

Variance Hearing
Renee Baxter
June 1 and June 8, 2015

To consider a variance request by Renee Baxter for a previously constructed, nonconforming, accessory building at 160 Pellegrini Pike.

The application requires a review under the following sections of the Greensboro Zoning By-Law 2.5 Rural Lands District and 5.5 Variances.

Warnings were posted on May 8, 2015 at the Greensboro Town Hall, the Greensboro Post Office and the Greensboro Bend Post Office, and Willey's and Smith's Stores. The warning was sent to applicant, Renee Baxter; and the following abutters and neighboring property owners on May 8, 2015: William Sanders; Robert Nicolino and Jane Senna; Kenneth Davis; Jennifer Keenan; and Winston Jennison Investments, LLC. It was published in the Hardwick Gazette on Wednesday, May 13, 2015.

Development Review Board members present:

June 1 - - MacNeil, Linda Romans, Sean Thomson, Janet Travers, Jane Woodruff, Wayne Young and Lee Wright, alternate.

June 8 - -MacNeil, Linda Romans, Sean Thomson, Janet Travers, Jane Woodruff, Wayne Young and Lee Wright, alternate

Others present:

June 1 - - Renee Baxter, applicant, & Mark Young; Kenneth Davis; Walter & Beverly Sanders (abutter William Sanders' parents and representatives); and Kristen Leahy, Zoning Administrator.

June 8 - - Renee Baxter, applicant, & Mark Young; Kenneth Davis; and Kristen Leahy, zoning administrator

Correspondence from interested persons: Three emails from William Sanders, and a written statement from Kenneth Davis.

During the course of the hearing the following exhibits were submitted to the Development Review Board:

#1 An email from William Sanders stating he had no problem with the variance request.

#2 A second email from William Sanders stating he needed more time to consider a few things and requested Ms. Baxter call him.

#3 An Assent of Interested Party to the proposed variance request from Kenneth Davis stating he is in favor of retaining the building as is.

#4 (June 8) An email from William Sanders stating that he had no objections to the building where it stands and he did not want the building to be dismantled or torn down.

These exhibits are available at the Town Clerk's office and on the Town web site www.greensborovt.org

Summary of Discussion

June 1

Ms. Woodruff, chair, began the hearing at 7:00 PM. She noted the hearing was semi-judicial, explained the procedure for the hearing, and asked the clerk to swear in all those who wished to speak at the hearing. Ms. Woodruff then asked Ms. Baxter to explain why she is requesting the variance. Ms. Baxter stated that she is requesting a variance for the previously built, nonconforming barn on the property she recently bought so she and her husband can keep it as is. She stated further that she has spoken to most of the landowners in the area and all seem to be okay with the building and its current placement. Ms. Baxter feels it would be a hardship for her to tear down the barn. She looked into it and it would cost twenty-five to thirty-five thousand dollars to tear it down and that does not include the removal of the concrete. Upon being asked, Ms. Baxter stated that she had also looked into moving the building and it would cost even more. She and her husband would like to use the building for storage of equipment and refinishing furniture. They would possibly put in a stall for Ms. Baxter's horse. Ms. Baxter and her husband stated the barn was built by the previous owner and they knew the building was not in compliance when they bought the property. Ms. Baxter thought the building might be 50 feet

from the center of the road (though only about 38 feet from the edge of the road) and thus would be in compliance on that side. Ms. Leahy, Zoning Administrator, said the surveyor Ms. Baxter engaged found that Mr. Davis actually still owns a thin strip of land between the Baxter's land and the road so the setback on that side is not from the road but from Mr. Davis' property. Therefore, the Board still needs to consider variances for both side lines as stated in the application. Mr. Young asked if Ms. Baxter obtained Mr. Davis' land next to the road, it would end the need for a variance on that side. Ms. Leahy said if that happened, the barn would then be in compliance on that side and there would be no need for a variance for that side. Ms. Baxter added that their first solution to put the barn in compliance was to do a land swap with Mr. William Sanders. However, they dropped that idea because Mr. Sanders' leach field would then be too close to the boundary line. Mr. Walter Sanders wanted it made clear that a man-made hardship is not the kind of hardship talked about in the bylaw. He stated further that the previous judgement of the State Environmental Court (Nov. 7, 2006) about the apartment space in the barn precludes any further requests for an apartment. Ms. Baxter reiterated that an apartment was not a consideration. Mr. Walter Sanders was concerned that William Sanders' septic system would be too close to the lot line if there would be a land swap. Mr. Baxter explained that she and Mr. Young had dropped the idea of a land swap for that reason. Mr. Davis stated that he fully supports the request for the variance. He felt the building looked good and thought it was unfortunate the building was erected too close to the lot lines by the previous owners. Ms. Woodruff then read three letters from abutters (see exhibits 1, 2, and 3).

The hearing was suspended for a short time so Ms. Baxter could speak to Mr. William Sanders on the phone as he requested in the email sent late Monday afternoon (see exhibit #2). After speaking with Mr. William Sanders by phone, Ms. Baxter returned and said that she and Mr. Young need time to work some things out with Mr. Sanders. In light of that, Ms. Woodruff continued the hearing until the next Monday, June 8, 2015 at 7:00 PM.

June 8

Ms. Woodruff, chair, began the hearing at 7:02 PM. She stated that this meeting was a continuation of the hearing begun June 1, 2015 on a variance request by Ms. Baxter for a non-compliant building on her property at 160 Pellegrini Pike. The June first hearing was continued to give Mr. Sanders and Ms. Baxter and Mr. Young time to address Mr. Sanders' concerns about the variance request. (Mr. Sanders' land abuts Ms. Baxter's land near the building in question.) Ms. Woodruff then read Mr. Sanders' current email dated Friday, June 5, 2015 (See exhibit #4) stating he had no problem with the building as it stands. Ms. Woodruff then asked Ms. Baxter and Mr. Young if they understood that the Board's decision has to be based on the zoning laws currently in effect. They answered that they did understand that.

Ms. Woodruff then asked Ms. Baxter and Mr. Young if they had anything they'd like to add to their testimony from June 1. Mr. Young stated that having to tear down the barn would be a great hardship both financially and in not being able to use the building. They really need the use of the barn for what Mr. Young does and for housing Ms. Baxter's horse. He went on to state that the neighbors seem to be in favor of keeping the barn. Mr. Young thought it was wrong of the original property owners to build the barn in violation of the zoning regulations. He and Ms. Baxter tried to rectify the violation with a land swap with Mr. Sanders, but it seemed to put Mr. Sanders leach field in violation of the zoning law. They thought asking for a variance would be the simplest thing to do to rectify the situation. Ms. Woodruff then asked if they knew the building was in violation of the ordinance when they bought it. Mr. Young said yes, they did know that, but they didn't know where Mr. Sanders' septic system was or exactly where the lines were. MacNeil asked if Bill Sanders might be able to move the leach field without moving the septic tank. In talking about this, Macneil wondered if the ground would perk or if a mound system would be required. Mr. Davis said he was there when they dug test holes for the septic areas in all four of the lots he developed there and he thought the area was all gravel so it would perk. MacNeil thought Mr. Sanders might be able to resite his leach field without too much trouble or expense if the land perked. Mr. Wright thought they might be able to just carve out an arc out of Mr. Sanders' land for the land swap. Mr. Wright asked if Mr. Davis owned all the land next to the road. Mr. Davis said he did and it is his property is between the road and the Baxter's property. Mr. Davis said that he

owns 50 feet of land where the road is and the road takes only about 16 feet of that. Mr. Davis thinks Pellegrini Pike is a private road. It probably was the driveway to the old farm. Mr. Young said he understood a variance was granted for Mr. Pike's shop on that road. When Ms. Woodruff asked if Ms. Baxter or Mr. Young had anything further to add, Ms. Baxter said they loved the area and they are trying not to cause Mr. Sanders any more hardship.

The Board went into deliberative session at 7:40 and came back into public session at 8:15 to announce their decision.

Findings of Fact:

Based on the application, exhibits, and testimony the Development Review Board makes the following findings:

5.5 Variances

A) Variance Criteria

... "The DRB may render a decision in favor of the appellant only if *all* of the following facts are found, and the findings are specified in its written decision:"

1. "There are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the property, and that unnecessary hardship is due to these conditions and not to the circumstances or conditions generally created by the provisions of these regulations in the neighborhood or district in which the property is located."

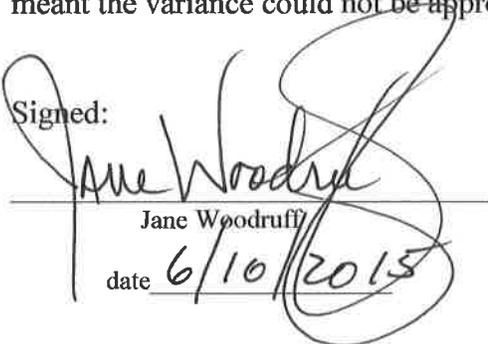
The barn is not a unique physical circumstance of the lot size or shape or other physical condition peculiar to the land. The problem was created by the former owner who built the barn out of compliance with the zoning regulations, not a condition of the lot or land. Because number 1 did not meet the requirement, the board did not address numbers 2 – 5.

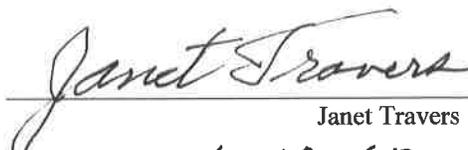
Decision and Conditions

Based upon these findings, the Development Review Board voted unanimously (7– 0) to deny a variance for the previously constructed, non-conforming, accessory building on the land at 160 Pelligrini Pike.

According to the zoning regulations, a request must comply with all five of the variance criteria to be approved. The Board could not approve the first criteria because the hardship was not created by unique circumstances of the lot size, shape or physical conditions peculiar to the property. The Board did not address criteria 2 through 5 because the building did not meet the requirements in number 1 which meant the variance could not be approved.

Signed:


_____, chair
Jane Woodruff
date 6/10/2015


_____, clerk
Janet Travers
date 6-10-15

NOTICE:

This decision may be appealed to the Vermont Environmental Court by an interested person who participated in the proceeding (in person or in writing) before the Development Review Board. Such appeal must be made within 30 days of the date of this decision, pursuant to 24 V.S.A. #4471 and Rule 5(b) of the Vermont Rules for Environmental Court Proceedings.