

# TOWN OF GRANBY ZONING BOARD OF APPEALS

## **Meeting Minutes**

November 14, 2023

A regular meeting of the Granby Zoning Board of Appeals was held at the Granby Town Hall, 820 County Route 8, Fulton; and was called to order at 7:12 pm by Acting Chairman Cheryl Anthony.

**AGENDA:** Brownell Public Hearing

Regular Meeting

**MEMBERS:** Tyler Palmitese, Chairman - absent

Peter LeoGrande

Melanie Strong

Mallori Stoia - absent

Cheryl Anthony, Acting Chairman

**ALSO PRESENT:** Collin Gilmore, Cameron Frink, Tom Anthony, and Planning Board Attorney Jamie Lynn Sutphen.

### **PUBLIC HEARING**

#### **Collin Gilmore**

*A Use Variance request for relief of Granby Zoning Ordinance Section III-A: Permitted Uses - Use Chart, to allow the keeping of fowl on residential property in the R-1 Zoning District, on property located at 733 State Rt. 48, Fulton, NY 13069; Tax Map #270.04-03-03.*

Acting Chairman Cheryl Anthony read aloud the legal notice and made a motion to open the Public Hearing at 7:02 pm. The motion was seconded by Member LeoGrande, all were in favor and the motion carried. Collin Gilmore stated that he had purchased the property this past year and built an enclosure to house chickens, which he did not know were unallowed in his zoning district. There are several residences in the neighborhood that have chickens, although not enclosed as his are, so he assumed it was allowed. He had received a notice of violation from the Town Codes Office and was told that he would have to get rid of them. He was also told that he could apply to the ZBA for a Use Variance, as was his right, but that the process was an arduous one with strict criteria for approval.

#### **GML 239 Review:**

Acting Chairman Anthony read aloud the Oswego County 239 Review Determination letter dated 11/9/23, which had been received after a referral submission having been triggered by the property's location on State Rt 48.

Although the County's determination stated that the project presented no significant countywide or intermunicipal impact, they did provide additional comments as follows:

- All four criteria established by NYS Law must be met to grant a use variance. The Department believes that the applicant would not be able to satisfy the requirement that the hardship was not self-created.
- The Department noted that if multiple residents are currently keeping fowl within the R-1 zoning district, it would be problematic to single out only one property that's non-compliant. They suggest that the Town revisit their Code, and perhaps separate out fowl in the Use Chart to a new line that allows it with special conditions.

Attorney Sutphen had additional comments regarding the criteria that the ZBA would judge the merits of the request against. She stated that to allow a use not allowed in the Town's Zoning Ordinance, the applicant would need to demonstrate for all four criteria that restrictions of the Ordinance cause unnecessary hardship for each and every permitted use in the R-1 district. The first criteria to be proven is that a reasonable return cannot be realized and requires submission of competent financial evidence, which Mr. Gilmore does not appear to have submitted. She stated that this is the hardest criteria to prove and generally requires the aid of a lawyer and specific accounting to prove valuations and losses. The ZBA members will need to review each criterion and determine whether they have been met by substantial evidence presented with the application. The remaining criteria are that the property has a unique circumstance for the district, the hardship is not self-created, and that the character of the neighbor would not be altered if granted.

Collin Gilmore clarified his arguments in support of his request to the ZBA as follows:

- ~ He has been on the property for one year and knows of at least four properties in close vicinity that have chickens.
- ~ None of the properties keep their chickens in an enclosure as he does, instead the chickens' free range across various neighboring properties.
- ~ He stated that he didn't know his zoning district, but has since come to know that it is a residential district identified as R-1. He pointed out that Thunder Island is in his back yard and is clearly not a residential entity.
- ~ It appears to him that he was the only property in the neighborhood to receive a violation from the Codes Office, and understands that it was prompted by a complaint.

Acting Chairman Anthony prompted discussion amongst the Board members to review and discuss each criterion as follows:

- 1) Property can not realize a reasonable return – The Members agreed that no evidence was presented to substantiate the value, and that it in fact seems that all of the permitted uses for the district within the Use Chart could be legally applied to the property with total compliance. Member Strong emphasized that the property can currently be used residentially without the chickens.
- 2) The alleged hardship is unique to the property – The Zoning Ordinance does not allow chickens on any property within the R-1 district therefore the hardship is not unique.
- 3) The hardship is not self-created – The members agreed that the action of adding a non-compliant feature without knowledge that it was not allowed, does not change the fact that the hardship was self-created by the property owner.
- 4) Will it alter the essential character of the neighborhood – Members stated that because other properties in the district appear to have chickens, as well as other non-compliant uses (Thunder Island), the applicant's chickens and enclosure will not alter the character of the neighborhood.

Acting Chairman summarized that three of the four criteria were not met. A **motion** was moved by Member LeoGrande to deny the Use Variance request to allow chickens on the basis that three of the four criteria required to grant such variance in accordance with NYS Law were not met by the application. The **motion** was seconded by Acting Chairman Cheryl Anthony, all were in favor and the **motion carried**. A motion to close the public hearing at 7:24 pm was moved by Acting Chairman Cheryl Anthony and seconded by Member LeoGrande, all were in favor and the motion carried.

**Resolution #2023-07**

**BE IT RESOLVED**, by the Zoning Board of Appeals for the Town of Granby, upon the facts presented and the determination made, that the request for a Use Variance to allow chickens on residential property within the R-1 District, on property located at 733 State Rt. 48, Fulton, NY 13069; Tax Map #270.04-03-03, is hereby **DENIED**.

A vote was taken:

Tyler Palmitese, Chairman	Absent
Peter LeoGrande, Member	Aye
Mallori Stoia, Member	Absent
Melanie Strong, Member	Aye
Cheryl Anthony, Member	Aye

**3 AYES 0 NAYES 0 ABSTENTIONS – Application DENIED.**

Attorney Jamie Sutphen explained to the applicant that in accordance with the law a use variance could not be granted, but he could appeal to the Town Board for an amendment to the restrictions that the Zoning Ordinance imposes on keeping chickens in the R-1 District. Perhaps conditions of enclosures, a maximum number of chickens, or a minimum lot size could be established parameters for the allowance in the residential area. She also suggested presenting the 239Review Determination letter from the County that suggests the Town revisits the usage for chickens as support for his appeal for amendment. Acting Chairman Anthony also asked that he complete a Comprehensive Plan Survey which asks what residents want to see in the Town – a document that is currently being revised as to vision and future goals of the Town. She also thanked him for participating in the ZBA process by completing an

application on the Town's new online system (Opengov) and bringing to light to a possible issue needing review and assessment by the Town Board members.

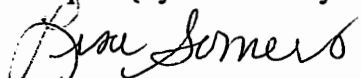
**MINUTES**

A **motion** was moved by Member LeoGrande to approve the meeting minutes for August 29, 2023. The **motion** was seconded by Member Strong; all were in favor without further discussion and the **motion** carried.

**ADJOURN**

A **motion** was moved by Member LeoGrande to adjourn the meeting at 7:31 pm, and seconded by Member Strong, all were in favor and the **motion** carried.

Respectfully submitted by:



Lisa Somers  
ZBA Clerk