

LONDONDERRY ZONING BOARD OF ADJUSTMENT
268B MAMMOTH ROAD
LONDONDERRY, NH 03053

MINUTES FROM 4/20/16 MEETING

Jim Smith called the meeting to order at 7:00 p.m. Members introduced themselves. The following members were present: Jim Tirabassi, voting member; Neil Dunn, voting member; Jim Smith, Chair; Jacqueline Benard, voting member; David Paquette, voting member; Suzanne Brunelle, alternate member; and Bill Berardino, alternate member. Also, in attendance were Colleen Mailloux, Town Planner and Laura Gandia, Associate Planner (TEMP).

I. APPROVAL OF MINUTES

N. Dunn made a motion to accept the October 2015 (Case 4 only), November 2015, February 2016 and March 2016 minutes as presented.

Motion was seconded by J. Benard.

Motion was granted, 5-0-0.

II. REPORT BY TOWN COUNCIL – N/A

III. PUBLIC HEARING OF CASES

A. CASE NO. 3/16/2016-1 (CONT.): SMITH, MATTHEW C AND TARANOV, TATIANA REQUEST A VARIANCE FROM LZO 2.3.1.3.C.1 TO ENCROACH INTO THE FRONT SETBACK TO CONSTRUCT A HANDICAPPED WHEELCHAIR ACCESSIBLE LANDING 9 FEET IN LENGTH AND 10 FEET WIDE WITH A ROOF, 32 HOLSTEIN AVENUE, MAP 1, LOT 20-28, ZONE AR-I

S. Brunelle recused herself from the case due to a conflict. Chairman Smith reviewed with the Board NHRSA 674:33 V which involves the hardship criteria for granting a variance when reasonable accommodations are necessary to allow a person with a recognized physical disability to reside in or regularly use the premises.

Tatiana Taranov (Smith), owner of 32 Holstein Ave, presented her case. She stated that her disabled mother who suffers from a brain injury, is handicapped, wheelchair bound, and resides with her and her family. She informed the Board that she currently has a landing that is encroaching in the setback but that landing is not enough to accommodate a wheelchair. She stated that her mother's bedroom is on the first floor, and that her mother is only able to enter the house through the extremely small garage. She stated that there is a steep driveway that makes it difficult for her mother to use the yard. Her hope is to construct a landing to allow her mother to sit in the front of the yard, participate in her grandchildren's activities, and interact with the community and neighbors. She informed the Board that the wheelchair requires a 5x5 ft. space to maneuver properly and this cannot be currently achieved given the space restrictions as well as the area needed for the front door to open and close. She stated she needs a larger landing with stairs than what currently exists.

Chairman Smith asked her to describe in more detail what she was seeking so the Board could have a better visual of her request. She confirmed that she is seeking a larger landing in the front of the house.

She stated that her mother currently has no access to enter or exit through the front of the house, and her access to the street is very limited.

J. Benard asked if the request was also for a roof. T. Taranov replied yes because of precipitation occurring from massive meltdown and melting ice, and the construction of the landing to the front door which needs to be leveled. She stated that the requested A shape roof similar to others in the neighborhood would provide protection from leakage and moisture into the home.

Chairman Smith asked the applicant to confirm the size, and she said it would be 9 feet in length and 10 feet wide. Currently it is 6 feet and she wants three steps instead of the two currently existing.

Chairman Smith instructed her to go through the five points of law.

T. Taranov briefly explained the ADA reasonable accommodations for a handicap person. Chairman Smith spoke of RSA 674:33 V regarding reasonable accommodations. He read RSA 674:33 V into the record and how it relates to the hardship criteria in granting a variance in this situation. T. Taranov stated that it would be unfair to not allow this accommodation for her mother, and to exclude her from her family and the community.

T. Taranov reviewed the criteria: (1) variance is not contrary to the public interest because it would include a family member in her community and family life, and allow equal access; (2) spirit of the ordinance is observed because the current landing with steps is already encroaching, and increasing the size of the landing is not outside the spirit; (3) substantial justice is done because it would allow her mother access to her own home – to the front and to the street; (4) the values of surrounding properties are not diminished because there will be a more attractive front landing which is similar to neighboring landings. She concluded by stating that the proposed use is a reasonable one – allowing them to utilize their home, and literal enforcement would result in an unnecessary hardship.

Chairman Smith asked for public input and there was none.

N. Dunn asked if the applicant knows how far she is encroaching, and she stated that it looks like her front door is on the setback line. Questions were asked about a ramp. She stated that she will not have a ramp, and does not believe a ramp is necessary or affordable at this time. N. Dunn referenced tying the granting to the variance to the person and the person's need. Chairman Smith pointed out in the statute that the Board may provide for this stipulation but it is permissive.

J. Tirabassi asked about the dimension and layout. The Board and applicant discussed the dimensions and layout of the landing. She drew a sketch for the Board which was presented and included as part of the record as Exhibit 1 showing the dimensions of 6 feet from the front door and 10 feet wide with the steps recessed (3 feet for the steps). She considered that the roof would extend over the steps but she was not sure. Concerns were expressed about the ability to open the door with appropriate space for the wheelchair. B. Berardino asked if her mother was confined to a wheelchair, and how she would get down the stairs without a ramp. T. Taranov stated that she is not confined and can walk but it is difficult for her. She explained that sometimes they use two wheelchairs or she can use another access point to exit the house. She stated that the dimension will be 9 ft. length by 10 ft. wide (6 for the landing and an additional foot for each step).

T. Taranov was asked if she wanted to add anything else and she did not.

Chairman Smith closed public input and the Board went into deliberations. The Board reviewed the five criteria as follows: (1) variance is not contrary to the public interest because it would provide

access for a family member to enjoy her family and the community; (2) spirit of the ordinance is observed because the granting would allow the use of the home by a disabled person; (3) substantial justice is done because it would allow a person access to her own home, front yard and front door; (4) the values of surrounding properties are not diminished because a more attractive front landing which is similar to neighboring landings is not going to diminish values; (5) the Board invoked RSA 674:33 V. The Board discussed whether the door width was wheelchair accessible and the space available after opening the door, and concluded that there is a three foot swing from the door, three foot out and then three steps.

N. Dunn made a motion to grant the variance as presented by the applicant with the restriction that the size and dimensions be limited to no more than 9 feet in length and 10 feet wide as shown in Exhibit 1 as drawn by the applicant.

David Paquette seconded the motion.

Motion was granted, 5-0-0.

B. CASE NO. 4/20/2016-1: SAVOIE, MICHAEL & JULIEANN REQUEST A VARIANCE FROM LZO 2.3.1.3.C.3 TO CONSTRUCT A 16 x 25 ADDITION TO THE BACK OF THE EXISTING HOUSE FOR FAMILY USE, 14 SOUTHWOOD DRIVE, MAP 1, LOT 62-14, ZONE AR-I

J. Tirabassi read the case into the record. Julie Savoie, owner of 14 Southwood Drive and applicant, presented her case. She stated that she purchased her home in 2000, and decided after some time that her family wanted an addition only to realize that due to the position of their home and the unique configurations of her lot, she could not find a suitable location leading her to have her property surveyed. At first, she wanted to construct a 16x30 ft. addition but thought that was too much of an encroachment, and decreased the size to 16x25 resulting in her request for a which a six foot encroachment into the 15 foot setback. She stated that there is no other reasonable place to put the addition – on the back there is a leach field, a garage on the other side, on the eastern side is a propane tank and generator. She informed the Board that on her back property line, there is a tree line with the newly constructed home behind the trees.

Chairman Smith asked for questions from the Board. N. Dunn asked about the difference in her application requesting seven feet and her testimony requesting six feet. J. Savoie stated that initially she asked for six feet in case her contractor need a little more space to work with but after speaking with her contractor she realized that due to the position of the leach field (leach field company came out to map out her leach field), she has to be five feet away so she will not be utilizing 7 feet but rather 6. Pilings will be used as the foundation. D. Paquette asked if the addition would be taking the place of an existing deck. J. Savoie stated there was an existing encroaching deck. J. Savoie then went through the five points as she outlined them in her application. (1) variance is not contrary to the public interest because it would not alter the essential character of the neighborhood or threaten the health, safety or general welfare of the public and due to the shape and size of the lot as well as the unusual location of the house on the lot; (2) spirit of the ordinance is observed because the health, safety and general welfare of the neighborhood will remain intact. The addition will not cause a public eye sore or loss of property value or loss of light or air, and overcrowding would not be an issue; (3) substantial justice is done because it would not have any negative effect on the neighbors, and they have no other reasonable or viable location for the addition; (4) the values of surrounding properties are not diminished because there is a natural tree line separating the properties; (5) literal enforcement – no fair and substantial relationship exists because of the uniqueness of the lot (wetlands and sloping), and the position of the house on the lot with the other restrictions in size and dimension. The proposed use is a reasonable one as they are seeking to construct an addition to the

back of their home as a family room.

Chairman Smith asked for any questions, closed the public input, and the Board began its deliberations. Uniqueness and special conditions of the property were discussed. The Board reviewed the five points as follows: (1) variance is not contrary to the public interest because it would allow for reasonable development of the lot; (2) spirit of the ordinance is observed because of the natural tree line, and the position of the house of the lot – the addition is augmented by the tree line; (3) substantial justice is done because it would allow for reasonable use of the property; (4) the values of surrounding properties are not diminished because there is no adverse effect on surrounding properties; (5) literal enforcement – no fair and substantial relationship exists because of the uniqueness of the lot (wetlands and sloping), and the position of the house on the lot way with other limitations in size and dimension (corner lot). The proposed use is a reasonable one as they are seeking to construct an addition to the back of their home as a family room.

David Paquette made a motion to grant the request for a variance in Case No. 4/20/16-1 to construct an addition not to exceed more than six feet into the setback.

Jim Tirabassi seconded the motion.

The Motion was granted, 5-0-0.

The Board took a five minute break at 8:15 p.m. and returned at 8:20 p.m.

IV. OTHER BUSINESS

A. REVIEW AND AMENDING OF BY-LAWS/RULES OF PROCEDURES

Chairman Smith stated that he was going to proceed with the review of the by-laws/rules of procedures. J. Tirabassi read the proposed language into the record. The proposed change is to the **RECORDS** section subsection 1 of the rules of procedures on page 5. The proposed change is to insert the following language after the end of the first sentence in subsection 1:

RECORDS

1. The records of the board shall be kept by the secretary of the board and made available for public inspection at Londonderry Town Hall offices in accordance with RSA 673:17. *If a member desires to review any application and/or file prior to the hearing, he/she may do so subject to the following conditions:*
 - a. *The member's sole purpose in reviewing the application and/or file prior to the hearing is to familiarize him/herself with the location of the property and the general request of the applicant. This purpose will allow the member to ask better, more informed questions during the upcoming hearing; however, the member is precluded from conducting research related to the application because the application must be decided on the basis of the evidence presented at the hearing.*
 - b. *The member cannot prejudge an application and must remain focused on the evidence presented at the hearing. While members frequently have some familiarity with a particular piece of property and/or applicant, that familiarity and a pre-hearing reading of the application is insufficient to make a determination on the application. The ZBA member must remain focused and impartial throughout the hearing.*
 - c. *The member must not discuss the application or related document with anyone, including other ZBA members. Pre-hearing discussions constitute "meetings" in violation of RSA 91-A, the Right to Know Law. Pre-hearing discussions are also perceived, rightly or wrongly, as a pre-hearing determination of the application. It is critically important for ZBA members not only to be fair and impartial, but also to appear fair and impartial.*

The Board discussed the proposed changes and their concerns about the research as follows: (1) the amount of research the members can conduct prior to the hearing; (2) the availability and method of obtaining the application prior; (3) the time frame for the members to receive the application. The Board along with Town Staff, Colleen Mailloux, Town Planner and Laura Gandia, Associate Planner (TEMP) brainstormed and modified the language as follows:

1. The records of the board shall be kept by the secretary of the board and made available for public inspection at Londonderry Town Hall offices in accordance with RSA 673:17 and be made available to ZBA members 10 days prior to the scheduled hearing date by e-mail or otherwise. **If a member desires to review any application and/or file prior to the hearing, the member may do so subject to the following conditions:**

- a. The member's sole purpose in reviewing the application and/or file prior to the hearing is to familiarize the member with the location of the property and the general request of the applicant. This purpose will allow the member to ask better, more informed questions during the upcoming hearing; however, the member is precluded from conducting additional research which conflicts with the member's statutory duties as outlined by New Hampshire Revised Statutes Annotated (NHRSA) and New Hampshire case law related to the application because the application must be decided on the basis of the evidence presented at the hearing.
- b. The member cannot prejudge an application and must remain focused on the evidence presented at the hearing. While members frequently have some familiarity with a particular piece of property and/or applicant, that familiarity and a pre-hearing reading of the application is insufficient to make a determination on the application. The ZBA member must remain focused and impartial throughout the hearing.
- c. The member must not discuss the application or related document with anyone, including other ZBA members. Pre-hearing discussions constitute "meetings" in violation of RSA 91-A, the Right to Know Law. Pre-hearing discussions are also perceived, rightly or wrongly, as a pre-hearing determination of the application. It is critically important for ZBA members not only to be fair and impartial, but also to appear fair and impartial.

This was read as the first reading for the proposed change pursuant to the ZBA Rules of Procedure. This language will be on the agenda for next month, and the following month for a final public hearing and vote.

Chairman Smith discussed the Right-to-Know training session in Meredith. Town Staff will provide more information to the members on that training.

Members had a discussion about replying to e-mails concerning attendance. Town Staff instructed members only to reply to Town Staff to avoid any appearance of a meeting.

N. Dunn made a motion to adjourn at 9:00 p.m.

David Paquette seconded the motion.

The motion was granted, 5-0-0. The meeting was adjourned at 9:00 p.m.

RESPECTFULLY SUBMITTED,



JIM TIRABASSI, CLERK

TYPED AND TRANSCRIBED BY PLANNING & ECONOMIC DEVELOPMENT DEPARTMENT SECRETARY.

APPROVED (X) WITH A MOTION MADE BY J. Benard, SECONDED BY D. Paquette AND APPROVED 5 - 0 - 0.