

Jon G. Rioux

From: Collins, Kristin M. <KCollins@preti.com>
Sent: Tuesday, October 26, 2021 12:25 AM
To: Jon G. Rioux
Subject: RE: [EXTERNAL] ZBA: Town counsel opinion on variance application

Jon,
I have reviewed this issue further and, while it is helpful to know that this is a legally conforming lot, I still believe the variance is necessary. Section 204(A) provides that a single family dwelling may be erected on a nonconforming lot of record. Since this proposal is for a commercial development, I believe the variance, which of course has already been granted, remains necessary.
Thanks,
Kristin

Kristin M. Collins
Attorney
PretiFlaherty

From: Jon G. Rioux <jgrioux@windhammaine.us>
Sent: Monday, October 25, 2021 3:21 PM
To: Collins, Kristin M. <KCollins@preti.com>
Subject: FW: [EXTERNAL] ZBA: Town counsel opinion on variance application

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From: Geoffrey Sparrow <geoffs@greenlansolar.com>
Sent: Thursday, October 21, 2021 3:58 PM
To: Jon G. Rioux <jgrioux@windhammaine.us>
Cc: Sam Lebel <slebel@acorn-engineering.com>; Aubrey Strause <astrause@acorn-engineering.com>; William Savage <wsavage@acorn-engineering.com>; Elizabeth A. Boepple <eboepple@mpmlaw.com>
Subject: Re: [EXTERNAL] ZBA: Town counsel opinion on variance application

Hi Jon,

My apologies for taking a while to get this information to you. The text in blue below is from our attorney Beth Boepple who was at the ZBA meeting and is also cc'd on this email.

I have traced the same property description back to a mortgage deed which also makes reference to a Warranty deed. The lot description has not changed since at least 1932, possibly earlier. Regardless of when the zoning went into effect, I am fairly confident Windham did not have zoning in place in 1932. Hence, my determination is that we do indeed have a pre-existing non-conforming lot and therefore the variance is not needed.

The deed with the highlighted description is attached.

At this point, we are going to move forward with our project application to the planning board. Let me know if you have any questions, comments, or suggestions as we move in that direction.

Thank you,

Geoff

On Mon, Sep 20, 2021 at 12:52 PM Aubrey Strause <astrause@acorn-engineering.com> wrote:

Jon-

I wanted to follow up on the outcome of the **Green Lantern Solar** item on the agenda for last Thursday's (September 16) meeting of the Zoning Board of Appeals (ZBA).

Green Lantern Solar is requesting a variance from the dimensional standard of 150 feet of public road frontage (at #994 Roosevelt Trail) for development of a solar array in the C-2 zoning district, which is not possible with this landlocked parcel (Tax Map #21, Lot 3) and would not be necessary based on minimal site access needs once the solar array is constructed.

After comprehensive review of the materials provided in the application, input from you, and comments from a member of the public about his conversations with previous CEO Hanson, it was unclear whether such a variance (if granted) would apply to:

- The proposed site use (solar array),
- The applicant (Green Lantern Solar),
- The owner of the lot (TMC Land Holdings, LLC) or
- The lot (Tax Map #21, Lot 3)

We proposed that a Condition of Approval be considered by the ZBA to limit the approval of the variance to the **applicant** for development of a **solar array**, since other types of development on the lot (for example, a convention center) on the lot would not be able to satisfy the Conditional Use Review Criteria in LUO Section 516.H or the conditions in LUO Section 1106.D, including parking, traffic, public safety access, sewage disposal, and others.

Green Lantern's application and related materials were discussed in detail.

We appreciated the discipline of the ZBA, which allowed members of the public in attendance to state their concerns (which would be considered by the Planning Board process) for the record **but** remained focused on their obligation to consider the specific request at hand.

The ZBA made a motion to table the requested variance until the Town's legal counsel could provide a legal opinion on how a hypothetical variance approval would be applied. Please keep us informed of the response provided by legal counsel, which will inform Green Lantern Solar's next step(s).

Thank you for your assistance on this project and for your role advising the ZBA.

-als

Aubrey L. Strause, PE

Municipal Services Coordinator

Licensed in Maine

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