

**APPROVED**

**ZONING BOARD OF ADJUSTMENT  
PUBLIC HEARING  
Wednesday August 17, 2022 – 6:00PM  
Lincoln Town Hall, 148 Main Street, Lincoln NH**

Due to the current evolving status of COVID-19, this meeting will be a *hybrid* meeting to be presented both in person with social distancing encouraged (space limited to 8-12) and via ZOOM Video Conferencing to allow for town wide participation. A quorum of the members of the board will have to be physically present at the meeting. All others may attend via ZOOM if they wish.

**Join Meeting via Zoom:**

<https://us02web.zoom.us/j/84364324412?pwd=SSStRQlZRRDBnakVSU1Q0cmk4dEc5UT09>

**Meeting ID: 843 6432 4412**

**Passcode: 039100**

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

**I. CALL TO ORDER** at 6:04PM by Acting Chair Jon Ham

**Members Present:** Acting Chairperson Jon Ham, Member Jack Daly, Member Delia Sullivan, Member Myles Moran, Susan Chenard.

**Staff resent:** Fire Chief & Code Enforcement Officer/Health Officer/Zoom Host and Moderator Ronald Beard, Planner Carole Bont.

**Guest:** Alfred P. Poulin, Jr. (resident) 82 Pollard Road, Lincoln, NH 03251

**II. CONSIDERATION** of meeting minutes from:

- June 15, 2022 (Present: Acting Chair Jon Ham, Chair Ray D'Amante (via Zoom), Vice Chair Mark Ehrman (via Zoom), Member Jack Daly, Member Delia Sullivan, Member Myles Moran, and Alternate Susan Chenard (via Zoom).

**Motion to approve minutes as distributed by Member Daly**

**Second by Member Moran**

**All in favor**

**Motion to nominate Jon Ham as acting Chairperson by Member Daly**

**Second by Member Moran**

**All in favor**

**III. NEW BUSINESS** (Staff and Zoning Board Member/Alternates).

1. **III. 6:00 PM. Request for an Equitable Waiver of Dimensional Requirements (EWDR) and a Variance.**

**[Var 2022-04 M1117 L055 Alfred Poulin – Equitable Waiver of Dimensional Requirements (EWDR) for the preexisting nonconforming house and a Variance for proposed addition within the fifteen-foot (15') west side setback area.]**

Request for an **EQUITABLE WAIVER of DIMENSIONAL REQUIREMENTS** and a **VARIANCE** 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 Alfred P. Poulin, Jr., 82 Pollard Road, Lincoln, NH 03251, for his property at 82 Pollard Road (Map 117, Lot 055).

Requests are for the ZBA to grant:

1. An **Equitable Waiver of Dimensional Requirements** to allow the existing home located partially within the 15-foot east side setback area to remain; and
2. A **Variance** to allow a proposed 8'X12' addition to be located on the west side of the house, 6.8 feet into the 15-foot side setback area to within 8.2 feet of the western property boundary line.

**Appellant & Property Owners:**

Alfred P. Poulin, Jr.  
82 Pollard Road  
Lincoln, NH 03251

**Surveyor:**

Sabourn & Towner Surveying and Septic Design, PLLC  
1022 Daniel Webster Highway  
North Woodstock, NH 03262

**Property:**

82 Pollard Road (Map 117, Lot 055), Rural Residential (RR) District.  
Not a part of any Homeowners Association or Condominium Association

**Project:**

Subject lot is only 0.14 acres in size & is located within the Rural Residential (RR) District where front, side & rear setbacks are 15 feet from the property boundary line. No structures are permitted within the setback areas.

Subject lot had a pre-existing nonconforming single-family home built prior to 1986 (adoption of zoning) that burned down in 2008/2009. The original house was located not only in the west side setback area, but actually encroached onto the adjacent lot owned by Eugene & Marie Duquette (Map 117, Lot 054).

After the fire, as the successor owner of the property, Appellant had a right to a Land Use Authorization Permit to rebuild the house where it was previously located (exact same size and exact same location) in accordance with Article III Applicability & Non-Conforming Uses, Section C. Non-Conforming Uses, paragraph 4. However, upon request, Appellant agreed to move the house to the center of the existing lot so the newly reconstructed house would be as compliant with the zoning ordinance as possible. Although the main portion of the reconstructed house does not encroach into the setback areas, the finished open side porch on the east side of

the house encroaches into the 15-foot east side setback area by 2.7 feet in front. The Town permitted this encroachment without a variance because the rest of the house was so much more compliant than the original house. The proposed side porch was granted a Land Use Authorization Permit to encroach into the side setback area back in 2009; the side porch was actually constructed in 2017. Appellant requests an Equitable Waiver of Dimensional Requirements would make the house in its current location compliant with zoning.

Appellant would like to construct an 8'x12' addition to the west side of the house. The proposed addition would encroach into the west side setback area by 6.8 feet to within 8.2 feet of the west side property boundary line. Appellant needs a variance to put the addition in the side setback area.

#### **Presentation:**

Mr. Poulin and Planner Bont explain the situation regarding the property and the issue of the setback and previous approval. The right side of the property has a porch which is not within the setback. There is a ten (10) foot right-of-way, over the neighboring property, in addition to the sixty (60) foot lot which is written in the deed.

#### **Discussion:**

Acting Chairperson Ham asks how far over the fifteen (15) foot setback does the existing porch sit. Planner Bont responds that is 12.3 feet and the setback is 15 feet. Acting Chairperson Ham asks about the shed that is currently on the property. Planner Bont responds that this is an accessory building, less than one hundred-fifty (150) square feet and is called an accessory building setback line which is ten (10) feet. The shed is considered a non-issue as it relates to the setback and Mr. Poulin has a permit for the shed.

The Zoning Board reviews the application of EQUITABLE WAIVER of DIMENSIONAL REQUIREMENTS and each item on the check list is read aloud by Planner Bont and discussed. The ZBA is polled to determine if they are all in agreement with each item on the application checklist, and the ZBA members are all in agreement. (see application)

**Motion to grant the EQUITABLE WAIVER of DIMENSIONAL REQUIREMENTS as applied in the application property by Member Moran  
Second by Member Daly  
All in favor**

#### **VARIANCE REQUEST**

#### **Questions/Discussion:**

The ZBA asks Mr. Poulin what his plans are for the addition. Mr. Poulin explains what his plans are for his kitchen renovation. He wants to open up the space as it is very small and difficult to move around in. He would like to bump it out eight by twelve (8x12) feet and add an exterior vent for the stove/oven. He would move the existing kitchen into the new (8x12) foot space. He

would take out the window that is on the side of his abutter and move it out back which would allow for more privacy.

Only two abutters, from the condos across the street, came forward and asked Mr. Poulin what his plans were. Mr. Poulin gave them the details and they have no concerns.

Member Moran comments that he doesn't see that Mr. Poulin is experiencing a hardship. He has a kitchen, and even though it is small it is not a hardship. Member Moran doesn't believe this request is enough to grant a variance. Acting Chairperson Ham asks Alternate Chenard to weigh in on what Mr. Moran said. She agrees with what Member Moran said. There is a kitchen and to take up to half of the setback seems to be unfair as it isn't following the rules that are in place. Mr. Poulin replies that he does have some hardships. He mentions that he can't vent the stove/oven as the current kitchen will not allow for that. He adds that the refrigerator/freezer door can only be opened partially and the heater can't be moved. He feels these are reasonable hardships. Member Moran replies that Mr. Poulin built the home and was aware of the size and functional difficulties as he was the one who made it that way. Planner Bont joins the discussion and mentions that the existing house even with the added 8x12 feet is more compliant with the zoning laws than the original home that burned down. She notes that this would distinguish this home from other homes in the area.

Acting Chairperson Ham asks Planner Bont about an email that states the Mr. Poulin has not notified that town that the building was completed. Planner Bont responds that Mr. Poulin is working on that issue. Hopefully, he will be getting construction control affidavits from the people who did the work. She adds that this is an interesting situation because when the work was done this home was not his primary residence. He has submitted some construction control affidavits but nothing has been done regarding the plumbing and electrical work. In New Hampshire, if the home is your primary residence you are allowed to do your own work on the home.

Member Daly discusses the old Land Use Authorization Permit and asks if the covered porch is considered living space or not. Planner Bont explains that it is not living space and if he were to convert it to living space he would need a Land Use Permit for that change. The foot print is what is being looked at as it relates to the request for Variance. Member Daly is curious about the footprint dimensions. The original home was nine hundred eight (980) square feet and the maximum allowable for the re-build was the same. The new structure is seven hundred sixty-eight (768) square feet with four hundred thirty-two (432) square feet covered porch. He is wondering if it is now a total of twelve hundred (1,200) square feet. Mr. Poulin responds that the dimensions of the home are currently twenty-four feet eight inches by thirty-two feet eight inches (24'8"x32'8"). Member Moran asks if it is now a story and a half. Mr. Poulin replies "yes". Member Moran comments that the original home was a single-story ranch home with a walk out basement. The ZBA reviews the original homes dimensions which total nine hundred eighty (980) square feet and the current home is a total of twelve hundred (1,200) square feet.

Member Daly asks Mr. Poulin if he has considered purchasing some land from the neighbor on the west side of the property. Mr. Poulin replies “no, I have not and I doubt they will because their driveway is right there”.

Mr. Poulin adds that he keeps his lot clean and neat and is one of the nicest houses on the street. It brings good tax money to the town and plans to live there for the rest of his life. Mr. Poulin goes on to say that he contributes his time as a volunteer in town and is a member of a couple of boards. Member Sullivan comments that she has seen the house and agrees with Mr. Poulin that the lot and home are very well cared for.

### **Review of application checklist**

The ZBA reviews the application for a VARIANCE and it is read aloud by Planner Bont. The ZBA is polled on each criteria item to determine if they are all in agreement with each item on the checklist. (see application)

1. Granting the variance would be contrary to the public interest. The ZBA is polled and two **(2) members** feel it is **contrary** to public interest and three **(3) members** feel it is **not contrary** to public interest.
2. If the variance were granted the spirit of the variance would be observed because. Answer by Mr. Poulin is “The spirit of this variance will not be disturbed by means of wetlands, over crowding of residents and/or parking.” The ZBA is polled whether the spirit of the ordinance is being observed or not. **All members agree that the spirit of the ordinance would be observed.**
3. Granting the variance will do substantial justice because. Answer by Mr. Poulin is “Granting this variance to do substantial justice because it doesn’t interfere with the neighbor’s views or diminish property values”. The ZBA is polled whether the variance would do substantial justice based on the answer given by Mr. Poulin. **All ZBA members agree that the variance would do substantial justice.**
4. If the variance were granted the values of the surrounding properties would not be diminished. Answer by Mr. Poulin is “If this variance is granted it would increase the property values of this district and the surrounding properties”. **The ZBA is polled and all members agree that if the variance were granted the values of the surrounding properties would not be diminished.**
5. Unnecessary Hardship – Owning to special conditions of the property distinguish it from other properties in the area. Denial of the variance would result in unnecessary hardship because there’s no fair and substantial relationship between the general purpose of the ordinance provision and the specific application of that provision to this property because. Answer by Mr. Poulin is “Due to the given factor of the lot size to sixty by one hundred (60x100) feet would be substantial to the enjoyment and use of my given property”.

**AND**

“The proposed use is a reasonable one because the proposed use is reasonable because

it doesn't alter, change, or diminish the atmosphere of the neighborhood." The ZBA discusses whether or not the variance does meet the unnecessary hardship criteria.

### **Uniqueness of the property Section B**

The issue of the uniqueness of the situation is discussed as there was a pre-existing, extremely non-conforming house there and the foot print was more problematic. The situation is unique as the original house burned down and Mr. Poulin had the right to put a new home back exactly where it was before. Member Sullivan comments that if Mr. Poulin planned on having three (3) people living there, he would have built the new home to the maximum size allowed. She feels the uniqueness distinguishes it from other cases. The ZBA agrees that this is a unique situation as well. There will be 8.2 feet from the closest spot in the back to the neighbor's driveway. The previous home was over the lot line. The ZBA discusses the fact that Mr. Poulin could have built the new home differently (down the entire side) and is only asking for a small area to expand the existing kitchen. The ZBA is polled on excepting the criteria by using Section (B) instead of (A) as discussed.

### **Amended Application**

Using Section B under Unnecessary Hardship will cause this to be an amended application. Mr. Poulin verbally agrees to the discussed amendment of the application.

### **Construction Control Affidavit**

Member Daly asks if there are any outstanding issues with the sign-offs on the work completed on the existing home. Planner Bont explains that the primary residence issue with the Construction Control Affidavit needs to be sorted out. Currently, everybody that does work to their property, in the Town of Lincoln, who has a license or not has to sign an affidavit. In the affidavit they must state that they knew what the rules were, they complied with the rules in the state building code and that will be kept on file. Planner Bont will discuss the issue with the State Fire Marshall to see if they feel differently about this situation. The Town of Lincoln has made a deal with the state and is not willing to adopt the RSA to have a State Building Code Enforcement branch in the town. This issue is separate from the Request for Variance. Member Daly asks if the affidavit exists for the plumbing and electrical work that was done. Planner Bont replies "yes, he signed in person".

**Motion to grant the variance with the stipulation to amend the application to criteria (b) being the uniqueness of the property because the prior house being over the setback and allowing this variance is a better situation than what we could have had. By Member Sullivan**

**Second Member Daly**

**All in favor**

**Motion to accept the application as amended by Member Moran**  
**Second by Member Daly**  
**All in favor**

**IV. CONTINUING AND OTHER BUSINESS** *None*

**V. OTHER BUSINESS** *None*

**VI. PUBLIC PARTICIPATION AND OTHER BUSINESS:** *None*

**VII. ADJOURNMENT**

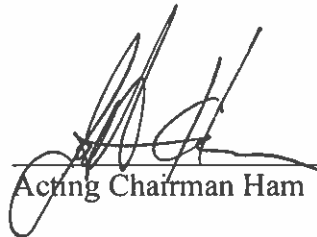
**Motion to adjourn by Acting Chairperson Ham**  
**Second by Member Daly**  
**All in favor**

Respectfully submitted,

*Judy Sherriff*  
Recording Secretary

Date Approved: \_\_\_\_\_

*11/3/2022*

  
\_\_\_\_\_  
Acting Chairman Ham

