



P L A N N I N G & Z O N I N G
D E P A R T M E N T

**NOTICE OF DECISION
GRANTED**

**ZONING BOARD OF ADJUSTMENT
TOWN OF LINCOLN, N.H.**

Case No: Var 2022-04 M117 L055 Poulin – Equitable Waiver of Dimensional Requirements (EWDR) for House & Variance (Var) for Proposed Addition in Setback Area

You are hereby notified that the appeal of Appellant Alfred Poulin of 82 Pollard Road, Lincoln, NH 03251, for an **EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENTS** for the pre-existing house located in the fifteen foot (15') east side setback area and a **VARIANCE** to build a kitchen addition in the fifteen foot (15') west side setback area for his property at 82 Pollard Road (Map 117, Lot 055) concerning Article VI (District and District Regulations), Section B (District Regulations), Paragraph 2 (Land Use Schedule), Subparagraph 4 (Dimensional Chart) of the Land Use Plan Ordinance (LUPO) has been **GRANTED** by the ZBA unanimous vote of five (5) members at a public hearing on **August 17, 2022**.

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.

FINDINGS OF FACT

Facts in support of Equitable Waiver of Dimensional Requirements for Pre-Existing Nonconforming House in the Side Setback Area and Variance for a Kitchen Addition in the Side Setback Area:

- A. The subject lot at 82 Pollard Road (Map 117, Lot 055) is not a part of any Homeowners Association or Condominium Association
- B. The subject lot at 82 Pollard Road (Map 117, Lot 055) is located within the Rural Residential (RR) District where front, side and rear setbacks are 15 feet from the property boundary line.
- C. No structures are permitted within the setback areas.
- D. Per old assessment cards, the pre-existing nonconforming house was built around 1950, prior to 1986 adoption of the Land Use Plan Ordinance (zoning ordinance).
- E. The zoning ordinance established fifteen-foot (15') front, side, and rear setback requirements for buildings within the Rural Residential (RR) District.
- F. The pre-existing nonconforming single-family home burned down in 2008/2009.
- G. 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).
- H. After the fire, as the successor owner of the property, Appellant Poulin 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.
- I. In 2009, when Appellant Poulin applied for a Land Use Authorization Permit, upon request of the Town Manager/Planner, 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 and would not encroach onto the neighbor's property.
- J. The main portion of the reconstructed new house itself is located within the building envelope and does not encroach into the fifteen-foot (15') setback areas.
- K. In 2009, the Town Manager/Planner granted a Land Use Authorization Permit to Poulin that included a proposed side porch for the new house to encroach into the side setback area back in 2009; the side porch was not constructed until 2017.
- L. In 2009, the Town Manager/Planner permitted this encroachment by the finished open porch on the east side of the house without a variance because the rest of the house was so much more compliant with the zoning ordinance than the original house.

- M. On the east side of the house the finished open porch encroaches into the fifteen-foot (15') east side setback area by two and seven tenths' feet (2.7') in front and two and four tenths' feet (2.4') in the rear.
- N. The front of the porch is twelve and three tenths' feet (12.3') from the east side property boundary line, encroaching two and seven tenths' feet (2.7') over the east side setback line into the setback area.
- O. The rear of the porch is twelve and six tenths' feet (12.6') from the east side property boundary line encroaching two and four tenths' feet (2.4') over the east side setback line into the setback area.
- P. On the west side of the property there is a ten (10) foot right-of-way over the neighboring property for the benefit of the subject property written in the deed, in addition to the sixty (60) foot wide lot.
- Q. At the August 17, 2022, ZBA hearing, Appellant said he will install the large picture window in the proposed kitchen addition facing the rear of his lot instead of looking towards his western neighbor. He will place a smaller window up high on the wall facing his western neighbor to let in light, but not to interfere with the privacy between neighbors.
- R. Appellant needed an Equitable Waiver of Dimensional Requirements to permit the encroachment of the porch into the fifteen foot (15') east side setback area of the lot.
- S. Appellants needed a Variance to put a proposed eight-foot by twelve-foot (8'X12') kitchen addition in the 15 ft west side setback area.

EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENTS DECISION

Equitable Waiver of Dimensional Requirements for Pre-Existing Nonconforming House in the Side Setback:

- A. **The request for an equitable waiver of dimensional requirement, involves a dimensional requirement, not a use restriction.** Setback requirements are dimensional requirements and not use restrictions.
- B. **Appellant (and the Planner) satisfactorily explained that:**
 - 1. **The setback violation has existed for ten (10) years or more with no enforcement action, including written notice, being commenced by the Town.**
 - a. According to the old property tax assessment cards, the pre-existing nonconforming home on the subject lot was built in approximately 1950, prior to the adoption of zoning in the Town of Lincoln in 1986.
 - b. The Town did not commence or taken any enforcement action, including written notice, to have either the original house or the new replacement house moved.
 - c. The original house burned down in 2008/2009.
 - d. After the pre-existing house burned down, as the successor owner of the property, Appellant Poulin 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.
 - e. In 2009, after the pre-existing house burned down, the Town Manager/Planner issued a Land Use Authorization Permit for a new replacement house that was significantly more compliant with the zoning ordinance, although the porch of the new house did encroach into the east side setback area.

- f. At the request of the Town Manager/Planner, Poulin agreed to move the location of the house to the center of the lot to make the location of the house as compliant with the zoning setbacks as possible, while keeping the original size the same.
 - g. In 2009, the Town Manager/Planner permitted this encroachment by the finished open porch on the east side of the house without a variance because the rest of the house was so much more compliant than the original house.
- 1. The nonconformity was discovered after the structure was substantially completed or after a vacant lot in violation had been transferred to a bona fide purchaser.**
 - a. When the original house was built in 1950 there was no zoning. Therefore, the original house was not nonconforming at the time it was built and the subject lot was not a nonconforming lot at the time the original house was built.
 - b. Zoning was adopted in 1986, 36 years after the house was built. The 1986 Land Use Plan Ordinance (LUPO) (zoning ordinance) created setback requirements.
 - c. Poulin purchased the house on June 7, 2010 and learned that the old house was nonconforming under the zoning ordinance in 2009 when he went to apply for a Land Use Authorization Permit to replace the house.
 - 2. The violation was not an outcome of ignorance of the law or bad faith but resulted from a good faith error in measurement or calculation.**
 - a. The original house was built in 1950 prior to the adoption of zoning by the Town.
 - 3. The nonconformity does not constitute a nuisance nor diminish the value or interfere with future uses of other property in the area.**
 - a. The house is a residential single-family home built among other abutting residential single-family homes) with one exception.
 - b. There is a small residential condominium complex across the street on Loon Valley Road R/W with three (3) buildings and a total of ten (10) units. One building has four (4) units, one building has five (5) units and one building has one (1) unit.
 - c. The nonconformity does not involve an unreasonable or unlawful use of the property that results in substantial interference with the use and enjoyment of any person's property in the neighborhood.
 - d. The nonconformity does not constitute a nuisance nor diminish the value or interfere with future uses of other property in the area.
 - e. The nonconformity has existed for many years with no complaints.
 - 4. The cost of correction far outweighs any public benefit to be gained.**
 - a. Taking off the porch from the new house would be cost prohibitive and would jeopardize the structural integrity of the existing house and there would be no substantial public benefit to be gained by doing so.

VARIANCE DECISION

The ZBA granted the Variance because the ZBA found:

A. Granting the variance would not be contrary to the public interest because:

Granting the variance does not alter the essential character of the neighborhood of single-family residential homes and one small residential condominium development. Granting the variance would not threaten the health, safety, or general welfare of the public.

B. If the variance were granted, the spirit of the ordinance would be observed because:

Granting the variance is within the spirit of the ordinance to allow for the small eight feet by twelve-foot (8'x12') kitchen addition to a single-family home in a residential neighborhood with the single-family homes. Granting the variance will not cause increased congestion or threaten wetlands or create overcrowding of residents and/or parking.

C. Granting the variance would do substantial justice because:

The proposed project is consistent with the neighborhood area's current residential use. The variance would do substantial justice because as proposed, the one-story addition would be set back from the front of the house so the proposed addition would not interfere with the neighbors' views. Furthermore, the addition is located on the side closest to the neighbors' driveway towards the back of the driveway so the impact on the neighbor's house and views would be lessened.

D. Granting the variance would not diminish the value of the surrounding properties:

The values of the surrounding properties will not be diminished because the proposed project will not block any surrounding views of water or sunsets. In fact, compared to leaving the old burned down house located partially on an abutting neighbor's lot, the new house with porch and kitchen addition would increase the property values of the district and the surrounding properties.

E. Unnecessary Hardship is Deemed to Exist if and only if, owing to special conditions of the property that distinguish it from other properties in the area under Subparagraph (b) the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

1. The case does not qualify under Subparagraph (a) as an "Unnecessary Hardship."

- a. Having a kitchen that is too small is not an unnecessary hardship.

2. However, the case does qualify under Subparagraph (b) for an Unnecessary Hardship.

Subparagraph (b) If the criteria under Unnecessary Hardship, subparagraph (a) are not established, an unnecessary hardship will be deemed to exist, if and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

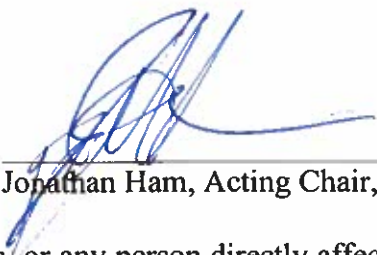
- a. **Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because: the special conditions of the subject property that distinguishes it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.**

- i. The house was built and the supporting lot was created before zoning was adopted which included setback requirements.

- ii. In this case, the original, extremely non-conforming house on the property and the location of the foot print of the original house was even more problematic.
- iii. The prior house substantially encroached both over the setback line and onto the abutting neighbors' property.
- iv. The situation is also unique as the original nonconforming house burned down and under the Land Use Plan Ordinance, Appellant Poulin had the right to put a new home back exactly where it was before, exactly the same size, encroaching onto the neighbors' property.
- v. It would not benefit Appellant Poulin, the abutters or the Town to strictly follow the zoning ordinance in this case, inviting litigation.
- vi. This is a special condition that distinguishes the subject property from other properties in the area.
- vii. Because the prior house was encroached both over the setback line and onto the abutting property and allowing this variance creates a better more compliant situation than what the Town could have had, had the Land Use Plan Ordinance been strictly complied with.
- viii. These are the special conditions that distinguishes the subject property from other properties in the area; the property cannot be reasonably used in strict conformance with the zoning ordinance and a variance is necessary to enable a reasonable use of the property.

Date

9/30/2022


Jonathan Ham, Acting Chair, Zoning Board of Adjustment

Note: The selectmen, any party to the action, or any person directly affected has a right to appeal this decision. See New Hampshire Revised Statutes Annotated, Chapter 677. This notice has been placed on file and made available for public inspection in the records of the ZBA on the above date and will be published in the newspaper. Copies of this notice have been distributed to the appellant, Planning Board, Board of Selectmen, Town Clerk, and Property Tax Assessor.