

VARIANCE DENIED; OWNER MUST COMBINE LOTS INSTEAD

On a brief note, the Vermont Supreme Court held that when considering a variance for an existing small lot, the zoning board of adjustment (ZBA) must consider all of the applicant's [adjoining] property. *Kashner v. Greensboro ZBA et al.* Vt. Entry Order No. 98- 566 (July 19, 2000). In this case, Kashner owned three adjoining lots and applied for a building permit and variance for a house on one of the lots, Lot # 29. The ZBA found there was no basis for issuing a variance because Kashner owned a contiguous 1.26 acres and, with that total amount of property, she could easily meet setback and septic requirements.

That decision was appealed and the lower court created and issued a lesser variance by reducing the size of the proposed building and moving its location on Lot # 29. On appeal, the Supreme Court said the lower court had erred and the question was not whether Lot # 29 was a pre-existing small lot but whether a variance was needed at all, considering Kashner's total contiguous property.

The Court said, "nothing in § 4406 (1) entitles Kashner to the requested zoning variance simply because [Lot # 29] is an existing small lot, if, in looking at all of the applicant's property, it can be shown that the property could be developed without a variance." *Id.* at 3. In other words, existing small lots must still meet the variance criteria and Kashner's application would fail the "unnecessary hardship" criterion in 24 V.S.A. § 4468 (a)(3).

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