

Town of Lincoln Zoning Board of Adjustment – Meeting Minutes  
February 16<sup>th</sup>, 2011 – 5:00 pm

**Present:** Chairman Joe Chenard, Tom Smith, Ronald Comeau, Paul Beaudin

**Staff Present:** Planning & Zoning Administrator Matt Henry

**Excused Absences:** Wilfred Bishop, Patricia McTeague

**Others Present:** Judith Tetley, Paul Tetley, Pat Romprey, Susan Chenard, Paul Beaudin

**I. CALL TO ORDER** by the Chairman Joseph Chenard at **5:00PM**;

Chairman Chenard called the meeting to order.

**III. CONSIDERATION of Case 11-01:**

**Case No: 11-01: The Zoning Board of Adjustment will conduct a Public Hearing on an application for a Variance from an allowed residential land use pursuant to Land Use Plan Ordinance, Article VI, Section B2, submitted by Thomas Tremblay, Tax Map 113, Lot 148.**

**The applicant is seeking a variance from the Lincoln Land Use Plan Ordinance in order to allow a detached accessory apartment above a proposed garage. The proposal would bring the lot dimensionally into compliance; however, detached accessory apartments are not an allowed use in the Village Residential district.**

Thomas Tremblay, the applicant, began by explaining that his proposal is to remove the existing trailer and garage, and construct a larger garage with a detached accessory apartment overhead. The reason he is before the board is that detached accessory apartments are not permitted in the Village Residential Zone. Therefore, a variance is required. Thomas Tremblay explained that it is his intention to meet a 15 foot setback on all sides, which would exceed the 10 foot side setback requirements in the Village Residential zone. The lot would be brought into compliance dimensionally which would benefit the entire town. Thomas Tremblay said that he feels the variance should be granted because there is a road that runs through his property that would make it impossible to attach an accessory apartment to the primary structure. Thomas Tremblay also noted that accessory apartments are allowed in an attached form so the use would not be too different from the allowed one.

Joe Chenard reiterated that the trailer is grandfathered and could stay there as it currently is. Demolishing the trailer would allow the lot to meet setback requirements. The trailer currently sits on zero lot line and the current garage sits four feet from the lot line.

Paul Beaudin said that the alleyway that splits the lot is actually a town maintained road accepted in 2001. He asked how many rooms the apartment would have. Thomas Tremblay said it would be a one bedroom.

**MOTION: Tom Smith made a motion to open the public hearing. Paul Beaudin seconded the motion. The motion carried (4-0-0).**

Paul Tetley asked if it was even possible to put a room over a garage. Thomas Tremblay said that it happens all over Lincoln. It is very common to have accessory apartments over the garage. He said

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that if the garage is placed where Thomas Tremblay is planning on placing it then it will be right in his back yard and he will have to look at it. The garage is going to be placed where there is existing open space. He said that he is 100% against this variance because it will alter the whole atmosphere of the neighborhood. He has talked to several abutters and he has yet to find somebody who is in favor of this variance. Paul Tetley said that he would not have so much of a problem with this project if it was going where the garage is currently. Paul Tetley said that there must have been a reason to not allow accessory apartments in the Village Residential Zone and the reason probably has not changed since the Zoning Ordinance has passed.

Thomas Tremblay said that he wanted to clarify that the variance is exclusively for the Accessory Apartment and has nothing to do with the garage itself. There is nothing against building the garage, in fact, the garage could have just been built if there was not going to be an accessory apartment above it.

Pat Romprey asked if the two lots are one piece of property. Matt Henry answered that it was the same piece of land with a right of way running through it, but it is one property with one owner. Pat Romprey asked if the footprint of the garage is going to change. Thomas Tremblay said that it was going to get larger. Pat Romprey asked if the trailer was still grandfathered if it has been vacant for 20 years. Matt Henry responded that he was not sure and it is really a legal question. He has read literature and precedent arguing that a structure such as this arguing both sides. Matt Henry said that it is currently assessed as a shed because it is a storage facility. Pat Romprey said that the lot in question is unique and nothing exists in that neighborhood quite like this lot. Matt Read two letters into the record, one in favor of the proposal and one opposed:

**Opposed:**

I am writing this email regarding the variance request application for Map 113, Lot 148, Govini property. I understand that the existing trailer on the property is grandfathered in for residential use. This was allowed when Lincoln was undeveloped and just a mill town. Allowing the garage to be renovated and allow an apartment to be built is not in the best interest of the neighborhood since the access roads and "green space" are limited in this area. Furthermore, the reason new zoning laws exist is to reflect the new economy of Lincoln and not allow it to be over built. The garage should remain a garage. Allowing this variance will set precedence for the rest of your tax payers that have a garage and would like to turn it into income property. It is for these reasons that I object to the approval of this application.

Russell Magus  
13 Edgewood St.

**Favor:**

In response to Mr. McCarthy's variance in the set back and building the new structure, I feel that it would benefit the area since the mobile home is already "grandfathered" in and the new proposal will also meet the zoning ordinance of the town. I feel that one better looking structure is more eye appealing than the two eye sores that are currently there. I do feel that keeping with the aesthetics of the neighborhood is an important factor of his proposal.

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I have spoken to some people in Boston who know Mr. McCarthy's work in development of real estate. They all spoke highly of him and stated that his work is excellent. I personally went by two of his developments and can say that his workmanship is of high-end, detail oriented quality. You can tell he put thought into these projects. My hope is that he brings this quality of workmanship to Lincoln, NH which I am sure that he will.

Just a few questions:

Will Mr. McCarthy be replacing trees that he will need to remove?

Will this change the properties residential status from a one family to a two family?

Does he know what materials he will use for the outside - shingles? siding? what type of windows? garage doors?

Although I feel that the value in property will go up - I think that some abutters are concerned as it may be a financial burden on them. Does the town have an exemption for the elderly or permanent residents?

Sorry I couldn't come up for the meeting - if you do need to speak to me or if you have any questions, I will be commuting home after 5PM (xxx) xxx-xxxx.

Thank you for your time,

Cheryl Dustin

Matt Henry answered the questions raised that he could answer. He said that the residential status would not change to “two family” but rather to “single family with an accessory apartment” which are two separate land uses. Also, the town does have an elderly exemption that only year-round residents may claim.

Matt Henry discussed some points that he felt would assist the ZBA in making a decision. First, he said that rather than discuss whether you are in favor of the proposal or not, the Board should stick with the five criteria so that it is done legally in case it ever gets challenged in superior court. Second, he said that the abutters have addressed concerns with regard to height. He said that it is certainly in the ZBA's purview to assign conditions to variance approvals if that is the direction the ZBA wishes to go. Third, Matt Henry said that it was really a dilemma regarding what the Town wishes to regulate more, uses or dimensions. That is really a personal decision that the Board should make.

Tom Smith asked if because the trailer was assessed as a shed, it could be lived in afterward without a variance. Matt Henry said that it was a “gray area”. Paul Beaudin said that in his opinion not only could they live in the existing trailer but they could remove it and put a modern one in so long as it is in the existing footprint of the old trailer.

There followed some discussion regarding whether granting the variance would set a precedence for the other lots in the neighborhood. Some argued that it would because there are other garages in that area. Some argued that it would not set precedence because the trailer made it unique from the other lots in that the trailer serves as a de-facto accessory apartment as it currently sits since there are water & sewer hookups currently there.

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Thomas Tremblay said that he was wondered if the variance would be precedent setting. However, he came to the conclusion that it would not be because the trailer is grandfathered and it is more of allowing the accessory apartment space that currently exists to be placed above the garage. Paul Beaudin disagreed and said that because the Zoning Ordinance currently does not allow for detached accessory apartments, each house that has a garage would argue the same points as Thomas Tremblay. Thomas Tremblay said that if you include the awning of the trailer, the footprint will actually get smaller because the garage is only 1080 ft<sup>2</sup>.

Joe Chenard asked how tall the garage would be. Thomas Tremblay said that it was most likely going to be in the neighborhood of 25 ft. or so. Judith Tetley asked if allowing such a building would mean that anybody would be allowed a similar building in the neighborhood. Matt Henry said that in order for them to build such a building they would have to go through the ZBA for a variance just like Thomas Tremblay is doing for this house and would have to meet the variance criteria. Paul Beaudin said that in his opinion they would have a strong case for a variance if this application was accepted.

**MOTION: Tom Smith made a motion to close the public hearing. Paul Beaudin seconded the motion. The motion carried unanimously (4-0-0).**

**MOTION: Tom Smith made a motion to go into voting mode. Paul Beaudin seconded the motion. The motion carried (4-0-0).**

The following was the ZBA’s findings and explanation:

1) **The values of the surrounding properties would not be diminished because:** Agree (4-0-0)

- a. Joe Chenard: Agree
- b. Ron Comeau: Agree
- c. Paul Beaudin: Agree
- d. Tom Smith: Agree

The ZBA agreed unanimously that surrounding properties would not be adversely affected by granting the variance. The structure would be more attractive and in compliance with the dimensional requirements of the Land Use Plan Ordinance. Removing distasteful non-conforming structures that currently exist would increase the value of the surrounding properties.

2) **Granting the Variance would be contrary to the public interest because:** Disagree (1-3-0)

- a. Joe Chenard: Agree
- b. Ron Comeau: Disagree
- c. Paul Beaudin: Disagree
- d. Tom Smith: Disagree

The ZBA determined that the applicant did not meet the “public interest” requirement because it would set a precedent for the entire neighborhood. If anyone in that section of the Village Center Zone were to apply for a variance,

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they could get one and that could result in each home having an accessory apartment over their garage.

3) **Owing special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:** Disagree (1-3-0):

- a. Joe Chenard: Agree
- b. Ron Comeau: Disagree
- c. Paul Beaudin: Disagree
- d. Tom Smith: Disagree

The ZBA determined that the applicant did not meet the statutory hardship requirement necessary to grant the variance.

4) **Granting the variance would do substantial justice because:** Split (2-2-0)

- a. Joe Chenard: Agree
- b. Ron Comeau: Agree
- c. Paul Beaudin: Disagree
- d. Tom Smith: Disagree

The ZBA was split regarding whether the variance would do substantial justice. Those arguing that it would do substantial justice said that because the trailer is a “de facto accessory apartment”, there would not be a potential traffic increase because the right of way has the potential to be used as it is now. Those arguing that it would not do substantial justice said that single lane road would not be able to handle many accessory apartments because the traffic would become too great for that small neighborhood. Because they felt granting the variance would set a precedence in that neighborhood, the neighborhood abutters would be adversely affected by the traffic and therefore, it would do the opposite of what they thought of as substantial justice.

5) **The use is not contrary to the spirit of the ordinance because:** Disagree (0-3-1)

- a. Joe Chenard: Abstain
- b. Ron Comeau: Disagree
- c. Paul Beaudin: Disagree
- d. Tom Smith: Disagree

The ZBA disagreed that the proposed use would not be contrary to the spirit of the ordinance because they believed that part of the reason that area is its own zoning district is that 1) there is not enough room to allow for detached accessory apartments and 2) The characteristics of the neighborhood is that of the old mill town that Lincoln once was. The ZBA felt that if the variance were to be granted it would change the entire characteristic of the neighborhood which the Village Residential Zone was meant to maintain.

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**MOTION: Paul Beaudin made a motion to exit voting mode. Tom Smith seconded the motion. The motion carried (4-0-0).**

Tom Tremblay said that he disagrees with the ZBA's votes. What the proposal is geared towards is placing the existing mobile home on top of the garage which would occupy of the property. It would not be precedent setting because it is the only lot that has a trailer on it. Thomas Tremblay said that one should not isolate church street as the "area" in question but rather the entire Village Residential Zone since lines are actually drawn. It is ambiguous to isolate church street as an "area".

**IV. CONTINUING & OTHER BUSINESS** (Staff and Planning Board Member/Alternates).

**II. CONSIDERATION** of the Draft Meeting Minutes of 09/01/2010.

**MOTION: Tom Smith made a motion to approve the minutes of 9/8/2011. Ron Comeau seconded the motion. The motion carried with Paul Beaudin abstaining (3-0-1).**

**VI. PUBLIC INPUT** on Specific Issues

**VII. ADJOURNMENT:**

**MOTION: Paul Beaudin made a motion to adjourn at 5:50. Tom Smith seconded the motion. The motion carried unanimously (4-0-0).**

Respectfully submitted,

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Matt Henry

Dated: February 28, 2011

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Joe Chenard, Chairman