn't take good care of the building. Doesn't really care what is done with the property but her husband's conversation with applicant indicated that he would be renting out the house. The lot is small and everyone has to repair the road. Stated her concerns about who will be fixing the road and what the intent of the apartment would be.

Resident Robert Puzio from 31 Pioneer Road. Stated his concern for the road that is not being taken care of. Does not want more than a single dwelling home unless someone will take responsibility for the care of the road.

Resident Wesley Chapelle- Stated that the structure is just a "box". He hasn't seen the foundation himself.

Mr. Gandin addressed Mr. Chapelle that matters of occupancy are cleared through the building inspector.

Mr. Puzio reiterated that someone has to take responsibility for the road.

Mr. Sterman also clarified that the road issues are beyond Zoning Board Scopes.

Mr. Gandin briefly listed the steps to dedicate a road if desired. It is another municipality.

Mr. Gandin asked applicant to clarify his intent of use the apartment, per brought up by residents.

Applicant stated he would like to rent his main house short term if they are away on vacation or during winter.

Mr. McElhiney asked the applicant to confirm the accessory apartment was not a rental while he is living in the main house. He confirmed that was not his intent.

Mr. McElhiney asked the applicant if he was using or renovating the existing structure or rebuilding. Applicant confirmed the structure is ready to use, including plumbing and electricity.

Mr. Gandin suggested that the neighbors coming together could be beneficial. Stated that this is a good opportunity for them to speak about their concerns, including the road issues.

Mr. Gandin read letter from resident (on file) from Ms. Porco dated 7/24/2018.

Resident Ms. Chapelle stated that Mr. Hank Vance said setback was 50 feet. -She also stated she thought he was wrong.

Mr. Erenzo addressed to applicant that the drawings are not to scale or relatively in proportion for the board to consider.

Mr. Katz stated that there are two things to discuss. The setup to consider is for 1 acre.

Mr. Sterman stated that he is sympathetic to the resident's concerns about the road.

The two structures on one lot are an extreme request in adherence to the code.

Mr. Gandin stated his understanding of the variance requirement of 5 acres. Density in occupancy would grow substantially.

Mr. Katz referred to the spirit of the law being considered had to do with the intent of use such as having parents or kids live affordably.

Mr. Gandin suggested the review of the 5 factors for variance.

Regarding factor 1) of “undesirable” or to “improve the look” –

Mr. MacElhiney stated that this would be pertinent to the feeling of the neighbors.

Applicant replied that the actual residing in the building would improve the look of the building.

Regarding factor 2) whether the benefit could be achieved by a feasible method other than a variance-

Mr. Gandin stated the house is pretty small so he has alternate options.

Mr. Wicks reads Mrs. Marilyn Wicks letter dated 7/26/18 (on file)

Regarding factor 3) whether the area variance is substantial

Various members say ‘yes’.

Regarding factor 4) would have an adverse affect on the physical or environmental conditions in the neighborhood or district.

Mr. Gandin stated his opinion that the density is of more importance.

Mr. Sterman states that we can not be sure of what level of quality work the applicant will produce.

Regarding factor 5- whether issue is self created-

Mr. McElhiney stated that considering this property was currently acquired, that it was self-created.

- Mr. Joe Katz makes a motion to deny the variance application
- Mr. David Sterman seconds
- Motion granted unanimously.

Application Denied

Mr. Gandin informs the applicant that there are other remedies.

Applicant states that his house is the smallest on the lot and that he must have a kosher kitchen in order for his family to visit.

Mr. Gandin stated to the applicant that it is the job of the board to follow the language of the law.

Applicant stated that he was going to help with the road, but knowing the neighbors now , “no way”

**EXECUTIVE SESSION**

**ADJOURNMENT:**

Joe Katz motions to adjourn

David Gandin seconds

Motion moves.