

TOWN OF HUNTINGTON

HUNTINGTON TOWN CLERK'S OFFICE
Received for Record

APPLICATION TO ZONING BOARD OF ADJUSTMENT

A.D. _____
at _____ o'clock _____ minutes _____ M.
Recorded in Book _____ Page _____
Attest _____ Town Clerk

Map # 02-041.100 Appeal # 2013-05-V Date 6/1/13
Landowner John and Kendra Christiana Phone # 802-434-3292
Mailing Address 266 Texas Hill Road; Huntington VT 05462
Appellant (if different) _____ Phone # _____

Mailing Address _____
Location of Property 266 Texas Hill Rd District Village

Type of Application: () Conditional Use Permit (X) Variance
Proposed Project Create a second driveway for the accessory dwelling (288 Texas Hill Road)

() Appeal of Action by Zoning Administrator

Reason for Appeal _____

The owner or applicant should submit with the application: plans, maps, elevations, landscaping diagrams, traffic circulation diagrams, names/addresses of abutting property owners (including across waterways and roads), and any other relevant information and data required to advise the Board fully with reference to the application or appeal. * Additional fees may apply for recording.

Signature of Applicant(s) [Signature] Date 6/1/13
Kendra R Christiana Date 6-1-13

FOR USE BY ZONING BOARD OF ADJUSTMENT

Appeal # 2013-05-V Zoning Permit # _____

\$175* Fee Paid Waived 6/25/2013 Date 6.3.13 Rec'd by [Signature]

Notice of Hearing Posted (X) Warned (X) Date of Hearing June 25, 2013 Notices mailed to:
Denton, Ricklets, Rowe & Lane, Willis

Approved Denied _____ on the basis of the following determination or conditions:

See "Findings of Fact."

Date of Decision _____

July 17 A.D. 2013
at 10 o'clock - minutes A.M.
Recorded in Book 105 Page 878-880
Attest  Town Clerk

HUNTINGTON ZONING BOARD OF ADJUSTMENT

IN RE Kendra and John Christiana, V-2013-05-V

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. INTRODUCTION

These findings address a request for a variance by Kendra and John Christiana to excavate a second driveway access from Texas Hill Road to an existing accessory residential structure on their property at 266 Texas Hill Road (Map# 02-041.100). On June 25, 2013, the ZBA held a hearing on this variance request. In short, while the ZBA found that this was a very close question, a majority of the ZBA concluded that the variance for a second driveway access should be granted, for the reasons stated below. As an aside, the ZBA also unanimously concluded that because this ordinance provision can easily lead to impractical and/or harsh results, it should be amended to allow for a second driveway so long as such second driveway cut met conditional use criteria.

II. FINDINGS OF FACT

By way of background, on October 9, 2012, the ZBA previously granted a conditional use permit pursuant to Article 5.7 for the Christianas to build an accessory residential dwelling. Accessory dwellings are limited under the ordinance to 30% of the total habitable floor area of the single family dwelling on the property. The Christianas proposed accessory dwelling complied with this area requirement as well as the ordinance in general. Because under Article 5.7.3(3) "no additional drives are to be created" for such an accessory dwelling, at that time the applicants contemplated accessing the accessory structure from the existing driveway to the primary residence. There is a distance of approximately 260 feet between the primary residence and the accessory structure. Dawn Taylor, who is Kendra Christiana's mother, now resides in this structure.

However, since the construction of the accessory dwelling, the use of the existing driveway to access the accessory structure has proved impractical, particularly during mud season and any thaws during winter or wet periods in the remainder of the year. Access to the accessory structure across the lawn by vehicles, including fuel delivery vehicles, has been particularly burdensome during these periods. While in theory an extension from the exiting driveway, as allowed under the ordinance, to prevent these access issues is possible, it would be impractical and an eyesore. Specifically, an extension of the existing driveway to the accessory dwelling would require about 220 feet of driveway construction, while a new direct driveway cut from Texas Hill Road would only require about 80 feet of driveway construction.

The applicants received quotes from John Scott Excavating for both alternatives. Extending the existing driveway for 220 feet was estimated to cost about \$3,350 while a new driveway cut of 80 feet was estimated to cost about \$3,150. The costs are close because the shorter driveway requires the additional cost of a culvert on the side of Texas Hill Road.

Accordingly, the difference in monetary costs between granting the variance and denying would be negligible and no monetary hardship would result from denying the variance.

The majority of the ZBA, however, found that non-monetary impacts of denying the variance were significant. For example, because of the existing septic system an extension of the existing driveway would have to be placed very close to Texas Hill Road and run parallel to Texas Hill Road for about 220 feet. This driveway extension, while allowed under the ordinance, would not only be aesthetically unsightly but would constitute a complete waste of land resources. The ZBA finds that the definition of "unnecessary hardship" under the Ordinance is broad enough to include such adverse environmental impacts. While there was no specific evidence presented regarding the potential run-off impacts of constructing this two hundred foot driveway right next to and parallel to Texas Hill Road, there was concern by some ZBA members that this long unnecessary driveway would be significantly less permeable than the existing lawn, even putting aside the adverse aesthetic impacts. In short, not only is it an "unnecessary hardship," it is just plain silly to require the construction of a long driveway parallel to Texas Hill Road when a new driveway cut would be about 1/3 in length. Indeed, given how unsightly this long driveway would be, compliance with the ordinance would, if anything, undermine the rural character of the neighborhood while granting the variance would be compatible with the neighborhood. The majority of the ZBA finds it has enough discretion under the variance criteria to make a common sense judgment that granting the variance under the unique circumstances of this case has much less impact on the land than denying a variance.

In addition, the ZBA finds that the "unnecessary hardship" was not created by the applicants. To be sure the applicants could have applied for a variance for a second driveway at the time they applied for a conditional use permit for the accessory structure and/or before they built the structure. The fact that the applicants thought they could make the single driveway work, without asking for a variance, however, should not be held against them. Therefore, the majority of the ZBA found that the applicants did not create the unnecessary hardship.

It is noteworthy that, according to the applicants, the Huntington Highway Department Road Foreman has no objections to a second driveway cut from Texas Hill Road and there was no evidence presented that it would create any burden on the Highway Department.

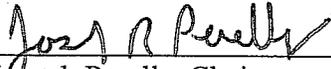
The meeting was attended by ZBA members Joe Spence, Gordon Miller, Mark Smith, John Altermatt, and Joe Perella. Kendra Christiana and her mother Dawn Taylor attended on behalf of the applicant. No adjacent landowners attended the meeting nor did any submit written objections.

III. CONCLUSIONS OF LAW

The ZBA finds as follows under Article 6.7 of the Huntington Ordinance. First, there are unique physical circumstances or conditions peculiar to the property and that unnecessary hardship is due to such conditions and not the zoning regulations in general. Second, because of the unique physical conditions the property cannot be developed in strict conformity with the zoning regulations and that a variance is necessary to enable the reasonable use of the property. Third, the hardship here was not created by the applicant. Fourth, the variance will not alter the essential character of the neighborhood or district and nor will it impair adjacent property or the public welfare. Fifth, the variance requested and granted represents the minimum variance that will afford relief to the applicant and represents the least modification possible of the Huntington

Ordinance. The variance for the driveway is granted as depicted in the diagram attached as Exhibit A.¹

Dated this 12th day of July, 2013



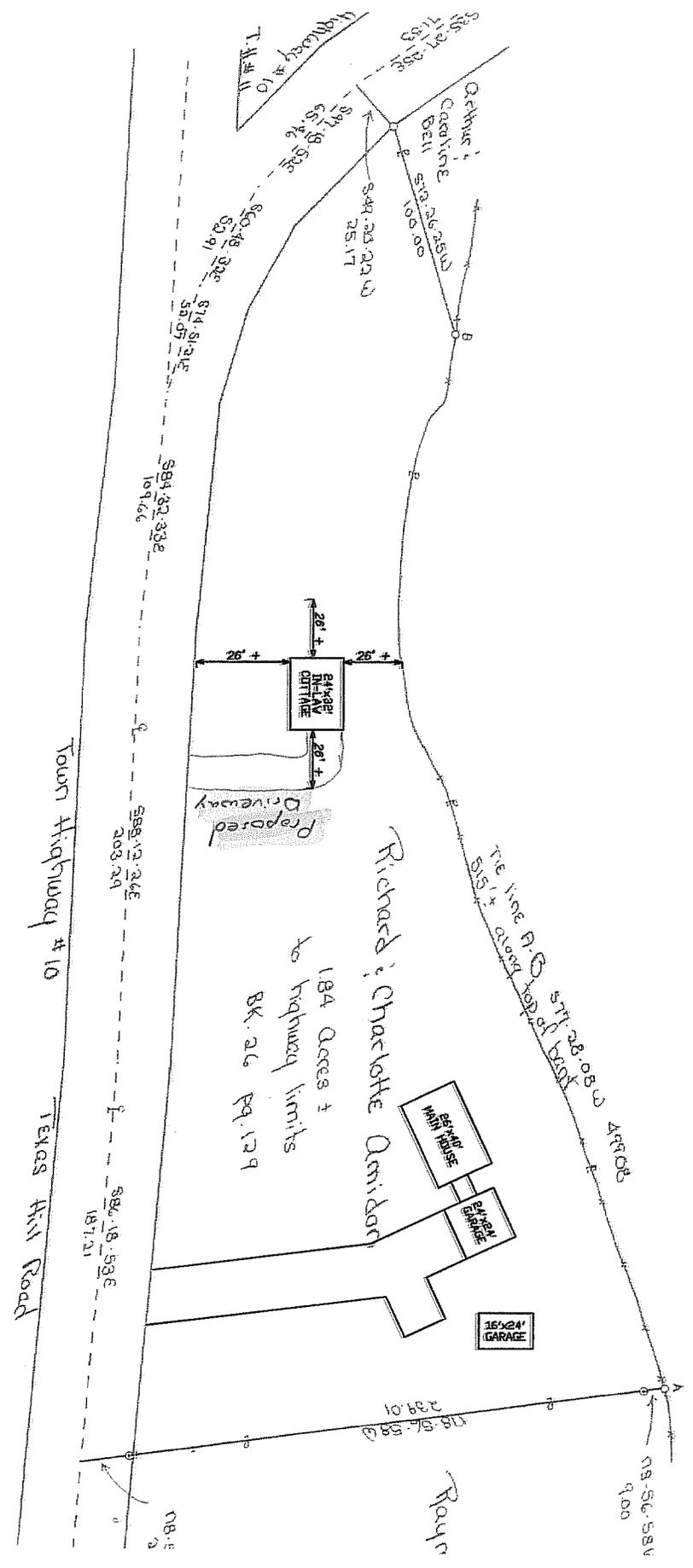
Joseph Perella, Chair,
Joe Spence
Mark Smith
Gordon Miler
Zoning Board of Adjustment
Huntington, Vermont

¹ ZBA member John Altermatt voted against granting the variance application as, in his opinion, the application did not meet all the criteria, particularly that the hardship was not created by the applicant.

Exhibit A

Magnetic North 1987
 Approx. True North

Roland & Charlene La Pierre



Legend:

- = iron pipe found
- = iron pin set
- = fence