

**MOUNT VERNON BOARD OF APPEALS
REPORT OF FINDINGS AND CONCLUSIONS**

**UNDUE HARDSHIP VARIANCE APPEAL
BY
Andrea and Gary Emmershly (APPLICANTS)**

PUBLIC HEARING JULY 24, 2018

A Public Hearing was held at 6:00 pm on July 24, 2018 at the Mount Vernon Town Office. The Board of Appeals (Board) met to consider the application for an undue hardship variance by Andrea and Gary Emmershly. The Applicant requests a variance to the Mount Vernon Land Use Ordinance (Ordinance) to construct a new garage with storage and family room above at 34 Demariano Rd.

HEARING CALLED TO ORDER:

Chairman Carl Rogers called the July 24, 2018 meeting to order at 6:00 p.m. No members of the board recused themselves. A quorum was present.

APPEAL BOARD MEMBERS IN ATTENDANCE:

July 24, 2018: Carl Rogers (Chair), David Fuller, Malcolm Hardy, Scott Herrick, Randall Oakley and Gerhard Von Hauenschild.

OTHERS IN ATTENDANCE:

July 24, 2018: Andrea Emmershly, Gary Emmershly (Applicants), Andrew Marble (Code Enforcement Officer), Jon Olson, Alice Olson, Alan Williams.

FACTS IN EVIDENCE:

- Andrea and Gary Emmershly are the owners of the subject property.
- The Board has the power and duty to hear and decide requests for variances to the requirements of the Ordinance.
- The Board is required by the Ordinance to grant variances only from dimensional requirements including, but not limited to, lot width, structure height, percent of lot coverage, and setback requirements.

- A variance can only be granted under Section 5 No. 8 if the Board finds that:
 - A. The proposed structure or use would meet the provisions of this ordinance except for the specific provision which has created the non-conformity and from which relief is sought and,
 - B. The strict application of the terms of this ordinance would result in undue hardship.

The term undue hardship shall mean:

- (i.) that the land in question cannot yield a reasonable return unless a variance is granted,
 - (ii.) that the need for variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood.
 - (iii.) the granting of a variance will not alter the essential character of the locality; and
 - (iv.) that the hardship is not the result of an action taken by the applicant or a prior owner.
- Section 3 of the Ordinance states that “A financial hardship shall not constitute grounds for granting a variance”.
 - An application for a permit to construct a new garage with storage and family room above at 34 Demariano Rd was received by the Code Enforcement Officer (CEO) Andrew Marble. A letter dated April 10, 2018 from the CEO to the applicant approved the modified application with the stipulation that the 75 foot road setback was required.
 - Upon demolition of the existing garage, Gary and Andrea Emmershy notified Andrew Marble, that upon remeasuring, the proposed building footprint did not meet the 75 foot road setback requirement. At this point Mr. Marble denied the permit.
 - The CEO cited an insufficient setback from the center of travel on Demariano road.
 - Rather than rework the application, the applicant decided to apply for a Hardship Variance.
 - The Applicant submitted an Application for an Undue Hardship Variance to the Board. The Application was dated June 25, 2018 and received by the Town Clerk on June 25, 2018, which is within the 30 days stipulated by the Ordinance for an application for variance to be valid.

the Public Hearing date, time and location was provided by Certified Mail to the applicant and three abutters. It was also posted in five public places within the Town, in the *Kennebec Journal*, and provided to the Selectmen and the CEO.

FINDINGS AND CONCLUSIONS:

- The Board has jurisdiction over the appeal.
- The Applicant has standing and therefore the right to appeal.
- The Board agrees the appeal should be considered appellant.
- Andrea and Gary Emmershys based the appeal on undue hardship stating that without a variance, the garage could only accommodate one vehicle.
- They noted a two-car garage would be more desirable and marketable.
- They also noted that they added a staircase in the garage to access the second floor of the garage which extended the garage past the setback limit.
- Andrea and Gary requested the following setback variance.
 - 1) Reduction of the seventy-five foot setback from the center line of the road defined in Section 5.b.1 of the Ordinance, to sixty-nine feet.
- Andrea and Gary discussed the prior permit issued by Richard Marble which allowed a 69 foot to center of road building.
- They noted they did not build within the one year limit of the permit and applied for a second permit which was initially denied by Andrew Marble.
- With recommended adjustments by the Emmershys, a new building plan was applied for with a permit being issued by Andrew Marble which indicated a 75 foot setback from the center line of the road.
- After the demolition of their existing garage, the Emmershys remeasured the setback to the road and found the building would be out of compliance. They reported this to Andrew Marble who then denied the building permit based on the required road setback requirement.
- Andrew Marble stated a letter to the DEP was not required since we were not asking for a lake variance.
- David Fuller made a motion to do a site visit which was seconded by Malcolm Hardy.

- All members of the board went for the site visit along with the Emmershys.
- During the visit, measurements were made from the center of the road to the proposed building footprint.
- Portions, but not all of the building footprint, violated the required 75 foot setback from the centerline of the road.
- That the center of the road curves in front of the Emmershys' residence contributed to the extension of portions of the proposed garage into the 75' road setback.
- The board noted that it is bound by the Mount Vernon ordinance in making decisions.
- Alice and Jon Olson, neighbors from across the road, attended the meeting and supported a variance for the Emmershys.
- It was noted that there were other houses that were within the 75 foot setback requirement although those houses were built prior to the 1994 ordinance that now governs the road setback requirement.
- Upon conclusion of the site visit, alternate options were discussed regarding the footprint of the proposed garage.
- The Board recommended that the Emmershys petition the Ordinance Committee to amend the ordinance given this is on a private road where a shorter setback may be reasonable.
- The Board, however, noted that it is bound to follow the existing ordinances and that alternate options were available to the Emmershys.
- The Board voted on each of the four items defining undue hardship as shown in the table below.

The Term "Undue Hardship" shall mean	Appeals Board Members Vote						Majority Vote	Required for Approval
	David Fuller	Malcolm Hardy	Scott Herrick	Randy Oakley	Carl Rogers Chair	Gerhard Von Hauens child		
i. that the land in question cannot yield a reasonable return unless a variance is granted	No	No	No	No	No	No	No	Yes
ii. that the need for variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood.	No	Yes	Yes	Yes	No	Yes	Yes	Yes
iii. the granting of a variance will not alter the essential character of the locality	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
iv. that the hardship is not the result of an action taken by the applicant or a prior owner	No	No	No	No	No	No	No	Yes

The Appeals Board finds that the Emmershy appeal does not meet the strict application of undue hardship in that the land in question can yield a reasonable return. The reason for not meeting the strict application is that the hardship is the result of an action taken by the applicant.

MOTION TO ADJOURN:

Malcolm Hardy, second David Fuller. Meeting was adjourned at 7:30 p.m.

SIGNATURES OF BOARD MEMBERS IN ATTENDANCE:

Bob Smith

Barbara Jones

Mike Hardy

Scott G. Herrick -

[Signature]

Chris King