

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

MINUTES FROM 01/20/21 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; Brendan O'Brien, member; Suzanne Brunelle, member; Bill Berardino, member; Mitch Feig, alternate member; Also, participating was Laura Gandia, Associate Planner; Nick Codner, Chief Building Inspector and Beth Morrison, Recording Secretary.

I. APPROVAL OF MINUTES

J. Benard a motion to accept the December 16, 2020, minutes as presented.

The motion was seconded by M. Feig

The motion was granted by, 5-0-0.

II. REPORT BY TOWN COUNCIL – D. Paul informed the Board that there was nothing to report this evening.

III. REGIONAL IMPACT DETERMINATIONS: Associate Planner Gandia informed the Board that she had three projects for their consideration this evening.

1. CASE NO. 01/20/21-1: Request for four variances from LZO (1) 5.18.H.2 to allow an accessory dwelling unit to be located in the front of the yard which is otherwise prohibited; (2) 8.2.A.2 to allow a non-conforming building to be rebuilt after being discontinued for one year; (3) 8.2.A.3 to allow a 85 SF expansion of a non-conforming structure; and (4) 8.2.A.4 to allow a non-conforming structure to be rebuilt when the damage exceeded 75% of the replacement value, 96 Pillsbury Road, Map 9 Lot 56-3, Zoned AR-1, John & Denise Faiella (Owners & Applicants)

2. CASE NO. 01/20/21-2: Appeal of the Zoning Administrator/Chief Building Inspector Nick Codner's administrative decisions/determinations dated December 2, 11 and 18, 2020 all of which determined that the applicant discontinued the use of a non-conforming structure for one year and that the damage on the non-conforming structure from a fire exceeded 75% of the replacement value, 96 Pillsbury Road, Map 9 Lot 56-3, Zoned AR-1, John & Denise Faiella (Owners & Applicants)

3. CASE NO. 01/20/21-3: Request for a variance from LZO to encroach three feet into the 40 foot front setback for the construction of a farmer's porch, 26 Sparhawk Drive, Map 1 Lot 82-38, Zoned AR-1, Michael Fiori (Owner & Applicant)

Associate Planner Gandia recommended the Board find that this project is not a development of regional impact as it does not meet the criteria set forth by the Southern New Hampshire Regional Planning Commission.

J. Benard made a motion to find these projects are not of regional impact.

B. O'Brien seconded the motion.

The motion was granted, 5-0-0.

IV. PUBLIC HEARING OF CASES

A. CASE NO. 01/20/21-1: Request for four variances from LZO (1) 5.18.H.2 to allow an accessory dwelling unit to be located in the front of the yard which is otherwise prohibited; (2) 8.2.A.2 to allow a non-conforming building to be rebuilt after being discontinued for one year; (3) 8.2.A.3 to allow a 85 SF expansion of a non-conforming structure; and (4) 8.2.A.4 to allow a non-conforming structure to be rebuilt when the damage exceeded 75% of the replacement value, 96 Pillsbury Road, Map 9 Lot 56-3, Zoned AR-1, John & Denise Faiella (Owners & Applicants)

B. O'Brien read the case into the record noting there was no previous zoning. Chairman Dunn voiced his opinion, that if the Board grants the first variance request, then the rest of them are not needed. L. Gandia stated that in theory that was correct, but they are in this order for a particular reason for the way the applicant wants to proceed. She added that it was related to ownership, as of right now the lot has two houses that are pre-existing legally non-conforming houses. She went on to note that the fire is what put the applicant in front of the Board and if the accessory dwelling unit (ADU) variance is granted, it has to be owner occupied to conform with the current zoning. Chairman Dunn said that he presumed by going for the variance request from LZO 5.18.H.2 that they complied with everything else. L. Gandia replied he was correct. Chairman Dunn stated that it will be owner occupied in principal, as one of the units has to be owner occupied. L. Gandia explained that if the applicant would like to have it the same as it was, meaning two houses on one lot, which allows them more flexibility, they would have to proceed with the other variances. She went on to note that currently the applicant is not guided by any ADU on the property, and if they did not have the fire, they would be able to continue to have two homes on one lot with two different owners residing in either home. Chairman Dunn stated that this does not make sense to him. He commented that he believed the ADU would give the applicant everything they want, except for the ownership. He added that he felt it was confusing to put a blanket of variances in front of the Board and expect them to wade through it. L. Gandia remarked that there is a process to it, which was reviewed in detail by staff to put the applicant in a position to get them back to pre-fire. S. Brunelle mentioned that the applicant is arguing the alternative. Chairman Dunn replied that he understood that. L. Gandia reviewed the process, noting that if they are successful with the ADU then they would go to the appeal of administrative decision. M. Feig commented that looking through the submittal, it was not clear if the building that had the fire was a pre-existing non-conforming building. L. Gandia responded that N. Codner made the determination that it was a pre-existing, legally, non-conforming structure, which is in his final letter to the applicant. Chairman Dunn voiced his opinion, that he is not sure he agrees with the approach, as it seems counterintuitive to him. He asked the Board

if they wanted to proceed how it was stated on the agenda. The Board's consensus was to proceed as it was on the agenda.

John Faiella and Denise Faiella, owners of 96 Pillsbury Road, Londonderry, NH, addressed the Board. Chairman Dunn stated that he is confused and would like the applicant to explain further if possible. J. Faiella explained that they would like to proceed with the first variance request for the ADU, as they believe that would be the best option for them. He added that if this is approved, they will not move forward with any of the other variances this evening. He stated that they can live in either dwelling and if they sold it, the new owner would have to live in one of the dwellings as well, which he believes would work the way the property configured. Chairman Dunn commented that he was unsure about the order and this seems like the best way to approach it. D. Faiella started by giving some background to the Board noting that as far back as 1967/1969, two structures existed at 96 Pillsbury Road. She said that both structures have separate septic systems and wells. She pointed out that one structure is used as the primary residence and is located in the back of the property and the other structure sits in front of the primary residence, which is over 100 feet from the road and 50 feet from the side property lot. She stated that the lot is 2.49 acres in size and is next to Southview Terrace Condo Association and one lot away from Orchard Hill Greenhouses. She explained that in September of 2019, the second structure suffered a fire and was damaged. She went on to state that shortly thereafter, use of the structure was donated to the fire department for training and was completely demolished. She added that due to financial constraints, COVID, medical/health issue, the death of the builder, the structure was not rebuilt. She said that on November 13, 2020, the applicant applied for a building permit with the Building Department and was told that variance(s) were needed from the Zoning Board of Adjustment (ZBA).

She addressed the five criteria for the granting of the variance request from LZO 5.18.H.2:

- (1) The granting of the variance is not contrary to the public interest: because it does not change the essential character of the neighborhood. She said that the structure has existed since 1967/1969 and are neighbors to condominium units and greenhouses. She said that there is no threat to the health, safety or welfare of the general public.
- (2) The spirit of the ordinance is observed: because it will not change the essential character of the neighborhood nor threaten the health, safety or welfare of the general public.
- (3) Substantial justice is done: because the loss to the applicant would outweigh any gain to the public.
- (4) Values of surrounding properties are not diminished: because the style of the dwelling will be technically pleasing and complement the existing structure and be of similar appearance to what previously existed.
- (5) There is no fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property because the property is unique as it was developed in 1967/1969 with two structures and there is only about 35 feet from the back and side of the house to the property line. Further, the septic for the second structure already exists towards the front of the lot where the structure was previously located. She said that the proposed use is a reasonable one.

Chairman Dunn asked for questions from the Board. He asked how big the primary residence is. J. Faiella replied that the primary residence is about 3,500 SF. Chairman Dunn noted that the ADU would need to be 40% of the primary residence. N. Codner stated that he has 3,111 SF for the primary residence, noting that 40% of this would be 1,348 SF. Chairman Dunn noted that what the applicant is proposing falls within the 40%. N. Codner replied that was correct. Chairman Dunn said that he did not want the applicant to get caught up here if this was going to be an issue. S. Brunelle asked if the ADU would be placed exactly where the old building was. J. Faiella replied that was correct. S. Brunelle asked if there was any other place they could place it. J. Faiella stated they could not due to the septic system in the front yard and the pool in the backyard of the primary residence. M. Feig asked what the building was used for prior to the fire. J. Faiella replied that it was used for rentals.

Chairman Dunn asked for public input.

Mary Faye, Southview Condominium, addressed the Board with a question. M. Faye asked if the structure was going to be bigger than the previous building. Chairman Dunn replied that the footprint will remain the same, but the square footage will be larger. J. Faiella explained that they are using the same footprint, due the design of the roof.

Chairman Dunn brought the discussion back to the Board as there was no further public input. J. Benard asked if they would be renting the ADU and they would live in the primary residence. J. Faiella replied that is correct right now, but would like to retire and live in the ADU in the future. Chairman Dunn asked again for clarification on the ownership issue, asking if it was related to being able to subdivide the property. L. Gandia replied that it is not about being able to subdivide, but strictly ownership. She went on to give an example stating that with an ADU, if the applicant wanted to move away from the property, they could not give one house to their son and one house to their daughter. Chairman Dunn asked the applicant again if this is how they would like to proceed. J. Faiella replied that it was and told the Board the L. Gandia worked with them to come up with the best possible outcome. S. Brunelle mentioned that one issue she had was allowing an ADU in the front yard, but looking at the plans, there really is no other place to place the ADU.

The Board closed public input and began deliberation on LZO 5.18.H.2 to allow an accessory dwelling unit to be located in the front of the yard which is otherwise prohibited:

- (1) The granting of the variance is not contrary to the public interest: because it does not change the essential character of the neighborhood.
- (2) The spirit of the ordinance is observed: because it will not change the essential character of the neighborhood.
- (3) Substantial justice is done: because the loss to the applicant would outweigh any gain to the public.
- (4) Values of surrounding properties are not diminished: because it will not have any adverse effect on any neighboring property values.
- (5) There is no fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property because the

property is unique because there is only 35 feet on the side and rear property lines to place a structure, the pool is in the back and the septic system is the front. The proposed use is a reasonable one.

J. Benard made a motion in CASE NO. 01/20/21-1 to grant the request from LZO 5.18.H.2 to allow an accessory dwelling unit to be located in the front of the yard which is otherwise prohibited 96 Pillsbury Road, Map 9 Lot 56-3, Zoned AR-1, John & Denise Faiella (Owners & Applicants)

S. Brunelle seconded the motion.

The motion was granted, 5-0-0. The applicant's request for a variance was GRANTED.

J. Faiella and D. Faiella informed the Board that they formally withdrew all the remaining variance requests and the appeal of administrative decision.

C. CASE NO. 01/20/21-3: Request for a variance from LZO to encroach three feet into the 40 foot front setback for the construction of a farmer's porch, 26 Sparhawk Drive, Map 1 Lot 82-38, Zoned AR-1, Michael Fiori (Owner & Applicant)

B. O'Brien read the case into the record noting no previous variances. Michael Fiori, owner, told the Board that since the house is not square to the lot, Moulton Drive is 40 feet to the existing house and this will impact the six foot farmers porch they want to build.

He addressed the five criteria for the granting of the variance:

- (1) The granting of the variance is not contrary to the public interest: because it will not have any effect to the town or neighborhood.
- (2) The spirit of the ordinance is observed: because it will not affect the town.
- (3) Substantial justice is done: because by not allowing him to construct this porch will not benefit the town in any way.
- (4) Values of surrounding properties are not diminished: because it will make the property values increase by having a nice looking porch.
- (5) There is no fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property because the property is unique as it is a corner lot and the proposed porch meets the side setback on Moulton Drive. He said that the proposed use is a reasonable one.

Chairman Dunn asked if the Board had any questions. He asked for clarification on criteria number three as it was written. He explained that the benefit to the applicant would outweigh any loss to the town. M. Feig asked how far the porch comes out. M. Fiorini replied that it comes out six feet. M. Feig asked if the applicant looked into making the porch not encroach the setback. M. Fiorini responded that the

porch would not run from one end to the other and thought it would take value of the home. Chairman Dunn stated that on the application, it states that the porch will encroach three feet into the front setback. M. Fiorini replied that was correct, he is short three feet. Chairman Dunn commented that he drove by and was surprised to see footings at the site, noting that usually people will wait to make sure the variance is granted. M. Fiorini replied that they are not filled in yet.

Chairman Dunn asked for public input and there was none.

The Board closed public input and began deliberation:

- (1) The granting of the variance is not contrary to the public interest: because it does not alter the essential character of the neighborhood.
- (2) The spirit of the ordinance is observed: because it will not alter the essential character of the neighborhood nor threaten the health, safety or welfare to the public.
- (3) Substantial justice is done: because the loss to the applicant would outweigh any gain to the public.
- (4) Values of surrounding properties are not diminished: because it would improve the value of the home therefore not adversely affecting the property values.
- (5) There is no fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property because the property is unique as it is a corner lot with two 40-foot setbacks to comply with. The proposed use is a reasonable one.

Chairman Dunn commented that they do not have people do a legal survey for something like this and wondered how this would be enforced. N. Codner stated that they have a certified plot plan of the house on file, so they can take a measuring tape to make sure it is only encroaching three feet.

J. Benard made a motion in CASE NO. 01/20/21-3 to grant the request for a variance from LZO to encroach three feet into the 40-foot front setback for the construction of a farmer's porch, 26 Sparhawk Drive, Map 1 Lot 82-38, Zoned AR-1, Michael Fiori (Owner & Applicant)

B. Berardino seconded the motion.

The motion was granted, 5-0-0. The applicant's request for a variance was GRANTED.

VI. Other Business

Election of Officers:

S. Brunelle made a motion to make Brendan O'Brien the full time clerk.

B. Berardino seconded the motion.

The motion was granted, 5-0-0.

B. Berardino made a motion to keep the Chair and Vice Chair the same as the previous year.

S. Brunelle seconded the motion.

The motion was granted, 5-0-0.

Adjournment:

J. Benard made a motion to adjourn at 7:58 p.m.

B. Berardino seconded the motion.

The motion was granted, 5-0-0. The meeting adjourned at 7:58 p.m.

RESPECTFULLY SUBMITTED,


CLERK

TYPED AND TRANSCRIBED BY Beth Morrison, Recording Secretary.

APPROVED (X) WITH A MOTION MADE BY Suzanne Brunelle, SECONDED BY M. Feig, 5-0-0.