

**MOUNTAIN LAKES DISTRICT
ZONING BOARD OF ADJUSTMENT
October 5, 2016**

Call To Order – Chair Karen Rajsteter called the meeting to order at 4:01 pm.

Roll Call – Karen Rajsteter (Chair), Don Dubrule, Laraine King and alternate member Marcia Selent.

In Attendance – Robert Roudebush and Heidi (Lyman) DeBrino of Lyman Realty

Request for Variance – O’Shea – 44 Wildwood Road

Karen Rajsteter declared a quorum of the Board to be present to consider the variance request. She briefly explained that Mr. Kevin O’Shea is the executor of his mother’s estate and while in the process of selling her home at 44 Wildwood, a local surveyor noted that the garage on the property was about six feet inside the twelve foot setback. As a result of that information, realtor Heidi (Lyman) DeBrino of Lyman Realty assisted Mr. O’Shea in requesting a side setback variance for the garage built in 2006. She also represented Mr. O’Shea at the current meeting.

Robert Roudebush read the variance request application. He explained that the Planning Board originally reviewed the O’Shea issue, then came to a consensus that the request should go to the ZBA for consideration. He then read RSA 674:33-a (Equitable Waiver of Dimensional Requirement – copy attached) for the ZBA members and noted they could grant a variance under the RSA if they determined the request met the conditions as listed in section I or II of the RSA.

The ZBA members reviewed the drawings, photos and other file information provided by the applicant. They also reviewed responses from abutting property owners who were notified of the hearing by certified mail. The responses on record had no objection to the variance being granted. Karen Rajsteter noted she recently received a communication that questioned whether the O’Shea house encroached on the neighboring lot. Heidi DeBrino said the surveyor was asked to determine the boundary pin locations as opposed to a full survey. In the process, he found a small portion of the garage was within the setback, but did not find any other issues. The drawing in the application file showed only the garage inside the setback. The ZBA members briefly discussed the question. They noted the current ZBA hearing was publicized as a hearing for the garage setback variance and agreed that considering the house location question would require a new variance application and a separate, properly publicized meeting.

Karen Rajsteter moved to approve the garage setback variance as requested. Don Dubrule moved to amend the motion to include RSA 674:33-a as part of the motion and the reason to approve the variance. Marcia Selent seconded the amended motion; the motion passed unanimously.

Karen Rajsteter moved to adjourn; Don Dubrule seconded. The motion passed unanimously.

The meeting was adjourned at 4:20 P.M.

Respectfully submitted,
Kristi Garofalo

**TITLE LXIV
PLANNING AND ZONING**

**CHAPTER 674
LOCAL LAND USE PLANNING AND REGULATORY POWERS**

Zoning Board of Adjustment and Building Code Board of Appeals

Section 674:33-a

674:33-a Equitable Waiver of Dimensional Requirement.

I. When a lot or other division of land, or structure thereupon, is discovered to be in violation of a physical layout or dimensional requirement imposed by a zoning ordinance enacted pursuant to RSA 674:16, the zoning board of adjustment shall, upon application by and with the burden of proof on the property owner, grant an equitable waiver from the requirement, if and only if the board makes all of the following findings:

(a) That the violation was not noticed or discovered by any owner, former owner, owner's agent or representative, or municipal official, until after a structure in violation had been substantially completed, or until after a lot or other division of land in violation had been subdivided by conveyance to a bona fide purchaser for value;

(b) That the violation was not an outcome of ignorance of the law or ordinance, failure to inquire, obfuscation, misrepresentation, or bad faith on the part of any owner, owner's agent or representative, but was instead caused by either a good faith error in measurement or calculation made by an owner or owner's agent, or by an error in ordinance interpretation or applicability made by a municipal official in the process of issuing a permit over which that official had authority;

(c) That the physical or dimensional violation does not constitute a public or private nuisance, nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of any such property; and

(d) That due to the degree of past construction or investment made in ignorance of the facts constituting the violation, the cost of correction so far outweighs any public benefit to be gained, that it would be inequitable to require the violation to be corrected.

II. In lieu of the findings required by the board under subparagraphs I(a) and (b), the owner may demonstrate to the satisfaction of the board that the violation has existed for 10 years or more, and that no enforcement action, including written notice of violation, has been commenced against the violation during that time by the municipality or any person directly affected.

III. Application and hearing procedures for equitable waivers under this section shall be governed by RSA 676:5 through 7. Rehearings and appeals shall be governed by RSA 677:2 through 14.

IV. Waivers shall be granted under this section only from physical layout, mathematical or dimensional requirements, and not from use restrictions. An equitable waiver granted under this section shall not be construed as a nonconforming use, and shall not exempt future use, construction, reconstruction, or additions on the property from full compliance with the ordinance. This section shall not be construed to alter the principle that owners of land are bound by constructive knowledge of all applicable requirements. This section shall not be construed to impose upon municipal officials any duty to guarantee the correctness of plans reviewed by them or property inspected by them.