

Variance Hearing  
Think House LLC  
December 16, 2019

*To consider a variance request by Think House LLC to build an accessory dwelling on the land at 87 Birch Lane.*

The application requires a review under the following sections of the Greensboro Zoning By-Law: 2.7 Shoreland Protection District; 4.2 Accessory Dwelling Unit and 5.5 Variances.

**Warnings** were posted on November 21, 2019 at the Greensboro Town Hall, the Greensboro Post Office, the Greensboro Bend Post Office, and Willey's and Smith's Stores. The warning was sent to the applicant and the following abutters and neighboring property owners: Jerome King Trust, Gwen Mann, and Phil Patterson on November 21, 2019. It was published in the Hardwick Gazette on Wednesday, November 27, 2019.

**Development Review Board members present:** BJ Gray, MacNeil, Linda Romans, Nat Smith, Lee Wright, Wayne Young, Janet Travers (alternate) and Mike Metcalf (alternate),

**Development Review Board members absent:** Jane Woodruff

**Others present:** John Dernavich, contractor; and Audrey DeProspero, Zoning Administrator (arrived at 7:35 pm)

**Correspondence from interested persons:**

Email from Gwen & Tod Mann, abutters; Day & Janet Showers Patterson, interested parties

**During the course of the hearing the following exhibits were submitted:**

#1 email from Gwen and Tod Mann

#2 email from Day and Janet Showers Patterson

**Summary of Discussion**

Mr. Smith, vice chair, began the hearing at 7:06 PM. Before proceedings began, Ms. Travers and Ms. Gray declared they are both distantly related to the applicant by marriage. However, they both felt that fact would not affect their decision in this matter and they could be fair and impartial. Mr. Smith then noted the hearing was quasi-judicial, explained the procedure for the hearing, and asked the clerk to swear in those who wished to speak at the hearing. He also noted that there was an email from Gwen & Tod Mann and Day & Janet Showers Patterson that would be entered into the record as exhibits #1 and #2. Mr. Smith then asked Mr. Dernavich to explain what the owners want to do on their property at 87 Birch Lane. Mr. Dernavich stated that the owners wanted to construct an accessory dwelling unit on their recently purchased land to be used as an overflow area for their children and guests. The main house is rather small and they felt they needed this area to relieve a projected overcrowding. Mr. Dernavich then asked if they didn't want, or get, a variance, would they need a conditional use permit. The Board answered that since an accessory dwelling is a permitted use in the Shoreland Protection District, the Zoning Administrator could give that permit if the setbacks were met. Mr. Dernavich stated that if they rotate the proposed structure slightly it could meet all the standards and the height of the roof line wouldn't change since the structure would be rotated on the corner with the highest elevation. Thus, it would not increase the visibility of the structure. It would have approximately four foot frost walls and the hole in the middle would be left for access to the plumbing. The structure would basically be a rectangle with a kitchenette, laundry area, a living area, a bathroom, and a small bedroom. It would be about 25 feet high and look similar to a barn. It will be seasonal; not insulated or heated. Mr. Dernavich cited bylaw 8.11 (A) that says, in part, that a site selection shall consider the existing topography of the land. He went on to say that the whole plan of this structure was based on this statement. The owners are willing to landscape for additional screening if necessary.

The hearing ended at 7:40. The Board went into deliberative session at 7:42 and came back into public session to announce their decision at 8:04.

## **Findings of Fact:**

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

### **2.7 Shoreland Protection District**

An accessory dwelling unit is a permitted use in the Shoreland Protection District.

This lot is 1.03 acres. It meets the permitted size of 1 acre. The structure meets all setback requirements except the setback from the center of the road. One corner is 41 feet from the center of the road instead of the required 50 feet.

### **4.2 Accessory Dwelling Unit**

*(A) An accessory dwelling unit is permitted in all districts.*

*(B) An accessory dwelling unit can be either located within, attached to, or detached from an existing owner-occupied single family dwelling.*

*(C) The following criteria shall be met for all accessory dwelling units:*

- 1. The unit shall be clearly subordinate to an existing owner-occupied single family dwelling. It is less than 800 square feet and is subordinate to the main dwelling.*
- 2. The unit shall be an efficiency or one-bedroom apartment, and shall have facilities and provisions for independent living, including sleeping, food preparation, and sanitation. The plan includes these.*
- 3. The property shall have received a state Wastewater and Potable Water Supply permit for the addition of the unit. The wastewater and potable water supply permit is included in the application.*
- 4. Applicable setback, coverage, and parking requirements specified in the Bylaw are met. The structure meets all setback requirements except the setback from the center of the road. One corner of the proposed building is 41 feet from the center of the road instead of the required 50 feet.*
- 5. The unit does not exceed 1200 square feet of total habitable floor area or 30% of the total habitable floor area of the principal dwelling, whichever is greater. In the Shoreland Protection District, the unit does not exceed 800 square feet of total habitable floor area or 30% of the total habitable floor area of the principal dwelling. It is less than 800 square feet and is subordinate to the main dwelling.*

The Board reviewed these standards and found that the proposed accessory unit meets all of them except 4.2 (C) 4 because one corner of the building is not the required 50 feet from the center of the road.

### **5.5 Variances**

#### **A) Variance Criteria**

- 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.*
- 2. Because of these unique circumstances and conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the Zoning Bylaws and authorization of a variance is necessary to enable the reasonable development of the property.*
- 3. The unnecessary hardship has not been created by the applicant.*
- 4. If authorized, the variance will not:*
  - a) alter the character of the neighborhood or district*
  - b) impair the use or development of adjacent property*
  - c) reduce access to renewable energy resources*
  - d) be detrimental to the public welfare*
- 5. The variance represents the minimum that will afford relief and the least deviation possible from the bylaws and town plan.*

The proposed accessory dwelling doesn't meet 5.5 (A) 2 because there is another possible way to construct this dwelling in strict conformity with the provisions of the Zoning bylaws. The Board considered the visual effect rotating the structure would have and determined it would make little difference. The height of the building would not change and it is largely hidden by the surrounding vegetation.

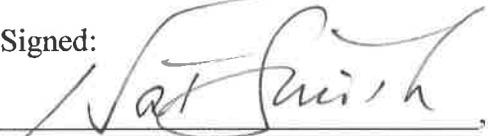
**Decision and Conditions**

Based upon these findings, the Development Review Board voted unanimously (7 – 0) to deny the variance because it does not meet 5.5 (A) 2. (One alternate voted in the absence of a Board member.) If the structure is moved or rotated and conforms to all the setbacks, it can be permitted by the Zoning Administrator without an additional fee.

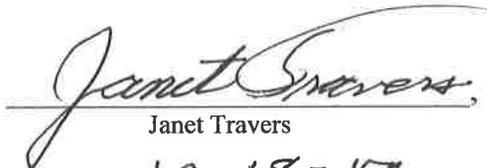
**Conditions:**

1. Any and all necessary state and federal permits must be in place before construction can begin.
2. Vegetation that obscures the view of the building from the road must be replaced if removed during construction or planted if needed.

Signed:

  
\_\_\_\_\_, vice chair  
Nat Smith

date 12-18-19

  
\_\_\_\_\_, clerk  
Janet Travers

date 12-18-17

**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.