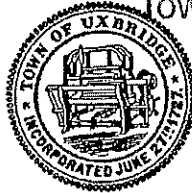


Rob Knapik, Member
John Gniadek, Member
Mark Kaferlein, Member
Thomas McNulty, Associate Member



Uxbridge Town Hall
21 South Main Street, Room 205
Uxbridge, MA 01569
508-278-8600 x2019 p

DECISION

ZBA Case #: FY19-08
Zone: **Agricultural Zone**
Owner: **Raymond Lebouef**
Property Address: **69-73 Lackey Dam Road**
Assessor's Reference Map: 9 Parcel: **785 and 787**
Worcester District Registry of Deeds References: Book: **39743** Page: **28**

Variance Granted

Decision Date: November 7, 2018

BACKGROUND: 69 and 73 Lackey Dam Road, Raymond Lebouef, Owner/Applicant, is seeking a Variance to several dimensional requirements. The pre-existing non-conforming property has two single-family dwellings on it that pre-date the zoning bylaw. The owner proposes to divide the property along an existing fence line, more or less.

VOTING MEMBERS PRESENT: Rob Knapik Chair, Mark Kaferlein and Thomas McNulty

SUBMITTALS:

- Zoning Board of Appeals Application for Variance
- Variance Request Plan, 69 & 73 Lackey Dam road, Uxbridge, MA
- Property Deed
- Certified Abutter List

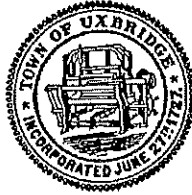
PRESENTATION / DELIBERATIONS / FINDINGS OF FACT:

A public hearing was opened and closed on November 7, 2018.

Attorney Mark Wickstrom, Wickstrom Morse LLP, attended on behalf of the Applicant. Attorney Wickstrom informed the Board that the reason for the Applicant is because the owner of the Property and of Lot 1 and Lot 2 as shown on the Variance Request is selling Lot 2 to his tenant, and that during a title search of the Property, it was discovered there was no plan of record that depicted the Property as two separate lots, and therefore some approval from both the Planning Board and the Zoning Board of Appeals would be required. The houses situated on each of Lot 1 and Lot 2 were built in 1950, which predates the Uxbridge Zoning Bylaw, and have existed on the same lot since. Over the years there have been some family transfers that were not recorded. Attorney Wickstrom emphasized there are no other changes being proposed, only the change of ownership and it should be seamless from the neighborhood perspective.

Attorney Wickstrom explained that until recently in Massachusetts it appeared clear in this type of situation that pursuant to the relevant provision of the Subdivision Control Law, the Planning Board may allow a property owner to draw a dividing line between two structures that preexist the zoning bylaw. However due to a new case that was decided in approximately 2015, the Court advised that it is also necessary to obtain any necessary variances from the Zoning Board of Appeals where dimensional requirements are not met, making the a two-step, rather than a single-step, process. The Applicant has already obtained approval from the Uxbridge Planning Board for the division of the lots which follow an existing fence line that has been in existence for some time. The dimensional deficiencies are set forth on the Variance Request Plan and the Application. It was also noted that the Town Assessor presently considers the Property as two assessed taxable parcels. Attorney Wickstrom described the detriment the Applicant would face without the variance as the inability to sell one of the houses.

Rob Knapik, Member
John Gniadek, Member
Mark Kaferlein, Member
Thomas McNulty, Associate Member



Uxbridge Town Hall
21 South Main Street, Room 205
Uxbridge, MA 01569
508-278-8600 x2013 p
508-278-0709 f

DECISION

ZBA Case #: FY19-08
Zone: **Agricultural Zone**
Owner: **Raymond Lebouef**
Property Address: **69 & 73 Lackey Dam Road**
Assessor's Reference Map: 9 Parcel: **785 and 787**
Worcester District Registry of Deeds References: Book: **39743** Page: **28**

Attorney Wickstrom argued there is a hardship related to the structures themselves as opposed to the topography of the lot. It is "odd" that there are 2 structures on one lot and the division would alleviate that situation.

Mr. Knapik concurred with Attorney Wickstrom's explanation of the related portion of the Subdivision Control Law that provides generally that an owner of property on which is situated 2 houses that pre-date the zoning bylaw, then the property owner has the right to divide the property into two separate lots. Mr. Knapik mentioned the 2015 Court decision which provides that even though such property may be divided pursuant to the Subdivision Control Law, it remained necessary to obtain a Variance for any dimensional requirements that are not met.

Larry Lench, Uxbridge Building Inspector, noted that division of the Property and the Application is consistent with Uxbridge Zoning Bylaw Section 400-13, B, 2 which provides that only one dwelling and private garage shall be erected or maintained on a single lot in any zone or district. No members of the public attended the hearing or provided comment.

During deliberations Board members agreed that the Application satisfied the requirement that the standard for the grant of the variance is met.

MOTION / VOTE:

Mr. McNulty made a **MOTION** to close the Public Hearing FY 19-08 for 69 & 73 Lackey Dam Road. **MOTION SECONDED** by Mr. Kaferlein and passed unanimously by vote of 3-0-0.

Mr. McNulty made a **MOTION** that the Zoning Board of Appeals grant the Variances requested by the Applicant as set forth in the application for area frontage and certain setback requirements. **MOTION SECONDED** by Kaferlein and passed unanimously by vote of 3-0-0.

Rob Knapik, Member
John Gniadek, Member
Mark Kaferlein, Member
Thomas McNulty, Associate Member

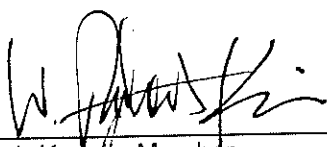


Uxbridge Town Hall
21 South Main Street, Room 205
Uxbridge, MA 01569
508-278-8600 x2013 p
508-278-0709 f

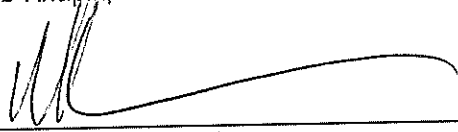
DECISION

ZBA Case #: FY19-08
Zone: **Agricultural Zone**
Owner: **Raymond Lebouef**
Property Address: **69 & 73 Lackey Dam Road**
Assessor's Reference Map: 9 Parcel: **785 and 787**
Worcester District Registry of Deeds References: Book: **39743** Page: **28**

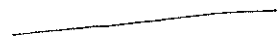
SIGNATURE PAGE



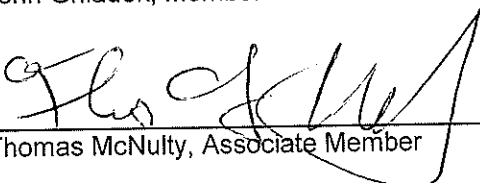
Rob Knapik, Member



Mark Kaferlein, Member



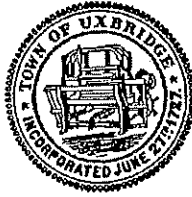
John Gniadek, Member



Thomas McNulty, Associate Member

November 7, 2018
Date

Rob Knapik, Member
John Gniadek, Member
Mark Kaferlein, Member
Thomas McNulty, Associate Member



Uxbridge Town Hall
21 South Main Street, Room 205
Uxbridge, MA 01569
508-278-8600 x2013 p
508-278-0709 f

DECISION

ZBA Case #: **FY19-08**
Zone: **Agricultural Zone**
Owner: **Raymond Lebouef**
Property Address: **69 & 73 Lackey Dam Road**
Assessor's Reference Map: 9 Parcel: **785 and 787**
Worcester District Registry of Deeds References: Book: **39743** Page: **28**

Appeals, if any, from this decision shall be made pursuant to M.G.L. Chapter 40 A, Section 17 and filed within 20 days after the date of the filing in the Office of the Town Clerk.

I hereby certify that twenty (20) days has elapsed from the file date and no appeal has been filed in this office.

A true copy: **ATTEST**

Town Clerk, Kelly Dumas or
Assistant Town Clerk

Date

Town Seal

****THE APPLICANT IS REMINDED OF THEIR RESPONSIBILITY TO RECORD THIS
DECISION AT THE REGISTRY OF DEEDS PER THE CERTIFICATE OF GRANTING.
NO PERMITS SHALL ISSUE UNTIL THE PERMIT IS RECORDED. ****