

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

MINUTES FROM 5/17/17 MEETING

The meeting was called to order at 7:00 p.m. Members introduced themselves. The following members were present: Neil Dunn, Chair; Jacqueline Benard, Vice Chair; Jim Tirabassi, Clerk; Suzanne Brunelle, member; Bill Berardino, member; Allison Deptula, alternate member; and Brendan O'Brien, alternate member. Also, in attendance were Laura Gandia, Associate Planner and Beth Morrison, Recording Secretary. Chairman Dunn reviewed the hearing procedures.

I. APPROVAL OF MINUTES

J. Tirabassi made a motion to accept the April 19, 2017 minutes as presented.

Motion was seconded by S. Brunelle.

Motion was granted, 5-0-0.

II. REPORT BY TOWN COUNCIL – N/A

III. PUBLIC HEARING OF CASES

A. CASE NO. 5/17/2017-1: Request for a variance from LZO 2.3.1.3.4.A to allow six chickens on a 1.49 acre lot where 2.0 acres are required, Three Winthrop Road, Map 005 Lot 002-15, Zoned AR-1, David and Alycia Burnham (Owners & Applicants)

J. Tirabassi read the case into the record noting that there was no previous zoning action on the property. David Burnham, owner and applicant, introduced himself to the Board. He explained to the Board that he is seeking to acquire six chickens on his 1.49 acre property (approximately 0.5 acre less than what is required) noting that the uniqueness of his property. He stated that there are four houses on his dead end street. He pointed out that his property abuts many acres of vacant land. He further explained that for his abutters on West Road there is a 20 foot hill that has plenty of foliage to block the view of his chickens. He added out that one of his neighbors, Shelley DeBye, Four Winthrop Road, was present and in support of his application.

He then reviewed the five criteria for the granting of the variance as follows:

- (1) The granting of the variance is not contrary to the public interest: D. Burnham stated he felt the variance will not have an adverse effect on his neighbors as he lives at the last house on a dead end street. He further noted that even though they have abutters, they are insulated by woods, and the placement of the coop would not have a negative effect on the neighbors and would not be contrary to the public interest.
- (2) The spirit of the ordinance is observed: D. Burnham explained that he felt the spirit of the ordinance would be observed as his property abuts several vacant acres where the coop and chickens will be placed.
- (3) Substantial justice is done: D. Burnham explained that he moved from Massachusetts approximately nine months ago with the intent on getting chickens. He added that it would be educational for his children to have chickens, and the chickens would provide food for his family. He added that there is no gain to the public if the variance is denied.
- (4) Values of surrounding properties are not diminished: D. Burnham explained that he does not plan on getting a rooster that would be loud and affect noise level in the neighborhood. He also noted that the location of the chickens would be hidden from view and would not diminish the look of the neighborhood. He added that he felt there would be no diminution in property values.
- (5) There is no fair and substantial relationship between the general purpose of the ordinance and the specific restrictions on the property: D. Burnham explained that his property is different than other properties that have less than 2.0 acres because of the reasons he has stated above (dead end street, last house, abuts many vacant acres), and he added that the use is fair and reasonable given the substantial property area for the chickens and the coop. He concluded his presentation.

Chairman Dunn asked for questions from the Board. B. Berardino asked how he determined the number of chickens. D. Burnham explained that he thought this number was reasonable and fair, appropriate for his family, and a reasonable number to take care of properly. J. Benard asked for clarification on the location of the coop. D. Burnham explained that the coop would be approximately 70-80 feet from the Eastern propane tank. He further explained the location of the coop abutting the shed. Chairman Dunn pointed out that the regulation states the coop, pen, barn, etc. has to be 25 feet from any property line. D. Burnham stated the coop would be 25 feet from any property line. A. Deptula asked if the chickens would be enclosed. D. Burnham explained they would be enclosed in a coop to give them enough room to roam, and also protect them from other wild animals.

Chairman Dunn asked for public input.

Abutter, Michelle DeBye, Four Winthrop Road, addressed the Board in favor of the application stating that the chickens would be educational and provide eggs for the family.

Member S. Brunelle asked the Board if there were similar applications presented to the Board. Chairman Dunn responded that there were noting some were granted and others were denied. J. Benard asked if there was a well on the property and D. Burnham stated yes.

The Board closed public input and began its deliberations as follows:

- (1) The granting of the variance is not contrary to the public interest because the Board concluded that there is no threat to health or safety, and the character of the neighborhood is not altered;
- (2) The spirit of the ordinance is observed because the essential character of the neighborhood is not altered, and there are no health or safety concerns.
- (3) Substantial justice is done because there is no greater gain to the public.
- (4) Values of surrounding properties are not diminished as the other properties in that area could have chickens on their property.
- (5) There is not a fair and substantial relationship between the general public purpose of the ordinance and the specific application of that provision to the property because of the remote location of the property on a dead-end street with surrounding properties containing more than two acres with the ability to have livestock; the proposed use is a reasonable one because there is no public safety issue and the essential character of the neighborhood is not altered.

The Board noted the following restrictions: no more than six (6) hens, no roosters, no free range, and abide by 25 foot rule away from property line for hen house.

J. Benard made a motion to grant CASE NO. 5/17/2017-1 request for a variance from LZO 2.3.1.4.A to allow six chickens on a 1.49 acre lot where 2.0 acres are required, Three Winthrop Road, Map 005 Lot 002-15, Zoned AR-1, David and Alycia Burnham (Owners and Applicants) with the following restrictions:

- (1) No roosters; (2) no more than 6 hens; (3) and no free range.**

J. Tirabassi seconded the motion.

The motion was granted, 5-0-0. The applicants' request for a variance was granted.

B. CASE NO. 5/17/2017-2: Request for variances from LZO 2.3.1.3.C.1 to allow a second floor addition over a two car garage which would be 18 feet from the

**front setback where 40 feet are required, 23 Mountain Home Road, Map 009
Lot 12-6, Zoned AR-1, Barry & Jennifer Brooks (Owners & Applicants)**

J. Tirabassi read the case into the record noting that there was a previous zoning action on the property for the construction of a garage encroaching into the 40 feet setback. He explained that on April 15, 2004 a variance was granted to build a garage into the 40 feet set back on Reverend Parker Road. Jennifer and Barry Brooks introduced themselves to the Board. Barry Brooks stated he would be addressing the board and presented his five criteria for granting a variance as follows:

- (1) The variance will not be contrary to the public interest because the garage already exists and the addition will be built directly over it with no additional encroachment towards Reverend Parker Road. He noted the deck would also be directly behind the second floor remaining 18 feet from the road.
- (2) The spirit of the ordinance is observed because this proposed addition should not adversely affect the flow of traffic or the health or safety of pedestrians. He added the addition will be well maintained and presented.
- (3) Substantial justice is done because there is not any loss to the general public in granting this variance; however, there would be a greater loss to the applicants in not being allowed to build a second floor to the existing approved structure.
- (4) The values of surrounding properties are not diminished because most of the surrounding properties have added decks since the original structures were built. He noted that he believed the value of his property would increase, thereby, adding to the overall value of the neighboring properties. He added the addition would not result in the loss of any views of other property owners currently enjoy.
- (5) Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship: B. Brooks stated that the house was built before the creation of Reverend Parker Road which now requires his property to have two 40 feet setbacks unlike other houses in the neighborhood. He also explained that most of the land is in the back of the house and it would have been impossible to attach a garage accessible to the existing driveway anywhere but where it was built. He noted that to add an addition on the other side of the house would be problematic, more costly, and would negatively impact the leach field. He concluded that it would be reasonable to build the addition over the garage noting most homes in the neighborhood have similar designs. He concluded his presentation and welcomed any questions.

Chairman Dunn asked for questions from the Board. S. Brunelle asked if the owner was the applicant from the first variance, to which B. Brooks replied that he was not. S. Brunelle expressed concerns about visibility from the nearby intersection. B. Brooks explained that they garage was about 25-30 feet from the stop sign. J. Tirabassi asked if the house was set back 40 feet from Mountain Home Road to which B. Brooks stated it was. N. Dunn asked what type of room they wanted to build and B. Brooks replied it would be a family room.

Chairman Dunn asked for public input and there was none.

The Board closed public input and began its deliberations as follows:

- (1) The variance will not be contrary to the public interest because the addition does not alter the essential characteristic of the neighborhood and there are no safety or health issues.
- (2) The spirit of the ordinance is observed because the addition does not adversely affect the flow of traffic or the safety of pedestrians.
- (3) Substantial justice is done because there is no loss to the public but a significant loss to the applicant in the enjoyment of his home.
- (4) The values of surrounding properties are not diminished because the addition fits the characteristics of the surrounding neighborhood.
- (5) Owing to special conditions of the property that distinguish it from other properties in the area denial of the variance would result in unnecessary hardship because there is not a fair and substantial relationship between the general public purpose of the ordinance position and the specific application of that provision to the property because the variance for the garage was already granted after the road was put in and the applicant is not further encroaching into the setback. The Board noted that the proposed use is a reasonable one.

J. Benard made a motion in CASE NO. 5/17/2017-2 to grant the request for a variance from LZO 2.3.1.3.C.1. to allow a second floor addition over a two car garage which would be 18 feet from the front setback where 40 feet are required, 23 Mountain Home Road, Map 009 Lot 12-6, Zoned AR-1, Barry & Jennifer Brooks (Owner & Applicant) with no restrictions.

B. Berardino seconded the motion.

The motion was granted, 5-0-0. The applicant's requests the variance was granted.

II. Communications and miscellaneous: Training

The Board was asked to come up with topics of training. S. Brunelle noted that she would like a sign topic to be presented. N. Dunn requested guidance on affirming a vote versus a quorum vote. L. Gandia provided clarification on that topic. N. Dunn and S. Brunelle would like clarification regarding the definition of livestock and domestic pets from R. Canuel. J. Bernard requested more guidance regarding the criteria for the number of livestock. N. Dunn wanted clarification and guidance on the workforce housing ordinance. N. Dunn also requested guidance on fair share. L. Gandia suggested the Board consider receiving additional instruction on the five variance criteria. N. Dunn asked for clarification on the telecommunications act. The Board noted that it preferred training to occur prefer its regularly scheduled meeting.


III. Other business: **N/A**

Member J. Tirabassi made a motion to adjourn at 08:49 p.m.

B. Berardino seconded the motion.

The motion was granted, 5-0-0. The meeting adjourned at 08:49 p.m.

RESPECTFULLY SUBMITTED,



CLERK

TYPED AND TRANSCRIBED BY BETH MORRISON, RECORDING SECRETARY

APPROVED (X) WITH A MOTION MADE BY JT, SECONDED BY SB, 5-0-0.