



PLANNING & ZONING
DEPARTMENT

NOTICE OF DECISION
GRANTED

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

**Case No: Var 2022-06 M113 L083 Ham Rentals LLC – 2 Variances Requirements for
Proposed Addition and Garage in Setback Area**

You are hereby notified that the appeal of **Tamra Ham d/b/a Ham Rentals, LLC** of 98 US Route 3, Lincoln, NH 03251 who owns the subject lot, 13 Pleasant Street (Map 113, Lot 083) [0.15 Acres in the Rural Residential (RR) District] requesting **two (2) Variances from the ZBA** as required under Land Use Plan Ordinance (LUPO), to build a deck and a garage, both in violation of Article VI (District and District Regulations) Section B. District Regulations, Paragraph 4. LOT AND LOT COVERAGE REQUIREMENTS AND STANDARDS, Dimensional Chart where in the General Residential (GR) District the **Side Setback is ten feet (10')** from the property boundary line, and the **Front and Rear Setback is fifteen feet (15')** from the property boundary line was **GRANTED** by the ZBA unanimous vote of five (5) members at a public hearing on **November 2, 2022**. The two (2) Variances granted are:

1. **Request for a variance to extend a deck onto the back of the house, encroaching six feet six inches (6'6") into the side setback area, approximately three feet six inches (3'6") from the property boundary line granted.**
2. **Request for a variance to replace the pre-existing fabric garage with a regular stick-built garage and expand the new garage an additional two feet towards the house and away from the property boundary line making it fourteen by twenty-four (14 x 24) feet.**

Appellant & Property Owners:

Tamra Ham d/b/a Ham Rentals, LLC
98 US Route 3
Lincoln, NH 03251

Surveyor:

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

Property:

13 Pleasant Street (Map 113, Lot 083) [0.15 Acres in the General Residential (GR) District]
Not a part of any Homeowners Association or Condominium Association.

Subject lot is located within the **General Residential (GR) District** where the **Side Setback is ten feet (10')** from the property boundary line, and the **Front and Rear Setback is fifteen feet (15')** from the property boundary line.

FINDINGS OF FACT

1. The subject lot is located within the General (GR) District where side setbacks are ten (10) feet from the property boundary line.
2. No structures are permitted within the setback areas.
3. Appellants needed a variance to put any structures into the front, rear or side setback areas.

Facts in support of Variance to extend Back Deck onto the back of the house in the Side Setback Area:

1. The pre-existing nonconforming house was built in 1930 prior to 1986 adoption of the Land Use Plan Ordinance (zoning ordinance); the zoning ordinance established front, side and rear setback requirements.
2. The pre-existing nonconforming house is approximately three feet six inches (3'6") versus the required ten feet (10') from the property boundary line, encroaching six inches (6'6") within the ten-foot (10') side setback area.
3. The proposed deck with an A/C unit in the corner would extend off the back of the house along the same line as the pre-existing house and would be the same distance from the property boundary line as the pre-existing nonconforming house.
4. Both existing house and proposed deck/AC Unit would be the same distance (3'6") from the northwest property boundary line and seven feet five inches (7'5") from the neighbor's garage.
5. The neighbor's garage at 15 Pleasant Street (Map 113, Lot 084) is only three feet eleven inches (3'11") from their shared property boundary line.
6. The owner of the adjacent property at 15 Pleasant Street (Map 113, Lot 084), Jonathan (Jon) Alan Ham, of 98 US Route 3, Lincoln, NH 03251 does not object to the Appellant's request for a variance.
7. Appellants needed a variance to put the proposed rear deck extension into the 10 ft side setback area.

Facts in support of Variance to replace the pre-existing fabric garage with a regular stick-built garage and expand the new garage an additional two feet towards the house and away from the property boundary line.

1. The pre-existing nonconforming fabric garage is located within the ten-foot (10') side setback area.
2. The pre-existing fabric garage is within the ten-foot side setback area.
3. There was a stick-built garage on a slab built in 1940, prior to the adoption of zoning in 1986.
4. The 1940s garage was still standing as of 1992, and 1993.
5. On the assessment cards for 2006 & 2012 the structure was referred to as a "Utility Shed" and "shed1".
6. A note on the 2012 assessment card says "GARAGE NOT TO BE BUILT PER OWNER" and "sheds removed" which suggests the garage or "shed" was removed by a prior owner.
7. There is no mention on the assessment cards about when the fabric garage was located on the slab for the garage.
8. The fabric shed was present when Appellant purchased the property in 2019.
9. The 1940 slab, the 1940 former garage and the existing fabric garage are located five feet (5') from the property boundary line, versus the required ten feet (10') from the property boundary line.

10. A new garage in the same spot would not increase the existing encroachment into the southeast side setback area.
11. Appellant will build a new garage in the same location of the original garage that was built in 1940 that was taken down and replaced by the "tarpette" garage (i.e., tarp garage).
12. Appellant will increase the size of the garage wider by two feet (2') closer towards her home, away from the property boundary line, which would increase the size of the original garage, making it fourteen feet by twenty-four feet (14' x 24') feet to allow for two cars.
13. The garage will be a simple single-story garage and will have electricity.
14. Garage is intended to be a safe place for storing bikes, a snowblower, a lawnmower and cars.
15. The space between the home and the proposed garage will be seven and a half (7 1/2) feet.
16. Barbara Vitale, Trustee of the Barbara L. Vitale Revocable Trust, 37 Hanson Farm Road, Lincoln, NH 03251 is the owner of 9 Pleasant Street (Map 113, Lot 082) and was present at the hearing and did not object to the Appellant's request for a variance.

VARIANCE DECISION #1

To Extend Back Deck onto the Back of the House in the Side Setback Area

The ZBA granted the Equitable Waiver of Dimensional Requirements 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 residential character of the neighborhood. Granting the variance does 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 construction of an extension to the back deck on a single-family home in a residential neighborhood. Granting the variance will not cause increased congestion or threaten wetlands or create overcrowding.

C. Granting the variance would do substantial justice because:

The proposed project is consistent with the neighborhood area's current residential use.

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.

E. Unnecessary Hardship

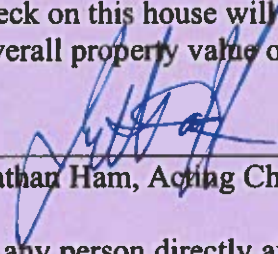
1. **Owning to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:** the special condition of the subject property that distinguishes it from other properties in the area, is that the house was built and the supporting lot was created before zoning was adopted; the later zoning ordinance included setback requirements. Prior owners built the house very near the property boundary line, resulting in the current owners not being able to add a deck to the rear of the house without violating a later setback requirement.
2. **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 husband of the owner of the subject lot also owns the abutting lot most impacted by the

deck and does not object.

3. **The proposed use is a reasonable one because** many of the neighboring residential single-family houses also have back decks like the one proposed here and will follow the current layout of the existing house. The back deck on this house will match the back decks on the neighbors' houses with decks and raise the overall property value of the property.

Date

6/19/2023


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.