

Town of Salisbury, NH
Zoning Board of Adjustment



Approved Meeting Minutes
August 11, 2022

Board Members Present:

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

Members of the Public:

Meghan Whyte, John Whyte, Jocelyn Henry

Zoom Attendees: None.

Chair Bentley called the meeting of the Salisbury Zoning Board of Adjustment to order at 7:02 p.m.

Approval of Minutes

Some changes were noted to the draft minutes of July 14, 2022:

- Kathleen Doyle and Ann Breen attended the meeting via Zoom.
- Not a lot of the presentation of the setback issue was attributed to John Whyte
- Jocelyn Henry requested that a statement attributed to her be removed: “It is right in our view.”

Chair Bentley **motioned** that they accept the draft minutes of July 14, 2022 as revised. Tricia Thompson **seconded** the motion which passed successfully.

Variance Application Review - Continued from last meeting

PUBLIC HEARING- Continuance Variance Application for Meghan Whyte located at 112 Raccoon Hill Road (Map 247, Lot 2) in order to allow for the construction of a chicken coop within the side yard setback.

Chair Bentley opened the Public Hearing at 7:11 p.m.

Vice-Chair Kelly recused himself from this discussion as a Planning Board member for the Public Hearing portion of the meeting so that he could speak on the matter as an abutting property owner.

Eric Maxwell asked about the square footage of the coop. Meghan Whyte said there was a conversation between her husband John Whyte and the Building Inspector during which John was told that he would not need a building permit for the structure due to its size. The setback was not discussed at that time.

Tricia Thompson noted that If the structure is 200 sq ft or less a building permit is not needed. Chair Bentley stated that according to the drawings submitted by the building inspector, the original structure was already 11 feet into the setback.

Eric Maxwell asked if the setback rules are worded that you can't have anything at all within the setback (example: a compost bin). Tricia Thompson said if you look at the definition of a structure, it refers to something with walls and a roof. The setback rule is that you cannot place a *permanent* structure within the setback. Had the structure been made on wheels, none of this would be a problem because it would be easily moveable.

Tricia Thompson stated that she went out to both properties with the permission of both property owners. She could not see the structure from the Kelly/Henry property. In her view, you can clearly tell it does not meet the setback requirements, but moving it may prove difficult. There are really very limited places to move it on their property. She couldn't see that it affected the property values of anyone involved, nor does it appear to impose a hardship upon anyone. Going out and seeing it was beneficial for her to be able to answer the questions that she had.

David Kelly said that if the correct procedures on this building were followed from the beginning, they wouldn't be here. There would have been an initial notice to all abutters notifying them of this structure. All of these issues could have been handled. The whole

structure is within the setback. It is nothing that is hurting his eyes to look at, the problem is that the setback is not being adhered to. If this variance were allowed, and if they (the Whytes) were to move some day in the future, any new resident could put any structure within the setback.

Meghan Whyte stated that her husband John has spoken to a couple of town employees/officials, who have told him that although it is within the setback, they don't really see a problem with where it is. She understands that it is within the setback, and she wishes that things had happened differently so that they didn't have to be here. She noted that there have been 4 or 5 other setback variance requests for residential structures since 2016 that were not denied. These were for buildings people were going to live in. Even Mr. Kelly voted in favor of those variances.

David Kelly stated that those variances were different nonconforming lots, and there were no suitable alternative options that would work for those lots. They were also applied for before the work was done.

Tricia Thompson said that the procedure would not have started when they built the 8x10 because he doesn't have to notify anyone. It became an issue when they installed the chicken run with a roof and made it bigger. Building Inspector Chuck Bodien noticed it and brought it to the Whytes' attention and then they did try to follow the process. Chuck did a good job noticing it. She agrees that if it was over the 200 sq ft requirement to begin with and they didn't get a permit, then she would agree that they did not follow the process.

Meghan Whyte said it's only going to be moved as much as it has to be. When you go out and stand at the edge of the chicken coop, she cannot wrap her mind around how this is going to change anyone's life. As their neighbor, she would like to understand how it is bothering them so much.

Chair Bentley explained that they have to look at what the law requires and at the rules and processes established. If the process had been followed properly they wouldn't be here.

Jocelyn Henry noted that there are new lots going in on Raccoon Hill Road and she noted that there are 11 lots that are similar in size and shape to the Whytes' lot. So if they were to grant this, are they setting an example that it is ok to go ahead and build outside of the boundaries on all of these lots?

Meghan Whyte does not feel that this sets a precedent going forward and asked if there is something the Whytes could do aside from moving the coop, whether it is planting

something there or somehow shielding it from view? Tricia Thompson said that no one has an issue with the visibility of the coop. She asked if they had received a multitude of complaints about the coop. The Board said they had not.

David Kelly said that he sits on a board that has rules to follow. This is an incident where they directly did not follow the rules, and it did not come to them until the Building Inspector got involved when he saw it from the roadway. If any board in town isn't going to adhere to the rules, then throw away the rules. He is not doing this as their neighbor, he is doing this because he is a member of that board. He has no issues with the couple next door. But there are rules. This could have been squared away from the beginning had the proper process been followed.

Meghan Whyte offered an apology explaining that none of this was done maliciously and occurred due to a misunderstanding of the setback rules. Yes, they did break a rule, but they are asking for forgiveness. They are not trying to set a precedent that it is ok to break rules in town.

Jocelyn Henry read a prepared statement: "We do not support this variance. To protect the integrity of our property and maintain space between abutting properties we respectfully request that the ZBA uphold the guidelines and enforce the setback requirement of 35 feet."

Chair Bentley closed public commentary at 7:33 p.m.

Chair Bentley appointed Eric Maxwell as a voting member of the board for this portion of the meeting.

Deliberative session:

The Board reviewed the application again, addressing each of the criteria that must be satisfied in order to grant a variance.

1. **The proposed use would not diminish surrounding property values because...**

Applicant response: "It is well-built, properly installed. Hope to keep the neighborhood looking good."

Chair Bentley said that while it is a well-built structure, it is not properly installed because it is within the setback. Does it diminish surrounding property values?
No.

Eric Maxwell said that he also went to the property to see the issue for himself. He couldn't see it from the other property. It doesn't really seem to be bothering anyone other than it being within the setback.

2. **Granting the variance would not be contrary to the public interest because...**

Applicant response: "Hope that it does not negatively impact anyone. The reason for the covered pen is to keep the animals under control."

Chair Bentley said that in his view, building a structure within the setback without a permit is contrary to the public interest. The zoning ordinances were voted on by the town.

Eric Maxwell sees public interest a little differently, such as what the ramifications would be and the spirit of the rule itself. For example, can emergency services access and make way? The Fire Chief has stated that it wouldn't cause an issue.

Gary Williams said that he feels the public interest lies in adhering to the setback rules.

3. **Denial of the variance would result in unnecessary hardship for the owner because...**

3a. The zoning restriction as applied to the property interferes with the reasonable use of the property, considering the unique setting of the property in its environment such that:

~~Applicant response:~~

~~"zoning restrictions as applied to the property interferes with reasonable use of the property considering the unique setting of the property and its environment."~~

Applicant response:

Unnecessary hardship exists because it is a narrow lot with a drainage ditch. Compliance with setbacks would put it close to the drainage ditch and makes it hard to find another spot.

Tricia Thompson noted that the lot is very narrow. One thing she noticed was that they have planters they have built. They are placed just outside of the setback and are almost on their front doorstep. Outside of the setback, they were almost on their front doorstep. By moving the coop, would it possibly affect snow removal or drainage and runoff on the property?

Eric Maxwell agrees that the lot is narrow. If they move the structure 11 feet, will it have any impact upon the neighbors? Would it have a big impact to the owners? Likely yes. He does acknowledge that he is new to the area and is not yet experienced in New England winters

Chair Bentley doesn't feel it meets the hardship requirement, noting that this structure could have been built somewhere else.

3b. No fair and substantial relationship exists between the general purposes of the zoning ordinance and the specific restriction on the property because...

Applicant Response: “It’s a preexisting structure.”

Chair Bentley said that it shouldn’t be a preexisting structure.

Chair Bentley asked Meghan Whyte when the initial chicken coop was built.

Meghan answered it would have been some time in May of this year.

Tricia Thompson said that if they were to put it on the opposite side of their driveway it would not fit. If they moved it straight up beside the house, they might make it, but it would be very close to where the house is. They could possibly move it more toward the back of the house. There is no room on the left hand side.

3c. **The variance would not injure the public or private rights of others, since...**

Applicant Response: “Barely visible from the road and in the nature of other structures in the area.

Chair Bentley said that this does not address the fact that it is within the setback.

Chair Bentley said that if it is not visible on the property from the road, it doesn’t injure private rights. The injury to public rights is that it is within the setback.

Tricia Thompson said that it does not impede the public using any part of the road.

4. **Granting the variance would do substantial justice because...**

Applicant response: “It will keep the animals safe.”

5. **The use is not contrary to the spirit of the ordinance because...**

Applicant Resposne “It is within the neighborhood setting.”

Chair Bentley feels that it is contrary to the spirit of the ordinance because it is within the setback.

Discussion then took place on the voting process and the recordkeeping required.

Chair Bentley **motioned** that they take a vote on whether or not to grant the application for a variance. Tricia Thompson **seconded** the motion which passed successfully.

Eric Maxwell **motioned** that they approve the zoning variance request submitted by the Whytes. Tricia Thompson **seconded** the motion.

By roll-call vote: Maxwell-approved. Williams-not approved. Thompson-approved. Chair Bentley abstained from the vote. (2-1-1)

Motion passed. Variance is granted.

The Board reviewed and recorded their Official Findings of Fact to support their decision.

Adjournment

Salisbury ZBA Meeting,
8/11/22

Tricia Thompson **motioned** to adjourn the meeting. Dave Kelly **seconded** the motion which passed successfully.

The Board adjourned at 8:22 p.m.

Respectfully Submitted,
Jennifer L. King
Recording Secretary