

**Town of Newington, NH**  
**ZONING BOARD OF ADJUSTMENT**

Meeting Minutes, Tuesday, August 17, 2021

**Call to Order:** Chair Matt Morton called the August 17, 2021

**Present:** Vice-Chair Ralph Estes; John Frink; Edna Mosher; and Robert Barnes; Alternate Board members, Will Gilbert; Kathy Latchaw; and Derick Willson; Town Planner John Krebs and Recording Secretary Jane Kendall

**Public Guests:** Doreen and Rick Stern; Robert "Guy" Young, Jr.; Attorney Timothy Phoenix; Mike Garrepy with Nimble Hill Realty Investments, LLC; Russ Cooke; Chris Cross; Denis Hebert; Mike Marconi; Ken Latchaw; Abby Hood

1) Request by **Dorene and Rick Stern** for a Variance from Article V, Accessory Dwelling Units (ADU's), Section 2, Definitions to allow a detached dwelling unit, not connected to the primary residence as required on property located at **516 Shattuck Way, Tax map 7, Lot 5**

The applicants, Rick and Dorene Stern appeared before the Board to present their application.

Mr. Stern stated they had three buildings on their Trickey's Cove property, and they wanted to convert the building near the water to an unattached accessory dwelling unit (ADU). Mr. Stern stated that the building was there when he purchased the property from his parents.

Dorene Stern said the changes they wanted to make was to put in running water and septic.

Chair Morton asked if the building was habitable before, and Mr. Stern replied that it was only a makeshift cottage before they remodeled the building in 2008 with a building permit, and they used it all the time with bottled water.

Mr. Stern stated that they would need to install an upgraded septic system across the street as shown on a plan that was done in 2011, as their current septic system was only designed for their current two-bedroom home that was on the same lot. Mr. Stern noted that the leach field shown in the center of the lot was not an actual leach field.

Board member, John Frink asked if the proposed septic system was part of his lot, or on the conservation easement. Mr. Stern and Ms. Stern referenced the map that Town Planner, John Krebs passed out for board members to review. Mr. Krebs showed the property line, and the conservation easement that was part of the Stern's lot. Ms. Stern said the conservation easement area wouldn't be touched, and the proposed septic system would be placed further from the shoreline.

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Board member, Bob Byrnes asked how large the proposed septic would be. Mr. Stern replied that the newer system would be for four bedrooms, and would be like a small treatment plant.

Mr. Frink asked where they would park their cars, and Mr. Stern replied that they would continue to park in the same place on both sides of their shared driveway.

Chair Morton asked if they intended to put in a new driveway down to the proposed dwelling, and Mr. Stern said they were not.

Board member, Edna Mosher said she observed four to five cars parked in the shared drive. Ms. Mosher said the fire department had a difficult time getting into her driveway, and she thought that allowing a dwelling, without a nearby driveway access wouldn't be safe.

Ms. Mosher stated that the Zoning Board of Adjustment (ZBA)'s procedures advised that Board members to consider whether there were any alternative solutions such as picking the building up, and placing it closer to the house for a connection. Ms. Stern replied that they were concerned with disturbing the existing site, and they couldn't put anything heavy on the existing septic system. Mr. Stern added that there would be no place for the septic tank if they moved the building closer.

Ms. Mosher asked Mr. Stern about his written statement on work force housing, and Mr. Stern replied that ADU's were included in the definition of workforce housing. Ms. Mosher commented that Mr. Stern's house was not in the Workforce Housing Overlay district, but Mr. Stern responded that ADU's were allowed in Residential Zone.

Chair Morton noted that there was a small garage to the left of the existing house, and asked if it could be converted to an apartment with an attached breezeway that would comply with the ADU requirements. Mr. Stern replied that they didn't want to create another dwelling so close to their neighbor.

Board member, Bob Byrnes said it seemed there was ample area for an attached structure, and asked whether an ADU was allowed in a detached building. Chair Morton responded that the only time the Board allowed two structures on one property was when Brian Haberstroh proposed to build a guest house that would be connected to the main house on his property off Little Bay Road. Mr. Krebs added that the Board had not had a proposal for two residences since, and the Ordinance for attached ADU's was passed three or four years earlier.

Mr. Stern said they didn't have sufficient acreage to build an attached duplex or condominium, and two primary structures were not allowed on the same lot, so they were proposing an attached ADU. Ms. Mosher responded that the two separate residential dwellings would still count as two separate residences.

Alternate Board member, Derick Willson asked if they had considered building an ADU in place of their deck. Ms. Stern said that would be increasing the footprint of the primary house. Mr. Stern added that drainage wouldn't be good enough with the surrounding clay soil.

Mr. Willson asked if the residence was within the 100 foot tidal buffer. Mr. Krebs replied that it was not, but it was a preexisting condition that was built prior to the requirement.

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Mr. Frink questioned having an additional residence within the 100 foot shoreline protection buffer. Mr. Stern replied that they would need a survey from the New Hampshire Department of Environmental Services (DES) Shoreline Protection, but he didn't see the sense in of the expense unless he could receive the variance. Vice-Chair Estes asked if the fire department was okay with only a path walkway access to the cottage. Ms. Stern said they couldn't put a driveway over the septic, until it was moved.

Mr. Frink said he thought that they would also have an issue bringing living materials to and from the building that was in a protected area. Mr. Stern said they never had any issues bringing materials to the building. Ms. Stern added that she used to drive the school bus quickly over the septic system, and never had an issue either. Mr. Frink noted that they said they would move the septic system up if they got the variance, so he didn't see why they were saying it was impossible to move and attach the building.

Alternate Board member, Will Gilbert stated they he felt that it would be appropriate to grant the requests based on the intent of the workforce housing legislation, in response to the scarcity of housing in the seacoast area.

Ms. Mosher said Newington was trying to avoid increased residential. Mr. Stern responded that adding on to the house would increase the density of his lot. Ms. Mosher said they would be adding a new family to the lot, however. Ms. Stern said four people used to live in their main house before, and it was only their adult son that would continue living in the house.

Ms. Mosher said she was not in favor of granting the variance for two dwellings on less than two acres because she felt there were alternatives such as creating a connecting ADU, and she was concerned with the difficulty of access for emergency vehicles to the secondary dwelling.

Mr. Byrnes commented that allowing a lot of exceptions to allow a non-conforming dwelling near the water in addition to the primary residence on a single lot was not a hardship.

Mr. Frink also noted that the two dwellings could not be conveyed in sale as two principal lots beyond the existing owner.

Chair Morton closed the public meeting, and announced that the alternates would not be voting on this item because there was a quorum.

*John Frink made a motion to approve the request by Dorene and Rick Stern for a Variance from Article V, Accessory Dwelling Units (ADU's), Section 2, Definitions to allow a detached dwelling unit, not connected to the primary residence as required on property located at 516 Shattuck Way, Tax Map 7, Lot. Edna Mosher seconded,*

*Edna Mosher stated that the path to the building would be a detriment for emergency access, and the increased residential density on the single lot was contrary to the public interest.*

*Bob Byrnes added that the variance would also fall short of the spirit of the ordinance*

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*Edna Mosher stated that substantial justice would not be done by granting the ordinance.*

*Edna Mosher added that the value of surrounding properties would be diminished if another residential unit were added.*

*Edna Mosher went on to say that literal enforcement of the ordinance would not create a hardship because the applicant would be abiding by same ordinance that applied to others.*

*The motion was denied unanimously by Matt Morton, Ralph Estes, John Frink, Bob Bynes, John Frink and Edna Mosher.*

2) Request by **Lucy and Robert "Guy" Young, Jr.** for a Variance from Article VI, to reduce the lot from 188,851 s.f. to 90,776 s.f. thereby rendering the existing 4-unit residential building less conforming as to density; and Article VII to permit an existing 4-family residential building 27.14' from the proposed lot line abutting the proposed subdivision road where 40 feet was required from a lot line per definition of "side yard" on property located at **84 Nimble Hill Road, Tax Map 12/Lot 6**

Edna Mosher and Robert Barnes recused themselves as abutters, and stepped into the audience.

Attorney Timothy Phoenix stated that he was appearing before the Board as legal counsel to the prospective buyers and developers, Nimble Hill Realty, LLC. Attorney Phoenix explained that the overall project for a 13-lot subdivision on a 40-acre parcel was pending, and this was the first step for Planning Board approval.

Mike Garrepy with Nimble Hill Realty Investments, LLC passed out sheets from the Planning Board application showing the 40-acre subdivision proposal, including the Shackford Lot with road connections from Nimble Hill Road and Coleman Drive.

Mr. Garrepy stated that they were proposing to reduce the 6.84 acre 4-unit rental lot to 2.84 that was connected to the Young's existing wetlands and wetlands buffer that was of no value to their development project.

Mr. Garrepy stated that the 4-unit rental currently met the 20-foot side setback requirement, but a reference that was tucked away in the definitions section was recently pointed out that the new access road from Nimble Hill Road would turn the building into a corner lot requiring an additional 40-foot setback. Mr. Garrepy said the new road travel portion would be setback 40-feet, but the new right-of-way would be 20 feet or more, so they were asking for a variance to permit less than 40 feet to allow the existing four-family dwelling to remain.

Town Planner, John Krebs stated that he had recommended that they subdivide the back wetlands and wetland buffer from the lot as the existing 4-unit rental that was not conforming, and the eventual plan would be to remove the 4-unit building. a

Mr. Krebs added that the Planning Board legal counsel had pointed out that the Planning Board shall determine frontage on corner lots requiring front setbacks, which was where the conflict with the road proposal and the Ordinance came about.

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Mr. Frink asked if they were proposing to demolish the existing 4-unit rental, and replace it with another. Attorney Phoenix replied that that was not their intent for the time being as they would rather not displace renters until necessary.

Mr. Frink asked if the variance would go with the lot or if it could go with the building only. Mr. Krebs replied that if the frontage setback was granted, they could rebuild in the same location, but the applicant had agreed to build further back as a stipulation of approval. Attorney Phoenix added that they would have to comply with the Ordinance or return.

Chair Morton asked if they were suggesting that they might put four new buildings on the two-acre lot. Attorney Phoenix said they intended to eventually, but knew they would need to return for another variance. Mr. Frink clarified that this variance would only be for the request as posted.

Vice-Chair Estes asked if they were talking about four separate structures, or one. Mr. Garrepy replied that they were talking about four units in one building, and passed out copies of the record showing that there were units. Mr. Krebs noted that the tax records only showed three units, but the building instructor updated the record to show four units.

Denis Hebert of Gundalow Landing said he was not speaking for or against the application because he did not want to disqualify himself as a Planning Board member, but he wanted to ask a question. Mr. Hebert asked when the record had changed, and Mr. Krebs replied that it occurred in the last six months. Mr. Garrepy stated that the record was updated to four legal units in 2020.

Chair Morton noted that the property owner had never come before the Board to seek a variance for the apartments. Mr. Garrepy said the applicant, Robert "Guy" Young, Jr. had a history of the property. Chair Morton asked Guy Young when his father, Robert Young, Sr. had built the apartments. Mr. Young stated the first unit was an existing residence for at least 30 years, and then the others were added over time, with the fourth unit not being added before 2020. Mr. Young said his father thought it was better to ask forgiveness than permission.

Mr. Garrepy said the lot was conforming, but the non-conforming use was grandfathered. Mr. Garrepy stated that they did not intend to change the use at this time.

Mr. Garrepy said the requirement for the front setback for corner lots was tucked away in the Ordinance, and hadn't been pointed out to them until recently.

Attorney Phoenix noted that the gas line ran 27.14 feet from the lot line and 41 feet from the travel portion of the road. Mr. Young stated that the gas and water lines run up the hill from Nimble Hill Road, but he was not exactly sure where they were located.

Mr. Frink asked if Mr. Krebs had asked the applicants to apply for the variances. Mr. Krebs said the Planning Board's legal counsel said the non-conforming use became worse if the lot became smaller, but the applicant didn't agree, so it was the ZBA's call.

Mr. Garrepy said they didn't disagree with Mr. Krebs as they knew they were making the lot smaller. Attorney Phoenix said the lot wouldn't look any different by removing the forested wetlands that the Youngs would retain in the back, however.

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Mr. Frink asked what the applicant's intent was for the request. Mr. Garrepy replied that they didn't want to displace the tenants in the rental units at this time because the housing market was so tight, but they would eventually return to the Board with another proposal for redevelopment on the lot.

Attorney Phoenix presented his criteria for granting the variances, stating that allowing the 4-unit rentals to remain was not contrary to the public interest, or contrary to the spirit of the ordinance as outlined in *Malaky vs. Glen*, as the lot would remain large, and there would be no change to the view.

Attorney Phoenix stated that except for the road that would allow access to develop the Shackford lot behind the Young's property, the variance would not alter the essential character of the surrounding properties.

Attorney Phoenix said the abutting property owners were part of the plan, so granting the variance would not diminish the surrounding property values.

Attorney Phoenix stated the special conditions of the property that presented a hardship was that it was affected by the wetlands and the wetlands buffer, and that they needed the new road to lead to the new subdivision development on the other side of the forest so there would be no change to the view from Nimble Hill Road.

Attorney Phoenix said they exceeded the line of site requirements, the travel distance of the road was 40 feet from the structure, they had a storm runoff plan, and there would be no change to the distance between neighbors that would create any increase to the existing density, so they didn't see reason to deny the variance for the setback to the existing residential structure.

Attorney Phoenix said there would be no harm to the public, and denial would be an injustice to allowing the Youngs to sell their property, and to the pre-existing residential use, which would need to be demolished if denied.

Chair Morton asked if they couldn't get the road unless they demolished the building, and Mr. Garrepy said they were purchasing property from Guy Young for a lot line adjustment as there was only a 25-foot easement to the Shackford/Watson lot so that they could create two points of access as required by the Planning Board, one off Nimble Hill Road, and one off Coleman Drive. Mr. Garrepy said they were demolishing the garage, but requiring a 40-foot setback off both the new road, and Nimble Hill Road would create a hardship.

Edna Mosher of 97 Nimble Hill Road, who had recused herself from the ZBA Board as an abutter, and asked why the applicant didn't want to take house down, and why the site distance was okay. Mr. Garrepy explained that the intent was to keep existing unit where four families lived.

Ms. Mosher asked if the applicant would accept a condition of approval that they would eventually take the building down. Mr. Garrepy said the intent was to replace the building once it was torn down.

Chair Morton asked if they would rent or sell the new structure., Mr. Garrepy said it would depend on the housing market in the region.

Bob Byrnes of 95 Nimble Hill Road, who had also recused himself from the ZBA Board as an abutter, asked if they would replace the structure with a conforming dwelling that would enhance the lot, and be appealing to the Board members, or if they

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would leave both the 4-unit dwelling and the duplex to the back, leaving the parking in the front, looking like a convenience store, and sticking out like a sore thumb. Mr. Byrnes went on to say that he would rather see them demolish the building, than cut corners to accommodate the existing structure.

Chris Cross of 327 Nimble Hill Road said he was not speaking as a Planning Board member, but as an individual, though he had spent a lot of time focusing on the Shackford/Watson Lot subdivision with the Planning Board, and he wanted to see as much conformity to lots as possible.

Mr. Cross said the applicant was proposing to subdivide 13 lots on the Shackford/Watson property, and they were securing access through house lots on Nimble Hill Road, and Coleman Drive. Mr. Cross said they were removing the house on Coleman Drive to allow the intersection radius for more compliance, and he felt that they should do the same on the Nimble Hill Road lot, rather than requesting variances, and waivers, and making the lot more non-conforming by removing the back three acres of prime wetlands and wetland buffer, thus creating a porkchop strip for the Youngs in the back. Mr. Cross said there would be greater compliance if they demolished the building.

Mr. Cross went on to say that the property would be cut down eight feet with the right-of-way being 27 feet from the 4-unit dwelling, which was also not in compliance in consideration of the residents.

Mr. Willson asked if the road met the 400-foot requirement, and Mr. Cross replied that would require a waiver, not a variance.

Abby Hood of Coleman Drive commented that she did not agree with the majority of speakers as a different perspective was important, and she had fond feelings driving past the apartments, and didn't feel they were an eyesore. Ms. Hood said she liked that they were some of the only rentals in town, and thought they should remain as long as possible so long as it doesn't get in the way of project.

Russ Cooke of Hannah Lane said he was not speaking as a Planning Board member, but he wanted to reiterate what was said about wanting conformity, and not approving of a variance that would allow a non-conforming structure closer to the road with noise and exhaust.

Mr. Hebert asked for the Board to consider the square footage required for a two-family duplex or condominium. Chair Morton asked if he was speaking as the Planning Board chair, and Mr. Hebert stated that he was asking as an individual. Mr. Krebs responded that a two-unit building had to have 120,000 square feet, and 80,000 square feet for a single unit. Mr. Krebs said the applicant was asking for a lot line adjustment that would reduce the lot size to 2.08 acres. Attorney Phoenix added that would be the same as 90,000 square feet.

Chair Morton commented that he liked the variety that included old homes in Newington, as well as conforming lots for new homes, but he had no doubt that the developer wanted to maximize their investment in the property. Mr. Garrepy responded that they would have proposed the demolition, and redevelopment of the lot immediately if that was their intention, but they were asking for relief because they wanted to keep it for as long as possible.

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Mr. Garrepy went on to say that they intended on relocating the current driveway to the 4-unit residence so that it would be more conforming.

Attorney Phoenix reiterated that the road would be 27 feet from the lot line, but the travel lane was 40 feet away. Attorney Phoenix added that the road would curve further away slightly after the first 100 feet.

Attorney Phoenix said the road had been designed with the definition of a side yard to the existing structure, and was only pointed out that it had to meet the front setback requirement.

Chair Morton asked if the Town would accept the proposed road, and Mr. Krebs replied that all new roads had to be built to Town standards, and it was up to the Board of Selectmen on whether they were eventually accepted.

Mr. Byrnes said the 4-unit dwelling would require a septic system, and wanted to know where the septic system was located. Mr. Young replied that there was no septic on the road side of the structure. Mr. Garrepy added that the State approved a new system to be installed away from the wetlands if the current failed.

Vice-Chair Estes asked where the entrances to the four rental units were, and if they shared drives. Mr. Garrepy replied that there was one entrance to the original house on Nimble Hill Road, another on the west side, and the two back units shared the existing, grandfathered drive with the duplex, however, the overall subdivision plan didn't contemplate shared drives.

*Ralph Estes moved to accept the request by Lucy and Robert "Guy" Young, Jr. for a variance from Article VI, to reduce the lot from 188,851 s.f. to 90,776 s.f. thereby rendering the existing 4-unit residential building less conforming as to density; and Article VII to permit an existing 4-family residential building 27.14' from the proposed lot line abutting the proposed subdivision road where 40 feet was required from a lot line per definition of "side yard" on property located at 84 Nimble Hill Road, Tax Map 12/Lot 6. John Frink seconded the motion.*

Mr. Krebs suggested that the first variance depended on the second, and suggested that they consider the lot reduction first.

Mr. Frink commented that the lot would be conforming, but wouldn't meet the density requirement.

Attorney Phoenix suggested that the setback could apply to the entire lot, and didn't agree that the first was dependent on the second.

*Ralph Estes amended his motion to accept the request by Lucy and Robert "Guy" Young, Jr. for a variance from Article VI, to reduce the lot from 188,851 s.f. to 90,776 s.f. thereby rendering the existing 4-unit residential building less conforming as to density on property located at 84 Nimble Hill Road, Tax Map 12/Lot 6. John Frink seconded the motion.*

*John Frink stated that Attorney Timothy Phoenixes explanation of the five criteria was thorough.*



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*The motion was denied 3-2 with Ralph Estes, Matt Morton, and Kathy Latchaw opposing, and John Frink and Will Gilbert voting in favor.*

Mr. Krebs stated that the motion would require that the existing structure remain on the 7-acre lot.

*John Frink moved to accept the request by Lucy and Robert "Guy" Young, Jr. for a variance from Article VII to permit an existing 4-family residential building 27.14' from the proposed lot line abutting the proposed subdivision road where 40 feet was required from a lot line per definition of "side yard" on property located at 84 Nimble Hill Road, Tax Map 12/Lot 6. Kathy Latchaw seconded the motion.*

*John Frink reviewed the criteria for granting the variance, stating that the request was not contrary to the public interest as preserving the existing structure would have no adverse affect on the town.*

*John Frink stated that the spirit of the ordinance would be observed because the existing structure served a valuable purpose for keeping the limited number of rentals in town low.*

*John Frink said substantial justice would be done as demolition would not be necessary by the developer would be acting in good faith to the tenants for as long as possible.*

*John Frink stated that the value of the surrounding property owners would not be diminished by allowing the road to access the back lots.*

*John Frink stated that literal enforcement of two front setbacks would create an unnecessary hardship on a road created to access to the back property for development.*

*The motion passed, 3-2 with Matt Morton, John Frink and Will Gilbert approving, and Kathy Latchaw and Ralph Estes objecting.*

Mr. Garrepy stated that he understood that the building could remain, but he might ask for a reconsideration for a reduction in the lot size. Mr. Krebs pointed out that the density of the units could not be supported with a reduction in the lot size. Attorney Phoenix said they would accept the Board's decision.

**Minutes:** *Edna Mosher made a motion to approve the Minutes of March 25, 2021. Matt Morton seconded the motion, and all were in favor.*

**Adjournment:** *Chair Morton moved to adjourn the meeting. Derick Willson seconded, and the meeting adjourned at 8:42 p.m.*

**Next Meeting:** To be determined

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**Respectfully  
Submitted by:**

Jane K. Kendall, Recording Secretary