



IAN W. GILBERT
ATTORNEY AT LAW
November 12, 2025

David Vandewater
Greig Planning Board Chair
VIA EMAIL

Matter Number: 00145
RE: Dittl review

Dear David,

As you know, the Planning Board requested that I offer an opinion on the interpretation request submitted by Kurt and Penny Dittl regarding the subdivision of 5638 North Shore Road in Brantingham. I want to apologize for not getting a written response back to you and the board prior to your last meeting. Please feel free to share this letter with the Dittls or their surveyor and attorney.

First, I regard this issue as ripe for review and a final determination by the Planning Board, as the PB is empowered to consider waivers to conditions of prior approvals, specifically in this case: the approval granted on December 3, 2020 combining the Dittl property.

Per our discussion by phone, I agree with the Board's conclusion that the subdivision requested would create a greater nonconformity. I also note that notwithstanding this fact, the Planning Board does have the right to waive subdivision requirements under "special circumstances" where waiver is in the interest of the "public health, safety, and general welfare".

I do think that the Planning Board has sufficient grounds for offering a waiver, specifically on the basis that the subdivision is being done to reverse the combination of the parcels at issue. However, it is not required to do so. While it is true that several other parcels utilize North Shore Road as a boundary and have common owners but separate tax ID numbers, it is not immediately clear to me that these parcels were

created as a result of waivers given from the Subdivision Law requirements. It is just as likely that they are grandfathered.

The Planning Board should seek to avoid any accusation that it is arbitrarily applying waiver from the subdivision law absent clear precedent based on similar sets of facts. I note that in the interim, the Dittls likely sustained some benefit in terms of their tax assessment due to the combination of the parcels in 2020. They now seek the benefit of separating out the parcels again, restoring them to a single parcel; though this would create, as you put it, a greater nonconformity.

In conclusion, the Planning Board has discretion in this case to grant the waiver, but it is difficult to see how this benefits the general welfare as opposed to their individual welfare. Granting the waiver could also create legal issues for the Planning Board in the future if it were to deny similar requests from neighbors. The Planning Board might be assisted if it could be demonstrated that the other property owners who own adjacent nonconforming parcels (as referred to in Mr. Lyndaker's July 24 letter) were granted waivers similar to what is being requested.

Very truly yours,



Ian W. Gilbert