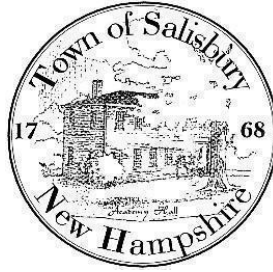


Town of Salisbury, NH
Zoning Board of Adjustment



Approved Meeting Minutes
February 9, 2023

Board Members Present:

John Bentley	ZBA Chair	Present
David Kelly	ZBA Vice-Chair	Present
Loretta Razin	ZBA Member	Present
Gary Williams	ZBA Member	Present
Tricia Thompson	ZBA Member	Present
Eric Maxwell	ZBA – Alternate	Present
Marcus Zuech	ZBA – Alternate	Absent
Vacant	ZBA – Alternate	
Vacant	ZBA – Alternate	
Vacant	ZBA – Alternate	
April Rollins	ZBA Assistant	Absent
Jennifer King	ZBA Recording Secretary	Present

Note: David Kelly attended this meeting as a member of the audience; he did not serve as a board member for this meeting / Public Hearing.

Members of the Public:

Several members of the public were in attendance.

Zoom Attendees: none

Chair Bentley called the meeting of the Salisbury Zoning Board of Adjustment to order at 7:00 p.m.

Approval of Minutes

Loretta Razin **motioned** to accept the draft minutes of January 12, 2023 as written.

Tricia Thompson **seconded** the motion which passed successfully.

Rehearing - Whyte Variance Application

Megan Whyte is the owner of 112 Raccoon Hill Road. She is applying for a variance for a chicken coop that is within the 35-foot setback. She explained that they built their coop in the spring of 2022 after an informal discussion with the building inspector. They did not need a permit for their initial structure as it did not exceed size restrictions. They ended up adding an additional enclosure around the coop and a roof for that enclosure to provide more protection for their chickens from predators and disease, and to keep them from wandering off of their property. The Building Inspector came back and noted that because they added the run with the roof, their structure may now be exceeding the size for which a building permit was required. He also noted that it appeared that at least part of the coop is a little close to the property line and within the 35-foot setback, and he suggested they apply for a variance. At that time, they did not realize that they were in violation of the ordinance. They acknowledge their own mistakes made during this process, and noted that given the way this entire process has gone, there is a lot of room for misinterpretations.

Meghan Whyte presented her application for a zoning variance and supported her request with photographs. This variance is being requested during a chicken egg shortage.

1. The proposed variance does not diminish surrounding property values. It is not visible from the Kelly/Henry property, nor is it visible from any other homes on abutting properties. This chicken coop is a well-made structure to match the home of the applicant, using cedar siding and shingles (referenced photo #2)
2. Granting this variance is not contrary to the public interest. There was concern that there would be contraindications to the coop with regard to the Road Agent or emergency services. She included a copy of the email discussion from Fire Chief and Road Agent Bill MacDuffie Jr. which states that there are none. The chicken coop is on private property and there is no reason that the public to have any interest in its location on the property. It does not have any impact on road maintenance or emergency services crews.
3. Denial of the variance would cause undue hardship because the zoning restriction as applied to the property interferes with the reasonable use of the property. Due to the unique location, shape and topography of the property, it would require extensive excavation and fill in order to relocate the chicken coop. Changing drainage to the wet area at the front of the property would not only affect her property but could possibly cause unnecessary damage to abutting properties (referenced photos 4-8).
No fair and substantial relationship exists between the general purposes of the zoning ordinance and the specific restrictions on the property because. The benefit to this location cannot be sought elsewhere in a reasonably feasible manner other than a variance.

Other areas would require extensive labor, cost, and excavation. This location does not contribute to overcrowding on her property or the abutting property. There are no agricultural or other restrictions as it relates to the chicken coop on this property (referenced photo #10). There are many other properties in Salisbury that have barns or coops for animals.

4. The variance would not injure the private or public rights of others as the variance would be granting the chicken coop to remain within the 35-foot setback on private land typically not accessed by the public. The town Road Agent and Fire Chief has declared that the chicken coop does not affect those jobs for the town, thus it does not infringe on public or private rights such as travel, safety operations or other duties and services provided by the Road Agent and Fire Chief.
5. A refusal of the variance would result in undue financial burden to the Whyte family due to the costs of having to undergo substantial excavation and site work to relocate the coop. There was no site work needed for its current location. Granting the variance would do substantial justice because it would allow their family to enjoy their property without subjecting the public or other property owners to harm or hardship. The proposed use of the area is a reasonable one that is compatible with the character of the area, nor is there any compelling testimony or formal complaint regarding the location of the coop. The spirit of the ordinance is intended to maintain space and avoid overcrowding with regard to structures on the property. A stone wall also exists as well as a significant change in elevation between the Whyte property and the Kelly/Henry property. It is also shielded from view by hemlock trees. The location has had no negative effects on abutting property owners over the past several months that they have been going through this process.

Tricia Thompson asked what the original size of the chicken coop was when it was first built? Eric Maxwell said that it was 10'x8' and the run made it 25'x16'.

Chair Bentley commended Meghan Whyte on her detailed presentation. He asked about what led to the addition of the run. Meghan Whyte responded that they added the run onto the coop in an effort to protect the chickens from outside predators. This is still the best and only place on their property for the coop. There is not enough room without significant site work to move the coop to another location on their property.

Tricia Thompson noted that the gravel area in the back yard is elevated a great deal.

Jocelyn Henry stated that Building Inspector Chuck Bodien did clarify that under 200 sq feet did not require a permit, but it still requires compliance with the zoning ordinance.

Jocelyn Henry stated that this rehearing is not about a chicken coop, it is about a 400 sq ft building that was constructed within 10 feet of their property line without taking the proper steps of applying for a variance ahead of time to try to minimize the impact on the setback. A variance placed on a property is permanent and travels from owner to owner. If a 400 sq ft chicken coop is allowed to remain in the setback under the variance, it could be something entirely different under this owner or a future owner.

The application for this variance does not meet the criteria for state RSA 674:33 and therefore should be denied by the Board.

1. The public interest lies within the expectation that zoning and building ordinances will be enforced as written in a fair and legal manner. Granting this variance would be contrary to the public interest because it would encourage other property owners to ignore the established town ordinances.
2. The spirit of the ordinance has not been observed because the entire structure has already been built within the setback. This is a 5-acre buildable lot approved by the Salisbury Planning Board on July 3, 1995. The zoning ordinances have not changed since the approval of this lot, and the zoning restrictions as applied do not interfere with the reasonable use of this property.
3. No substantial justice would be done by granting this variance because granting the variance has the potential of setting precedence for the other 11 lots on this road that are of similar shape, size and topography.
4. No supporting facts have been presented to demonstrate special circumstances that apply to this property. The application clearly states, "I ignorantly already built the coop which was under the square footage, but then added the pen area which makes it over and encroaches on the line." A variance cannot be granted for self-imposed hardship. There was a diagram provided by the town building inspector in which he took measurements as requested by the ZBA and that map clearly demonstrates that there is area to comply with the 35-foot setback without affecting the drainage in that area.
5. Approval of this variance would diminish the value of our property as it is within 10 feet of our property line, where we have explored a building lot subdivision. The ideal house site would be in the very location that they are seeking this variance. The purpose of the 35-foot setback is to provide a minimum 70-foot buffer between neighboring

buildings for fire safety and privacy. The loss of this buffer would negatively impact our lot. As far as the fire safety issue, this coop is under the canopy of our trees with heat lamps being run off an extension cord. In the event there is a fire, it will damage our tree buffer.

Meghan Whyte said that they do not heat their coop, and there are no heat lamps.

Simon Brown, an attorney representing Meghan Whyte offered that in terms of the public interest, there are 2 important questions; does granting the variance alter the essential character of the neighborhood? In this instance the answer is no. The other question is does the variance threaten the health, safety, or general welfare of the public? The answer there is clearly no as well. With respect to substantial justice, the question is if there is any loss to the individual outweighed by a loss to the general public. The Whyte's inability to obtain this variance would be a substantial loss for the reasons discussed, with no gain to the general public, which would be an injustice.

Meghan Whyte stated that you can see that there is a very clear line and a stone wall, and the elevation from their property to the abutting property is significant. The coop has been there for 9 months now. She understands that this is not the way it should have gone, and she wishes they had known and done better, but the past 9 months have proven that the coop is not affecting anyone injuriously in her opinion. The only gain for the town she sees is for her to be in compliance, but this is why variances exist. The last variance approved faced the same challenges she did, and he was talking about adding on a garage to a house, which is far more extensive and permanent than a chicken coop. It seems that those things have the same weight, but are being evaluated out of balance.

Loretta Razin asked if the coop was on a permanent foundation. Meghan Whyte said that the coop sits on cinder blocks. That is the best area for them to have their coop, as there is no site work required.

Loretta Razin noted a tree that is very close to the run. In the interest of being devil's advocate, she asked if she would be able to move the coop further away from the tree. Meghan Whyte answered that that is the point where the land starts to slope, noting that during the recent rains, while their coop was unaffected where it currently is, the sloping area gets wrecked during heavy rains.

Eric Maxwell asked how many chickens they have. Meghan Whyte answered that they have 16 with no plans to add more.

Chair Bentley asked if they could move or reduce the size of the run or move it further from the property line. Meghan Whyte said that they have established that the coop is

within the 35-foot setback, so she doesn't see the benefit in making it smaller for any reason, but yes, they technically could.

Meghan Whyte cited another example of a variance that was approved in 2018 for a shed built 4 feet from the property line and within 40-50 feet from the neighbor's house. Eric Maxwell asked if that case had neighbor opposition. Meghan Whyte answered that it did not,

Janet Coleman of 223 Raccoon Hill Road said that her family has lived here since April. It is a lovely area and there are animals everywhere. The coop is a lovely addition to the Whytes' property and there is no other room for it on that property. She doesn't understand what the problem is other than animosity. Times are difficult currently and she's raising chickens to feed her family. This has been overdone. As a neighbor (not an abutter), she wouldn't have a problem even if this were abutting her property.

Chair Bentley closed the Public Hearing closed at 7:38 p.m.

Board Deliberation

Eric Maxwell wanted to know if there was any way to prevent a variance from being an open-ended transfer from owner to owner. Discussion occurred regarding the restrictions of such a transfer. Eric Maxwell feels that this application is much improved. Tricia Thompson agreed, adding that the photos help immensely.

Tricia Thompson spoke to the hardships involved if the variance is not granted (timber work, excavation, restructuring drainage). Loretta Razin concurs with Tricia and feels that the 'spirit of the ordinance' is the only thing being affected.

Tricia Thompson doesn't feel that future plans for a subdivision apply here, as nothing has been presented to them. It also needs to be understood that the footprint that this variance would apply to should not change.

Tricia Thompson **motioned** to approve the variance application as presented.

Gary Williams **seconded** the motion which passed successfully.

Tricia Thompson thanked the members of the public that showed up and got involved. She asked that they not lose faith in the process and offered a reminder that this is a volunteer board.

Adjournment

Tricia Thompson **motioned** to adjourn the meeting.

Chair Bentley **seconded** the motion which passed successfully.

The Board adjourned at 7:46 p.m.

Respectfully Submitted,

Salisbury ZBA Meeting
2/9/23

Jennifer L. King
Recording Secretary