

# PLANNING & ZONING DEPARTMENT

## ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AGENDA

**Wednesday, April 17, 2024 – 6:00PM**

**Lincoln Town Hall, 148 Main Street, Lincoln NH**

\*Hybrid meeting available both in person & via Zoom Meeting Platform to allow for town wide participation. A quorum of Planning Board members must be physically present at the meeting. Although there is space in the large conference room for 8-12 guests in addition to the Board members, the public is welcome to participate remotely using ZOOM. Planning Board Meetings can be attended in-person at the Town Hall Building. Recordings of all Planning Board meetings can be found at [www.youtube.com](http://www.youtube.com) (Lincoln NH ZBA Meeting 02-21-2024). Zoom access is for your convenience; use at your own risk. If any technical difficulties or if ZOOM should go down, the meeting will NOT be rescheduled.

### Join Zoom Meeting

<https://us02web.zoom.us/j/81700766161?pwd=WUFKR2N1Zk9xSzI1bVFPRWVzbyt4UT09>

**Meeting ID: 817 0076 6161**

**Passcode: 179696**

Find your local number: <https://us02web.zoom.us/u/kblNuPaMIG>

**Or dial by your location 1-929-205-6099 US (New York)**

(See also town website [www.lincolnnh.org](http://www.lincolnnh.org) for same link, meeting ID and passcode.)

- I. **CALL TO ORDER** by the Chairman of Zoning Board of Adjustment; announcement of excused absences, if any, and seating of alternates(s), if necessary.
- II. **CONSIDERATION** of meeting minutes from:
  - February 21, 2024 (Present: Chair Ray D'Amante (via Zoom), Acting Chair Jack Daly, Member Delia Sullivan, and Alternate Susan Chenard appointed as a regular voting member)
  - April 17, 2024 (Present: Acting Chair Jack Daly, Member Delia Sullivan, and Alternate Susan Chenard appointed as a regular voting member) (*Minutes not completed yet.*)
- III. **MEETING AFTER TOWN MEETING – Welcome new members, if any, & elect officers.**
- IV. **CONTINUING AND OTHER BUSINESS** (Staff and Zoning Board Member/Alternates).
  - A. **Var 2024-01 M112 L072 George Sourgiadakis d/b/a Ice Cream Delights – Rear west corner of existing building is in the 15-foot rear setback; proposed addition is in 15-foot rear setback area in Village Center (VC) District; & Appellant does not want to be required to submit a survey with application for variance OR application for Land Use Permit.**

### Request for:

- (1) **EQUITABLE WAIVER of DIMENSIONAL REQUIREMENTS;**
- (2) **VARIANCE;** and
- (3) **WAIVER OF Survey Requirement**

Concerning Article VI District and District Regulations, Section B District Regulations, Paragraph 2 Land Use Schedule, Paragraph 4 (Dimensional Chart) of the zoning ordinance known as the Land Use Plan Ordinance (LUPO) by Appellant George Sourgiadakis d/b/a Ice Cream Delights, at 73 Main Street, for his property at 73 Main Street (Map 112, Lot 072).

### Appellant & Property Owner:

George Sourgiadakis  
d/b/a Ice Cream Delights  
73 Main Street  
PO Box 701  
Lincoln, NH 03251-0701

**Subject Property:** 73 Main Street (Map 112, Lot 072). Lot Size: 0.13 acres. Village Center (VC) District. Appellant also owns the two closest two abutting lots: (1) 75 Main Street [Map 112, Lot 018] and (2) Franklin Street #LO [Map 113, Lot 017] that would be most impacted by the proposed project.

**LUPO:** In the Village Center (VC) District the rear setback requirement is fifteen feet (15') from the property boundary line. No "structure" is permitted within the setback areas. The proposed attached shed is a "structure" and would encroach approximately eleven feet (11') into the fifteen foot (15') rear setback area and be approximately four feet (4') from the rear property boundary line.

Requests are for the ZBA to grant:

1. An **Equitable Waiver of Dimensional Requirements** to allow the existing ice cream store structure that was erected in 1960, prior to the adoption of the zoning ordinance in 1986, and that currently encroaches approximately one or two feet into the fifteen foot (15') rear setback areas to remain. There was no violation by previous owners when the building was constructed because there was no zoning in effect. No enforcement action has been taken in 38 years.
2. A **Variance** to allow a proposed (24' 4 1/2" X 10') shed with a refrigerator unit in it within the fifteen foot (15') rear setback area.
3. A **Waiver** of any usual requirement to provide a survey to show the exact measurements on the lot and the buildings on the lot when requesting a variance to put structures within the setback areas.

Authorized Agent, James Spanos, had a partial hearing on behalf of the Applicant and then asked for a continuance for another month for the hearing to be continued to Wednesday, April 3<sup>rd</sup>, 2024 at 6:00 PM. Due to blizzard conditions on April 3<sup>rd</sup>, the hearing was continued to Wednesday, April 17<sup>th</sup>, 2024 at 6:00 PM.

## V. NEW BUSINESS

### A. Var 2024-02 M113 L112 Delia Sullivan d/b/a D & K Properties, LLC – Detached Apartment Not Permitted in Village Residential (VR) District & building has no "direct access" onto a "Class V or better road" per NH RSA 674:41.

**Request for:**

(4) **VARIANCE**; and

Concerning a request by Appellant Delia Sullivan d/b/a D & K Properties, LLC, for a **Variance** for her property at 47 School Street (Map 113, Lot 112) concerning Article VI (District and District Regulations), Section B (District Regulations), Paragraph 2 (Land Use Schedule), Paragraph 4 (RESIDENTIAL USES) of the Land Use Plan Ordinance (LUPO).

**Appellant & Property Owner:** Delia Sullivan d/b/a D & K Properties, LLC  
13 Coolidge Street  
Lincoln, NH 03251

**Property:** 47 School Street (Map 112, Lot 072). Size: 0.29 acres. Village Residential (VR) District.

Like all except one of the lots along Henry Lane, currently there is a single-family home in the front of the lot (on the northeast half of the lot). There is currently a one story one car garage in the rear half of the lot (on the southwest half of the lot). The two halves of the lot are separated by an alley known as "Henry Lane" which serves as a vehicular access to the lot as well as access to six or seven other lots. The one lot that is an exception is 41 School Street (Map 113, Lot 109) where a second home was constructed on the rear portion of the lot in 1979 prior to adoption of the zoning ordinance in 1986.

**LUPO:** In the Village Residential (VR) District Detached Accessory Apartments are not permitted.

**Also, Road Access Status:** The subject lot is similar to several other lots within the old original village created by the original mill owner in the last century to temporarily house his employees. There is a row

of modest small houses with road frontage along School Street, however, there are no curb cuts off from the Class V Road (School Street), but rather vehicular access to each lot is via an “Alley” known as “Henry Lane” that has a unique status, subject to legal interpretation. The back alley is only 8/10 feet wide. The back alley is not a Class V Road or a Class VI Road or even a private road. The original alleys were created by the mill owner. The front portion of each lot that fronts on Church Street, School Street and Coolidge Street is where the main house was located; portions of the lots that were located on the opposite back side of the alley were intended for outbuildings and “garden lots” for the mill employees to grow their own food. There are four back alleys in the Town of Lincoln with lots that are similarly situated.

Pursuant to legal advice from Town Attorney J. Bernard Waugh, Jr., dated 2001-11-21, BOS voted “to make it clear that there is no intent of the Town to improve the roads beyond their current (2001) passable condition.” On November 26, 2001, in a BOS Meeting, the BOS voted as follows:

(Moved and voted) “That the Town acknowledges and recognizes the so-called “back roads” or “loop roads” behind Church, School and Coolidge Streets as Town highways, by virtue of credible evidence that these roads were used for public travel, including some degree of maintenance by the Town, for at least 20 years prior to 1968, as set forth in RSA 229:1. However, all vehicles and other obstructions, except existing trees and buildings, must be removed from, and must be kept clear of, an area 4 feet along both edges of the existing paved roadway, in order to facilitate snow removal. Furthermore, in accordance with RSA 674:54, III(a), this vote shall not be construed as creating or recognizing any new lots in the absence of subdivision approval, nor shall it be construed as alternating the zoning status of any affected land. Moreover, this vote shall not be construed as obligating the Town to improve or reconstruct these roads. They shall be plowed, but shall continue to receive only such minimal other maintenance as necessary to keep them passable and prevent insufficiencies as defined by RSA 231:90.”

Requests are for the ZBA to grant:

1. A **Variance** to allow a proposed building to include a 2-story building with a three-car garage below to replace the existing one car garage, and add a detached apartment in the second story above the garage in the Village Residential (VR) zoning district where detached accessory apartments are not permitted.
  - a. The building would be (33’ X 30’ = 990 SF) (LUPO: maximum accessory apartment size is 1,000 SF).

**Legal Issue to be Addressed by Town Counsel as part of the ZBA’s consideration:** Can Town issue a Land Use Permit to build on a lot with direct access to an Alley from a Class V roadway? Implications due to large number of lots similarly situated.

**V. OTHER BUSINESS – ZBA members/alternates, Zoning Board Staff**

**B. Review ZBA Rules of Procedure to review/revise, if needed.**

**VI. PUBLIC PARTICIPATION AND OTHER BUSINESS:** Public comment and opinion are welcome during this open session. However, comments and opinions related to development projects currently being reviewed by the ZBA will be heard only during a scheduled public hearing when all interested parties have the opportunity to participate.

**VII. ADJOURNMENT**