

Lancaster Zoning Board
Location: Lancaster Town Hall
August 31, 2022

Call To Order: The meeting was called to order at 1830H by Chairman Rick Bernier.

Roll Call:

Regular Members Present: Chairman Rick Bernier, Vice Chair Tricia Frenette, Linda Ogle, Steve Young

Absent: Les Hilton

Alternate Members Present: Donald Freddette, Nathan Kenison, Chris McVetty

Absent: None

Others Attending: Land Use Coordinator, Robin L Irving, Kyle Cholewa (Applicant), Jessica Cholewa (Applicant), William Gay (Abutter), Jeffrey Gilman (Applicant), Jane Gilman, Benjamin Gaetjens-Oleson (Abutter/Town)

Minutes:

Linda Ogle moved to approve the minutes from the July 27, 2022 meeting. Steve Young seconded the motion. All members voted to approve, no objections. *Motion passed.*

Public Hearings:

Steve Young moved to change Alternates Donald Freddette and Nathan Kenison to voting members for the meeting. Tricia Frenette seconded the motion. All members voted to move Freddette and Kenison to voting members for the meeting, no objections. *Motion passed.* During discussion of the case, the Board realized that they had one too many voting members, so Steve Young moved to remove Donald Freddette as a voting member. Linda Ogle seconded the motion. All members voted to remove Donald Freddette as voting member for the meeting, no objections. *Motion passed.*

Linda Ogle announced the following description of the public hearing for Case #540:

<p>Case# 540 – Cholewa, Kyle & Jessica for a Special Exception concerning Article 4, Section 5.02, “Height Regulations and Exceptions-Maximum Structure Height.” Applicant/Owner seeks special exception approval to construct a single-family farmhouse that is 37.5’ high at its peak when 35’ is the maximum allowable height. Land Zoned Agricultural. (Tax Map R18-Lot 027, 5.05 acres, 24 Hodge Road).</p>

Applicant Kyle Cholewa requested a special exception to the height restriction of 35’ and asked for a 2.5’ allowance. Cholewa explained that the proposed house will not be visible from the street. He owns the 47+ acres behind the house and his father-in-law, who transferred the land to them with the intention that their home would be built upon that parcel, owns the abutting 5+ acres just above this lot. The other abutter on the same side of the street have the parcel for sale (Vincent/Ryder estate). The applicants have ordered most of the materials to build the house and

imposing the 35' foot restriction would change the plans/design dramatically. William Gay (father-in-law) stated that he has no objection to the increased height by 2.5' mostly because the house is anticipated to be situated in the middle of the lot and will not have an impact on any neighbors.

Chairman Bernier opened the meeting to the public:

No other abutters were present. There were no comments from the public.

Chairman Bernier closed the meeting to the public:

Chairman Bernier went through criteria for Special Exception for Board deliberation:

1. Would the use be detrimental to the public health of Lancaster residents or the general public? All Board members agreed that the proposed use would NOT. There was no discussion. The Board members agreed that the applicant's answer as written addressed the question: *No. The use of the property is for a single-family dwelling, a use that is widespread throughout the Town. Single-family dwellings contribute to public health because the use is for shelter within the safe, comfortable surroundings of one's land.*
2. Would the use be detrimental to the safety of Lancaster residents or the general public? All Board members agreed that the proposed use would NOT. There was no discussion. The Board members agreed that the applicant's answer as written addressed the question: *No. The location of this proposed dwelling is a couple hundred feet from the road situated on a sparsely populated rural road in the Agricultural District known for farming. Traffic is low volume and the contribution of 2 family vehicles will be negligible. Part of the property use is for homesteading, growing our own vegetables and animals for personal use. Further, with the home being situated quite a distance off the road, the height of the building will have no effect on the abutter's view.*
3. Would the use be detrimental to the character of Lancaster? All Board members agreed that the proposed use would NOT. There was no discussion. The Board members agreed that the applicant's answer as written addressed the question: *No. The proposed use of the property as a single-family dwelling designed to reflect a modern interpretation of a traditional New England farmhouse is consistent with the look of an Agricultural District. The home is situated away from Hodge Road with fields in the rear. The land is intended to be used for farming and other homesteading activities, also in line with the character of the Agricultural District.*
4. Would the use be detrimental to the welfare of Lancaster? All Board members agreed that the proposed use would NOT. There was no discussion. The Board members agreed that the applicant's answer as written addressed the question: *No. The use contributes to healthiness and good welfare of the landowners because they will have a home. In the big picture, a new home on the tax rolls positively impacts the welfare of Lancaster residents as it broadens the tax base.*
5. Is the granting of this Special Exception in harmony with the purpose of the Zoning Ordinance? All Board members agreed that granting the special exception IS in harmony with the purpose of the Zoning Ordinance. There was no discussion. The Board members agreed that the applicant's answer as written addressed the question: *Yes. The use of this property is in harmony with the purpose of the zoning ordinance in that it does not overcrowd land, facilitates and encourages use of agricultural lands and buildings, and maintains the*

quality of life for the landowners, especially since the use would perpetuate the low-density and uncrowded, rural aesthetic unique to not only Lancaster but specific to the Agricultural District.

6. Is the granting of this Special Exception in harmony with the intent of the Zoning Ordinance? All Board members agreed that granting the special exception IS in harmony with the intent of the Zoning Ordinance. There was no discussion. The Board members agreed that the applicant's answer as written addressed the question: *The intent of the height restriction is to control the vertical expansion of buildings that are more characteristic of a high-density, more urban type of dwellings. The restriction also is a way of preserving the aesthetic value of an unobstructed view. By keeping the height restriction at 35 feet, the intent is really to limit buildings to 2 stories so that there are not these towering behemoth buildings smattering the horizon line. This proposed use is a 2-story building and the excess footage of 2'2" does not manifest as having a significant impact on a view especially due to the distance from the road and neighboring buildings not to mention a sizable tree buffer.*
7. Will the character of the area be adversely affected? All Board members agreed that it would NOT. There was no discussion. The Board agreed that the applicant's answer as written addressed the question: *No. The proposed use is a single-family dwelling in a rural setting consistent with the appearance and use of the neighboring homes. Homes along Hodge Road, Garland Road, and the more eastern roads are characteristic of larger lots having homes and barns, typical of an agriculturally centered community. See ordinance below.*

5.04 AGRICULTURAL DISTRICT: The Agricultural District shall be characterized by the lowest intensity of use having primarily such uses as agriculture, forestry and outdoor recreation and single-family dwellings.
8. Will the value of adjacent property be adversely affected? All Board members agreed that it would NOT. Tricia Frenette stated that the significant investment alone would improve property values and not have an adverse effect. The Board members agreed that the applicant's answer as written addressed the question: *No. The use is associated with shelter for raising a healthy family and harvesting from the land, characteristic of an agriculture-based district. There will be no added noise, traffic, dust, fumes or glare as a result of the use of this land as a single-family dwelling and homestead. The land is in current use and will have to be removed from this status upon the building of a home. The added taxable land and building will add to the value of the adjacent properties even with the excess height of 2'2" because views will not be obstructed when the home is situated substantially away from the road and can be seen only in the distance, unlike the monopole that is situated at 33 Hodge Road.*
9. Will the character of the lot be affected? All Board members agreed that the character of the lot will NOT be affected. There was no discussion. The Board members agreed that the applicant's answer addressed the question: *No. The applicant's land comprises of 2 lots of rolling hills of trees with some cleared farmland. The lot that is intended to have the farmhouse is 5.05 acres. Abutters have acreages of 1.70 Ac, 1.95 Ac, 8.52 Ac, and 254.23 Ac. All lots are characterized by having solitary homes with large tracts of land and tree buffers. In this case, the home is actually designed to nestle into the landscape with a walkout basement. This farmhouse will be consistent with the agricultural district character of the lot.*
10. Will hazardous waste be disposed of on the property? All Board members agreed that it will NOT. There was no discussion. The Board members agreed that the applicant's answer as written addressed the question: *No. All hazardous waste, if generated as a result of farming or homesteading, will be disposed of according to regulations. Further, all human hazardous waste will be collected into a state approved septic system.*

11. Will provisions be made for disposition of all waste without jeopardy, financial or otherwise, to the Town of Lancaster? Yes. See #13 Chairman Bernier stated that the answer was addressed in the previous question.
12. Will traffic in the area be adversely affected? All Board members agreed that traffic in the area will NOT be affected. There was no discussion. The Board members agreed that the applicant's answer as written addressed the question: *Traffic volume on Hodge Road is relatively low. The applicants already reside at 35 Hodge and therefore already generate their traffic volume to the area. By moving out of 35 Hodge to their own home next door, the impact on traffic stays the same. Traffic may temporarily during the building of the home, however, most of the contractors are small businesses that do not have a lot of employees, so the anticipated increase in traffic during building will not impact long-term traffic patterns and therefore does not adversely affect traffic.*

Nathan Kenison moved to approved the application for special exception as written with no conditions. Steve Young seconded the motion. All Board members voted to approve the application for Special Exception as written with no conditions, no objections. *Motion passed.* Special Exception is granted. Chairman Bernier reminded everyone that there is a 30-day appeal period. LUC Irving told the applicants that she will process the Land Use Permit and include the approval of the septic design as a condition.

Linda Ogle announced the following description of the public hearing for Case #541:

Case# 541—Gilman, Jeffrey d/b/a Geo. M. Stevens Real Estate, LLC- for an Area Variance concerning Article 5, Section 5.05, “Setbacks and Minimum Lot Size in the Central Business District Middle.” Based on finding of fact that access to parcel Tax Map P06-Lot 042 from parcel Tax map P06-Lot 041 would not change, Lancaster Zoning Board of Adjustment granted Owner/Applicant an Area Variance on December 18, 2019, reducing the allowable setback and minimum lot size in order to obtain a Technical Subdivision/Lot Line Adjustment with abutting Tax Map P06-Lot 041. Said Subdivision brings the property line closer to the building on the subject parcel than the 10’ allowable setback as well as reduces the lot size further below the minimum. Owner/Applicant requests approval of an Area Variance for the same reduction of allowable setback and minimum lot size but with change of access/no access from parcel Tax Map P06-041. Land Zoned Central Business District Middle. (Tax Map P06-Lot 042, 0.28 acres, 149 Main Street).

Applicant Jeff Gilman explained that the church property is next to Geo. M. Stevens and the property was purchased by GMS in 2019. The Zoning Board granted this property a variance in 2019 because there was some discrepancy with the boundary next to the parking lot and the variance allowed smaller setbacks. GMS maintained and controlled the parking lot, so the company was granted a lot line adjustment by the Planning Board so that the office building would own all of the parking lot. Gilman feels that the church is an attractive feature for the downtown and would like to use it; the option is to demolish it for more parking at the GMS offices. GMS applied to DOT for a curb cut in the vicinity of the triangular green space adjacent to the church. NH DOT stated that they would issue a curb cut only for a residential use. Gilman requested that the original variance be granted but now there will be no access to the church lot from the GMS parking lot. If the church property is used as a residential lot, access to the lot

would be via the new curb cut. If the property is used as a commercial lot, access to the lot would be from on-street parking. Chris McVetty asked why the driveway access would have any impact on use? LUC Irving explained that NHDOT issues different types of driveway access, commercial versus residential, based on different criteria and parameters such as width and site distance are evaluated based on the type of use. Chairman Bernier asked if the ZBA needed to know the property's use before they make the decision? LUC Irving clarified that the ZBA's decision had no bearing on the use of the property—the Board is deciding whether the variance that allowed smaller setbacks would be granted if there is no access to the property from the abutting parking lot in contrast to the previous findings wherein the Board granted the variance based on continued access from the parking lot with no mention of ever installing a curb cut.

Chairman Bernier opened the meeting to the public:

Abutter Benjamin Gaetjens-Oleson on behalf of the Town expressed his concerns with the unanticipated curb-cut because it would impact the Town's sidewalk and on-street parking. Gaetjens-Oleson mentioned that he assisted the applicant with the last application for a variance and it was clearly understood that access to the parking lot was going to be through the GMS parking lot, basically creating prescriptive rights to access. He is not comfortable with granting of the 2019 variance if the impression was to later put in a curb cut. He said that the Planning Board should have to re-hear the case regarding the lot line adjustment because not only was a driveway omitted from the plans but it was assumed that there was no need for a curb cut when the Planning Board approved the lot line adjustment.

Jeff Gilman responded that, at the time that GMS submitted the previous application for a variance, need for a curb cut couldn't have been anticipated. GMS has expanded and currently uses the entire parking lot. Also, no one has come forward to move the church or use the church despite efforts to market its use on or off-site. Use of the church as residential units is a way of preserving a Main Street asset, and in his opinion, the only way to secure tenants or buyers of a residential property is to provide a dedicated driveway access to that property.

Donald Freddette said that the aerial shows land that is vacant behind the church and asked if it was suitable for a parking area. Gilman stated that there is about 3 feet of land then the cemetery wall begins. Freddette then asked, if residential, if there was enough room on the other side (where the driveway access is proposed to be) of the church to allow vehicles to drive in, turn around in lot without backing into the state road, and drive out onto the main street. Gilman responded that there is enough room for 2 vehicles to do as Freddette suggested per communications with NHDOT. Nate Kenison asked if the vehicles would be parked facing the cemetery wall and Gilman confirmed this orientation. Freddette asked what impact the curb cut would have on on-street parking. LUC Irving pointed out that the email from NHDOT in the review materials indicates that 4 on-street parking spaces would be eliminated, however, NHDOT also stated that this area is not designated for permitted parking. Gaetjens-Oleson stated that, despite NHDOT's insistence that this area does not allow parking, the area is neither posted nor painted with hatch marks to indicate an area of no parking.

Nate Kenison asked if there were reasons warranting an approval. Gaetjens-Oleson stated that he is not sure if the Planning Board would have disturbed this green space just to create parking

spaces. Freddette wanted the Planning Board to review the case and make recommendations, then the case would come back to the Zoning Board. LUC Irving emphasized that the Zoning Board is considering the very variance that the Planning Board required in order to grant the lot line adjustment. She repeated the Town's concern as to whether the original variance would have been granted if the Zoning Board had known that access to the parcel would be restricted or denied; the variance issue has to be resolved before it goes to the Planning Board.

Tricia Frenette asked if there were other solutions. Gilman stated that he did not think so. Gaetjens-Oleson reminded the Board that there is no overnight on-street parking. Frenette asked what would happen if NHDOT grants the residential driveway permit, then the property is sold and the new owner intends to use the property as a commercial space. Gilman stated that NHDOT is requiring a deed restriction. Gaetjens-Oleson reminded everyone that the Zoning Board deny or restrict a permitted use, but the driveway permitting process can impose restrictions as a condition of the permit.

Kenison asked what the consequences of not approving this variance would be. LUC Irving responded that, if the property were used either as a residence/dwelling or a commercial space, access to the building would be from on-street parking. Gilman stated that not having a parking area for residential use would render the property unusable and unsellable as a residence. Gilman also expressed that the property is really not usable or sellable to a commercial entity due to the requirement for on-street parking, so he would likely demo the building and extend the GMS parking lot. Kenison summarized the issue as a trade-off between losing the green space and 4 spaces of on-street parking to install a curb cut/driveway versus losing a building that is now on the tax rolls and contributing to the tax base.

Chairman Bernier closed the meeting to the public:

Chairman Bernier went through criteria for a Variance for Board deliberation:

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

Linda Ogle felt that the variance would be contrary to the public interest because it eliminates on-street parking where parking is already limited throughout town and it also destroys a desirable green space. Chris McVetty said that the green space is so small that its removal would have no impact. Chairman Bernier was concerned that the town's character would be impacted by the loss of the building/piece of history if the variance was not granted. He emphasized that it would be beneficial to the town if the church building would be occupied as a home after being vacant for three (3) years. Chris McVetty asked if the public really even cares enough about the church to oppose its demolition. The Board continued to discuss what constitutes 'public interest.'

Following further discussion, the Board members agreed that granting the variance WOULD NOT be contrary to the public interest because the risk of losing the building and the taxes therefrom outweighs the impact from the curb cut on sidewalks and on-street parking spaces given that the property is used as a residential lot.

2. The spirit of the ordinance would/would not be observed because:

The Board members agreed that the spirit of the ordinance WOULD be observed because the location of the property is in a zone that permits mixed use and granting the variance would promote the residential use of the property. The Board also said that the findings for Question 1 apply to this question.

3. Granting the variance would/would not do substantial justice because:

The Board members agreed that granting the variance WOULD do substantial justice because it would promote residential use of the church during a time of housing shortage, support continued collection of taxes on the property, and preserve an aesthetically-pleasing old building on Main Street.

4. For the following reasons, the values of the surrounding properties would/would not be diminished:

The Board members agreed that values of the surrounding properties WOULD NOT be diminished because the preservation and residential use of the building will contribute to taxes and add value to the neighborhood as an available dwelling unit. If it is used commercially, the business will add to the tax base. In either case, it will contribute to value of surrounding properties rather than left vacant or torn down.

5. Unnecessary Hardship

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:

- i. There is/is not a 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 Board members agreed that denial of the variance would result in an unnecessary hardship because there IS NOT a fair and substantial relationship between the general public purpose of the ordinance provision and the specific application of that provision to the property because the property would not be accessible.

- ii. The proposed use is/is not a reasonable one because:

The Board members agreed that denial of the variance would result in an unnecessary hardship because the proposed use IS a reasonable one because it is a permissible use within that zone district per the zoning ordinance.

- b. The criteria in subparagraph (A) having 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. The property can/cannot be used in strict conformance with the ordinance because:

The Board members agreed that the property CANNOT be used in strict conformance with the ordinance because the lot size is too small. The variance addresses the compliance relative to setbacks for a subsequent lot line adjustment, however, the parcel remaining post-variance is too small to accommodate access routes other than the proposed curb cut for a residence. While on-street parking is an option for a commercial use of the property, the Board members acknowledged that parking on Main Street is challenging and frustrating.

Tricia Frenette moved to APPROVE the Area Variance (the lot line abutting GMS is closer to the building than the allowable 10') per the Board's findings with the following conditions:

1. The Applicant shall submit to the Lancaster Planning Board a request for review of Planning Board Case #818 with amended facts pertaining to access and shall adhere to any recommendations therefrom;
2. The Applicant shall submit to New Hampshire Department of Transportation District 1 a residential driveway permit application and shall comply with any terms and conditions therein.

Steve Young seconded the motion. All Board members voted to APPROVE WITH CONDITIONS the application for Area Variance as moved above, no objections. *Motion passed.*

Training Topics/Materials: None. LUC Irving will send via email a summary of the new legislative changes that will affect planning and zoning. She urged the Board to review the materials, especially because it clearly states that findings need to be thoroughly documented.

Announcements/Correspondence:

LUC Irving announced the most recently issued land use permits: 1) Anna Marie Harrison at 39 Forbes Street is installing a 14'x80'x9' 2002 single-wide mobile home onto a 15'x80' slab (being constructed by the mobile home park, formerly Cubb) with a 12'x74' stick-built deck on piers as well as a stick-built 8'x12' shed on a block foundation, 2) David Hutchins at 229 North Road is converting the former greenhouse to a stick-built 38'x44' garage on a slab as well as renovating the interior of the main house, 3) Tri County CAP at 56 Prospect Street is jacking up the building and installing pre-cast piers and closing in the crawl space as well as replacing the existing 6'x34' wraparound open porch on piers, 4) Joel Sanford at 224 Portland Street is installing a ground-mounted solar array with 32 panels, 5) James Murphy at 23 Prospect Street (former Sutherland house) is constructing a new 12'x16' stick-built deck on piers with an attached handicap ramp from the deck to the adjacent parking area, 6) Joel Sanford at 224 Portland Street is installing a vinyl liner pool, 7) David Haas at 8 Grove Street is remodeling the bathroom and replacing the existing garage with a 28'x28' garage that will be moved closer to the road and attached to the house via a mudroom, 8) Phillipe Gervais is constructing a stick-built 14'x24'x12' garage on a slab, 9) Travis McNally at 683 Main Street is constructing a detached stick-built 40'x44' garage that will be used for vehicle storage and a workshop (the landowner builds sheds etc. and will conduct this business as a home business), and 10) Daan Vondell has renewed his previous permit for constructing a 16'x24' seasonal dry camp or shelter. There was one sign permit issued to Taproot Marketplace (The Root Seller inhabiting the PJ Noyes commercial space).

Other business:

LUC Irving requested that the Board amend the fee approved for advertising that was voted on at the last meeting on July 27, 2022. At that meeting, the Board voted to impose a \$125 zoning application fee (variance, special exception, and equitable waiver), a \$300 advertising fee, and billing of certified letters at cost. Irving requested that the breakdown spreadsheet shows a year's worth of advertising bills and the shortfalls/credits if the Board were to charge \$50, \$100, or \$125. Based on this breakdown, Irving requested an advertising fee of \$125 instead of the previously approved \$300 because it covers the invoices.

Nathan Kenison moved to change the previously approved advertising fee from \$300.00 to \$125.00 for the application. Tricia Frenette seconded the motion. All Board members voted to approved the advertising fee change from \$300.00 to \$125.00, no objections. *Motion passed.* This fee schedule will go into effect immediately and the applications should be changed to reflect the approved changes and posted.

LUC Irving announced that the InvestNH funding has a municipal grant for hiring consultants to review and make recommendations for the Town's zoning ordinance, site plan regulations, subdivision regulations, Master Plan, and any other provisions that promote housing development like NH RSA 79E tax credit. She requested 1) a vote to support the Town's application for InvestNH Municipal Planning and Zoning Grant(s), and 2) a signed letter of commitment from the Zoning Board indicating that reasonable efforts will be made to implement recommendations and changes if the grant were to be awarded.

The Board members agreed that a review of the Town's regulations related to housing would be beneficial because, due to the shortage of available housing, the Town needs to find ways to promote development. The members also discussed the regulation of short-term rentals and campers. Tricia Frenette was in favor of applying for the grant so long as there was no match contribution from the taxpayers. LUC Irving stated that the application guidance materials only require that the Board(s) commit to best efforts to implement but there is no stated penalty for failure to do so.

Nathan Kenison moved to submit an application for InvestNH Planning and Zoning Grant funds. Linda Ogle seconded the motion. All Board members voted to submit an application for InvestNH Planning and Zoning Grant funds. *Motion passed.*

Steve Young moved to adjourn the meeting at 2007H. Nate Kenison seconded the motion. All Board members agreed to adjourn the meeting at 2007H, no objections. *Motion passed.*

Respectfully submitted,
Robin L. Irving, Land Use Coordinator

Approved:

Richard Bernier, Chairman of the Lancaster Zoning Board of Adjustment