MONT VERNON ZONING BOARD OF ADJUSTMENT

**PUBLIC HEARING VIA ZOOM CONFERENCE**

**Tuesday, December 21, 2021**

**AGENDA**

 7:00 PM Case 6-2021 Langlais, 14 Trow Road

 Application for Variance

**Seated:** David **Sturm,** Tony **Immorlica,** Steve **O’Keefe**; Jason **Johnson,** Charles **Schuessler**

**7:05 PM – Case 6-2021**

Meeting was called to order by David **Sturm,** Chairman. Roll call was taken. **Sturm** opened the public hearing on Case 6-2021. Present was Attorney Geoffrey Zall representing Ian and Nate Langlais. Attorney Zall explained that they are seeking an Equitable Waiver in this case as it better fits the situation. If the Board approves this, they will withdraw the Variance application. He showed the plan with the placement of the original foundation design. The stakes that showed location put in by Fieldstone had been lost. They had been obliterated probably when the lot was cleared. The excavator came in and excavated slightly in the wrong location. This resulted in a 1’ to 2’ encroachment into the front yard setback. The house is designed with a farmer’s porch which will result in about half of the porch encroaching 6’ into the front setback. They discovered the error when they got the septic design, which was after the foundation and footings for the porch were put in. He feels that this is a classic case for an Equitable Waiver under RSA 674:33 which specifically provides that a case is right for an Equitable Waiver if the violation was not noticed or discovered by any owner until after a structure in violation had been substantially completed. In this case, the violation was not noticed by the owner and contractor until after the foundation was constructed and concrete footings for the farmer’s porch were constructed. That is substantial completion of the underpinnings of the foundation and the footings. The violation was caused by a good faith error of the sub-contractor doing the excavation and installation of the foundation and footings. The violation does not create a public or private nuisance, nor diminish the value of any adjacent properties in the area. The violation does not interfere with or adversely affect any present or permissible future use of any property in the area. Attorney Zall submitted a letter written by Thomas Trow of 11 Trow Road. He states that as a close abutter he has no issues with the current construction plan or design of the home. He feels this was an honest mistake and not intentional or deliberate and would fully support approval of the relief the applicant is seeking. Attorney Zall went on to say that in order to correct the violation, they would need to tear up the foundation, take out the fittings, re dig the hole and start all over again. The monetary amount involved in doing that so far outweighs any benefit gained by enforcing this slight encroachment. There is still ample room for the protections that the front yard setback is supposed to give by the ordinance. The house itself is outside of the setback; it’s really the farmer’s porch that encroaches. The other houses on the street have farmer’s porches. This is a straight front colonial that was designed to have a farmer’s porch; it won’t look good without a farmer’s porch. He submits that this is a case for relief for an equitable waiver.

**O’Keefe** questioned how the stakes placed by Fieldstone were removed. Attorney Zall said that he spoke with the excavator who said the standard procedure is that Fieldstone comes out and stakes where the foundation is going to be. Then the excavator came out and removed trees. When they removed the trees, the stakes must have been dislodged or obliterated. When the excavators came out to dig the hole, they dug it in the spot where they thought the stakes were. **O’Keefe** asked if the excavator made any effort to contact Fieldstone to come back out and reset the stakes. Attorney Zall said no, they had a good idea where the stakes should be; they weren’t off by much but by enough to create a problem. He cannot answer why they did not contact Fieldstone. **Johnson** asked who the contractor was; although it was not off by much, it is off by a substantial number of degrees. Attorney Zall stated that the excavator was Bentley Management Group out of Nashua. **O’Keefe** asked if there are any other modification such as the placement of the driveway. Nate Langlais stated no, there is still a front load garage straight in from where the driveway is. **Immorlica** questioned when they discovered the error. Attorney Zall explained that the excavation was done, the foundation was poured and the footings for the porch were poured. Then they went for septic design approval. In order to do that they had to do an as-built. That is when they discovered the error. At that point in time Nathan stopped construction on that part of the project until the problem was resolved. **Immorlica** stated that once they knew of the violation, they went on with construction anyway. Nate Langlais stated that they stopped all construction on the part that is non-conforming; there is no porch on the house nor is there a garage built until this gets sorted out. **Immorlica** does not feel that the farmer’s porch falls under substantial completion as only the footings were poured. **Sturm** feels that when you consider the entire project, the statute talks about structure. A foundation is a structure; you could argue that footings are a structure. He noted that at the end of the day we are here as a safety valve; he is fully prepared to grant this waiver. **O’Keefe** motioned to approve the Equitable Waiver as requested seconded by **Immorlica.** All in favor 5-0.

**7:30 PM**

The Board discussed the denial of the Variance request at 54-56 Weston Hill Road. This is an on-going situation; neighbors are complaining that things are worse than ever. There has not been any enforcement of the decision. **Immorlica** asked who would be the enforcer; **O’Keefe** noted that in this town the Code Enforcer is the Building Inspector. He went on to say that when we look at future cases, we need to keep in mind that when we put stipulations on approvals, there is zero enforcement.

The Board reviewed the minutes of July 20, 2021. **O’Keefe** motioned to approve the minutes as written seconded by **Johnson.** Four in favor, 1 abstention.

**7:40 PM**

As there was no further business before the Board, **O’Keefe** motioned to adjourn seconded by **Immorlica.** All in favor.

Respectfully submitted,

Joan Cleary

Administrative Assistant