



PLANNING & ZONING
DEPARTMENT

NOTICE OF DECISION
GRANTED

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

Case No: Var 2023-01 M132 L057 Maniglia – Variance for Proposed Retaining Wall
Greater than Four Feet (4') in Height
to Extend into the Fifteen Foot (15') Front and Side Setback Areas

You are hereby notified that the appeal of Appellants Frank E. Maniglia & Meghan M. Maniglia, by and through their authorized agent (and architectural firm), Philip M. Bennett, AIA and Stuart Anderson of alba architects, LP, of 137 Main Street, PO Box 186, North Woodstock, NH 03262-0186 for a VARIANCE to build a Retaining Wall Greater than Four Feet (4') in Height to Extend into the Fifteen Foot (15') Front and Side Setback Areas for their property at 4 Hay Hill Road, (Map 132, Lot 057) 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 by unanimous vote of four (4) members (less than a full quorum consented to by Stuart Anderson on behalf of the Appellants) at a public hearing on March 15, 2023.

Appellants/Property Owner: Frank E. Maniglia & Meghan M. Maniglia
44 Ashwood Avenue
Wilmington, MA 01887

Agent for Appellants: Philip M. Bennett, AIA
alba architects LLP
137 Main Street
PO Box 186
North Woodstock, NH 03262-0186

Surveyor: Mark Lucy, P.E., C.P.E.S.C. Senior Design Engineer
White Mountain Survey & Engineering, Inc./
Horizons Engineering, Inc.
1270 NH Route 16
Ossipee, NH 03864

Property: 4 Hay Hill Road (Map 132, Lot 057). Size: 0.56 acres. **Rural Residential (RR) District.**

Homeowners Association (HOA): Subject lot is part of a development known as "The Landing at Loon Mountain", part of an active HOA known as "The Landing at Loon Mountain Homeowners Association", however, Joseph E. Lynch d/b/a Loon Landing Development, LLC is the successor declarant & is still owner of a majority of the undeveloped lots. He owns forty-seven (47) out of eighty-one (81) total lots (an adjusted total following a few lot mergers) for a total of fifty-eight percent (58%) of the undeveloped lots.

Homeowners Association:

The Landing at Loon Mountain Homeowners Association

(Map 130, Lots 062-085, Map 132, Lot 002-050, 053-054, Map 133, 041-044)

Joseph E. Lynch, President

The Landing at Loon Mountain Homeowners Association

d/b/a Loon Landing Development LLC

1 Connector Road

Andover, MA 01810

Joseph E. Lynch, President

The Landing at Loon Mountain Homeowners Association

d/b/a Loon Landing Development LLC

14 Montalcino Way

Salem, NH 03079

Land Use Plan Ordinance (LUPO): In the Rural Residential (RR) District, front, side & rear setbacks are fifteen feet (15') from the property boundary line. A retaining wall greater than four feet (4') in height, measured from grade at the bottom of the wall to the top of the wall is defined as a "structure". No "structure" is permitted within the setback areas. In 2004, the developer of The Landing at Loon Mountain put in the roadways and several retaining walls that greater than four feet (4') in height; some of those retaining walls are on the subject lot. Those retaining walls are pre-existing nonconforming retaining walls and are not the subject of this request. Those retaining walls are within the fifteen-foot (15') west side setback area, the fifteen-foot (15') rear side setback area, and the fifteen-foot (15') east side setback area of the subject lot.

Request is for the ZBA to grant:

1. A **Variance** to allow the construction of a retaining wall within the fifteen-foot (15') east side setback area. The proposed retaining wall will exceed four feet (4') in height and is therefore a "structure" within the LUPO and subject to the fifteen-foot (15') setback as defined for the **Rural Residential (RR) District**. The retaining wall will vary in height up to approximately nine feet (9') and will be located within the front and east side setback areas as shown on the plan.

CONDITIONS:

1. None.

FINDINGS OF FACT

Facts in support of a Variance for construction of a retaining wall that exceeds four feet (4') in height within the fifteen-foot (15') front and east side setback areas:

1. The subject lot is located within the Rural Residential (RR) District where front, side & rear setbacks are fifteen feet (15') from the property boundary line.
2. No structures are permitted within the setback areas.
3. In 2004, the developer of The Landing at Loon Mountain put in the roadways and several retaining walls that are greater than four feet (4') in height; some of those retaining walls are on the subject lot and in the setback areas.
4. Those retaining walls are pre-existing nonconforming retaining walls and are not the subject of this request.

5. Those retaining walls are within the fifteen-foot (15') west side setback area, the fifteen-foot (15') rear side setback area, and the fifteen-foot (15') east side setback area of the subject lot.
2. Appellants needed a variance to allow the construction of a retaining wall within the fifteen-foot (15') east side setback area.
3. The proposed retaining wall will exceed four feet (4') in height and is therefore a "structure" within the LUPD and subject to the fifteen-foot (15') setback as defined for the Rural Residential (RR) District.
4. The proposed retaining wall will vary in height up to approximately nine feet (9') and will be located within the front and east side setback areas.
5. The proposed retaining wall will be about five feet (5') from the property boundary line which would be about ten feet (10') into the fifteen-foot (15') setback.
6. The proposed retaining wall will support the driveway and parking area near the proposed home.

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 allowing for the construction of a single-family home, nor is it contrary to the zoning intent. Granting the variance does not threaten the health, safety or general welfare of the public as it is located on a private home lot. It is in the public interest to continue building on the approved lots in the development called "The Landing at Loon Mountain" with the appellants knowing that there are some difficult elements with heights, setbacks, retaining walls, etc., and, therefore, to grant this variance.

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 a single-family home in a residential neighborhood. Granting the variance does not cause increased congestion or overcrowding. The Town has approved a set of standards that resulted in this subdivision layout for "The Landing at Loon Mountain". Therefore, the subject lot exists as a legal, single-family house lot. The spirit of the ordinance is that these lots can be used or developed for single family house lots. Appellants have gone a long way to put designed features in the plans for this site that do not interfere with any properties around it and the designed features are consistent with the spirit of this subdivision on the topography of this lot.

C. Granting the variance would do substantial justice because:

The proposed project is consistent with the neighborhood area's current residential use. There is no gain to the public that outweighs the loss to the individual. The Landing at Loon Mountain is an approved condominium subdivision. The current use of the area is single-family house lots, the proposed use is a single-family home. If the ZBA concluded that a variance should not be granted for this use, it would be basically saying that no variances should be granted for any of these condo areas and that is not "substantial justice". Substantial justice supports granting this variance.

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

The proposed project is consistent with the area's current use and abutting properties. Granting the variance does not block any surrounding view, in fact it allows for further protection of the current view. The proposed does not decrease property values.

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 proposed project is consistent with the area's current use and abutting properties. Granting the variance does not block any surrounding view, in fact it allows for further protection of the current view. The proposed does not decrease property values. Furthermore, if the variance was denied this lot would probably have zero (0) value and that is not the intent of the whole condominium subdivision and what has already been accomplished there. So, denial of the variance would absolutely result in an unnecessary hardship to this property.

- i. 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:**

Denial of the variance would create hardship in rendering the lot extremely difficult to develop and create a scenario whereby any development would become uncharacteristic with the abutting properties.

- ii. The proposed use is a reasonable one because:**

The proposed use is reasonable as it is consistent with surrounding properties and within the spirit of the ordinance. This is a single-family residence in a single-family subdivision and meets that requirement. Strict conformance with the ordinance would deny the approved use of the property as a single-family house lot and render the lot almost impossible to use. In addition, granting the variance would not be detrimental to the area because every home that goes in to this subdivision is going to basically have the same impact, the same characteristics, the same needs and to the extent that it has an impact on value it has an impact on every value of every lot if relief isn't granted by this board.

Date

6/19/2023

Jack Daly, 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.