

Town of Greenville
46 Main Street, Greenville, NH
Zoning Board of Adjustment

Public Hearing – April 24, 2018

Call to order at 7:00 p.m. Present: Chairman David Orgaz, Members Michael Rathbun, Michael Washburn, and Pedro Sousa, Town Attorney Biron Bedard, and Town Administrator Tara Sousa.

Chairman Orgaz read the public notice, and called upon applicant Robert Tirrell to provide testimony in support of his application for an equitable waiver of dimensional requirements. Mr. Tirrell stated that the structure in question has been in place since 2003, and that Don Baldinelli (former Greenville Building Inspector) issued and signed off on a permit to build 2 decks. Bernie (Leblanc) complained about it at the time. Mr. Tirrell stated that it is 2 feet, and entirely on his property. Mr. Tirrell stated that at the time he was not aware of the "15 feet thing" and (Mr.) Baldinelli never informed him of it. He surmised that Mr. Baldinelli would not have signed off if he knew it. Mr. Tirrell stated that it is an easier entranceway for the room he is renting, instead of walking all the way around the house and up a flight of stairs, or going through his house with guests. Mr. Tirrell noted that he and his neighbor have had some hard times over 23 years. Mr. Tirrell indicated his roommate is, at his request, now using the back deck for smoking.

Upon Mr. Tirrell's questioning if he needed to say anything further, Town Attorney Biron Bedard expressed that the burden of proof is with the applicant, and the Board will determine if he has met that burden of proof.

Chairman Orgaz opened the floor for additional comments. Chris Estes, of Greenville, who identified himself as a friend of Mr. Tirrell's, expressed that in attending meetings, it is apparent that Mr. Tirrell's neighbor spends countless hours doing "his homework" in an effort to bother Mr. Tirrell. Mr. Estes suggested that the neighbor has a vendetta. He stated that the neighbor has cut wood debris in his backyard and that Mr. Tirrell has a nice fence that blocks any view. He stated that Mr. Tirrell has a wood shed that is much closer to the property line than the deck, but that is not of concern to the neighbor because it doesn't have anything to do with the rental property. He stated that this was "beating a dead horse."

Chairman Orgaz noted the Board's function is to interpret (Town) ordinances. Attorney Bedard asked Mr. Tirrell if he has a survey of the property on this side of the house. Mr. Tirrell answered that he has never had a survey. He stated that he had a title search when he purchased the property, and was aware of the dimensions. Attorney Bedard questioned if the 2 foot discrepancy Mr. Tirrell indicated in his testimony was his best estimate. Mr. Tirrell discussed the history of the subdivision of the property, and his presumption that the stone wall was built on the neighboring property, but that the definitive property line is not known. Attorney Bedard expressed that the Board is here to make a determination on a setback issue, not a boundary. Mr. Tirrell asked if Mr. Leblanc had a survey, and Attorney Bedard answered that he did not know. Attorney Bedard indicated that he is trying to determine if Mr. Tirrell

has any additional information which can assist the Board in making their determination. Mr. Tirrell discussed the placement of the deck.

A woman identified herself as Mr. Tirrell's mother, stated that she was tired of hearing all these stories.

Rose Davis, whose property abuts Mr. Tirrell's on the opposite side, stated that she said after the last hearing that we would be back again, and she expressed her belief that this will continue on regardless of any decision by the Zoning Board, because Mr. Leblanc has expressed his intent on "getting (Mr. Tirrell) on something." Board member Michael Rathbun asked if Ms. Davis can see the deck in question from her home, and Ms. Davis answered that she could not. Upon restating her previous statement about Mr. Leblanc's motivation, Mr. Rathbun stated that that is between them (Mr. Leblanc and Mr. Tirrell), and has nothing to do with us (the Zoning Board).

Mike Sadowski stated that he is not here for either party, but is concerned with facts, and how and why standards are waived. He asked about the Board's "line in the sand." He stated he grew up here and does not want to see Greenville become "Leominster north". He asked which standards the Board is going to uphold, and which it is willing to let go. Mr. Rathbun responded that the Board is going to follow the rules written by the zoning. In a case such as this, he indicated that it must be proven to them that it must be done.

Chairman Orgaz read into the record a written response submitted by abutter Bernard J. Leblanc. (See attached.) In response, Mr. Tirrell expressed that some of the noise referenced in the Leblanc's letter may be associated with his own activities, such as returning home in the early morning hours.

Attorney Bedard explained that in the absence of survey, the Zoning Board does not have the information to determine the extent of the violation.

There were no further comments from those in attendance. The Chairman announced a recess to consult with counsel at 7:20 p.m. Attendees were asked to wait outside.

The Board returned from recess at 7:46 p.m. The Board reviewed the property folder, noting the dates of previous enforcement action related to the deck in 2008, as well as the recent action by the current Code Enforcement Officer. Mr. Tirrell questioned if his request would be denied because the time between those actions was just under ten years. Mr. Rathbun expressed that the waiver must meet the criteria on the application. Attorney Bedard explained that Mr. Tirrell could agree to a continuance in order to pursue a survey, or the Board could make a determination based on the evidence presented. Mr. Tirrell asked about the cost of a survey, which Attorney Bedard was not able to advise him on, and what he had to gain by obtaining one. Attorney Bedard explained that a survey could, for example, determine that the extent of the encroachment into the setback is inches rather than feet, or that a violation does not exist at all. Mr. Tirrell agreed to look into obtaining a survey.

Motion by Mr. Sousa, 2nd by Mr. Rathbun, to continue the hearing to June 5th, 2018 at 7:00 p.m.
Motion carried with 4 in favor, none opposed.

To:
Zoning Board of Adjustment
Town of Greenville
Greenville, NH 03048
April 17, 2018

From:
Bernard J. LeBlanc & Diana L. LeBlanc
46 Pleasant Street
Greenville, NH 03048
Map 4 Lot 28, Residential Zone

In regards to APPLICATION FOR EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENTS to the Zoning Board of Adjustment, Town of Greenville, Greenville, NH 03048 by Robert Tirrell, 44 Pleasant Street, Greenville, NH 03048, Map 4 Lot 27, Residential District

We apologize that, due to a family obligation, we are unable to attend the scheduled hearing concerning Mr. Robert Tirrell's request to use an entry door and deck which was originally built in 2003.

Since its construction, we, the LeBlancs have become aware of the Town's setback requirements for our Residential neighborhood of which this deck is in violation. The town failed to notify us as abutters of a permit Mr. Tirrell applied for on 4/27/2008 stamped #0576. We tried to be good neighbors and let the situation be but when Mr. Tirrell tried to convert his property into a salvage yard we put our foot down as did many Greenville residents during a public hearing on the matter.

Mr. Tirrell constructed living space in the rear of the first floor from part of the previously established first floor apartment and an unfinished storage area (see previous owner's statement regarding storage area) and also the entryway and two decks without seeking approval from the Zoning Board of Adjustment or acquiring building permits "prior to construction" as required by the Residential Building Code.

On June 6, 2010, the Town ordered Mr. Tirrell to cease the use of contested living space and on the 10th of that month, Mr. Baldinelli and Mr. Ed White did observe parts of the kitchen and bath be torn out "3rd APT = 2 UNITS TOTAL" as stated on the Avitar Associates form of which we have provided a copy.

Following the death of his son Chris, Mr. Tirrell did approach us and asked if we would allow an occupant to live in the contested living space because he did not want anyone living in the legal apartment which was occupied by Chris Tirrell and his fiancé. I told him it might be OK as long as the occupant did not use the contested deck and entryway and he agreed to those terms. As soon as his new renter, Dennis Lacasse, moved in, he started to use the contested entryway but he was quiet and came in and out at reasonable hours.

Two months later, Mr. Tirrell turned around and rented the apartment in front. When Mr. Lacasse moved out, I asked the town to enforce the Residential District zoning codes. I protested when he applied and was granted permission to "Convert Building to 3 family separate rear area to separate apartment" (see copy of Building Permit Application). His request was approved by the Inspector on 8/24/16 although we were not notified. I never saw the permit card which should have been visible from the road. Permission was mistakenly granted under the assumption the property was part of the Downtown District and rescinded when it was realized the Residential Codes needed to be applied.

We understand the structure has been in place for years but it was not allowed to be used. We understand that there is a cost of removing such a structure that may place some financial burden upon our neighbor. But as of last October, the above mentioned 3rd apartment space became incorporated into Mr. Tirrell's living quarters and the Town gave him permission to share said space with roommates who pay him rent.

Now the entryway is actively being used. Last summer, Mr. Tirrell's roommates used the deck to entertain guests and they sit out there while conversing and smoking cigarettes. Under normal circumstances, that might be OK but our home has an attached barn which forms an L-shaped footprint. The contested deck faces the inside of our L-shaped home causing us to breathe in second hand smoke and to hear every spoken word as if they were in our dining room. We do not have air conditioning and prefer to have our windows open. This problem would not have developed if the original design of the building, which had no entryways or outdoor usage structure, had not been changed.

As Mr. Tirrell's roommates are not on any particular schedule, they come in and out at all times of the day and night often disrupting my sleep as I am a light sleeper. The entryway is located just under my bedroom window and I consider their activities to be a health issue. I have asked the town to remove the entryway since the renters are roommates and can use the same entryway as does Mr. Tirrell. There is also a common hallway with an open porch and stairway located on the north side of the building which would not disturb us.

To sum up - the contested entryway does devalue my property because of its proximity to my home. It also affects our health with second-hand smoke and the noise which makes sleep even more difficult. I have no problem if the roommates use the common entryways in the front of the house or on the north side.

Berrie L. Starn

Chairman Orgaz reconvened the hearing at 7:00 p.m. on June 5th, 2018. Present: Chairman David Orgaz, Members Michael Rathbun, Michael Washburn, and Pedro Sousa, and Town Administrator Tara Sousa.

Chairman Orgaz reread Mr. Tirrell's application, then briefly recapped the testimony from April 24th, and read the details pertaining to the decision to continue to allow Mr. Tirrell time to seek a survey.

Mr. Tirrell reported that he was not financially able to provide a survey at this time. Mr. Tirrell presented the tax map which includes the property in question, and discussed his own measurements, which differ from the dimensions noted on the tax map. He measured 71 feet, where the map indicates 70 feet, and was unable to locate a pin which, if still existing, would be under pavement. Mr. Tirrell questioned if he would be able to shorten the deck to meet the requirement. Chairman Orgaz indicated that without a survey, the Zoning Board would be unable to determine that, referring him back to the Code Enforcement Officer.

Mr. Rathbun asked if the door (that accesses the deck in question) is the only exit from the roommate space. Mr. Tirrell answered that there are 2 other egresses from that area, but that this entrance /exit is more convenient. Mr. Rathbun expressed that he would only be inclined to grant a waiver or variance if the Code Enforcement Officer determined the exit needed to be there, and if the abutting neighbor did not object. Chairman Orgaz asked if the door had always been there, and Mr. Tirrell answered that it had been added in 2003.

Mr. Tirrell asked if he would also need to move his woodshed. Chairman Orgaz stated that the woodshed is not part of this hearing. Bernard Leblanc, of 46 Pleasant Street, expressed that he would like the woodshed moved.

Mr. Leblanc asked if there would be any limitations on the signs Mr. Tirrell could put out to advertise for a roommate, as the legal apartment is currently occupied. Mr. Sousa stated that the Board cannot answer that question.

Mr. Sousa expressed that criteria #2 of the application was a determining factor, save for a possible emergency egress, believing that the homes (Tirrell's and Leblanc's) were already less than 15' apart. Mr. Tirrell clarified his application, which was intended to indicate that Mr. Leblanc's home was less than 15' from the property line.

Mr. Rathbun stated that there are 4 criteria which need to be met for the waiver and that he does not feel Mr. Tirrell has met the criteria. He felt the options were to determine the exact property line, or obtain his neighbor's permission. Chairman Orgaz indicated that without the survey of the property line, the Board can't give permission for steps in lieu of the deck. Mr. Sousa asked Mr. Leblanc if he would consent to steps (in the setback), and Mr. Leblanc stated he would not. Mr. Leblanc expressed that when he has "given an inch" Mr. Tirrell has "taken a mile".

Mr. Tirrell questioned what happens now. The Town Administrator reviewed the Coode Enforcement Officer's letter. It was discussed that the Code Enforcement Officer would need to determine if the exit can remain, if there is room for steps, etc.

Motion by Mr. Rathbun, 2nd by Mr. Sousa, to vote to deny the application for equitable waiver of dimensional requirements.

Motion carried with 4 in favor, none opposed.

Mr. Tirrell expressed that his attorney questioned how the deck could be approved by a former building inspector, and now be subject to this enforcement action. He asked if all of Mr. Baldinelli's work would be subject to review. Mr. Rathbun indicated that this matter is the only one the Zoning Board was tasked with addressing at this time.

Chairman Orgaz asked the Town Administrator if she would notify the Code Enforcement Officer of the outcome of the hearing, and she indicated she would.

Motion by Mr. Rathbun, 2nd by Mr. Washburn, to adjourn at 7:33 p.m.


Motion carried with 4 in favor, none opposed.

Submitted by: Tara Sousa/Town Administrator

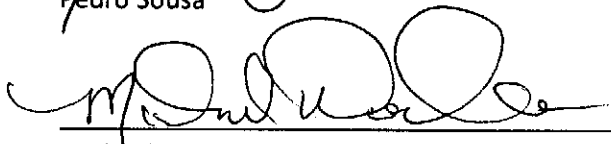
Approved by:



David Orgaz/Chairperson



Pedro Sousa



Michael Washburn

Michael Rathbun