

**Ashland Zoning Board of Adjustment**  
**DRAFT Meeting Minutes**  
**Thursday, March 23, 2023**

CALL TO ORDER: Charlie Bozzello, Chair, called the meeting to order at 6:30 PM.

MEMBERS PRESENT: Mardean Badger, Charlie Bozzello, Alan Cilley (alternate)

OTHERS PRESENT: Josh Davis (applicant), Betty Marsh (abutter), Christine Cilley

Charlie Bozzello appointed Alan Cilley to be a voting member of the Zoning Board for this meeting.

DISPOSITION OF MINUTES

The Board reviewed the minutes of the Thursday, February 9, 2023 meeting. Charlie Bozzello inquired that the actual dimensions of the variance were not included in the minutes of the meeting. Mardean Badger assured him that the dimensions of the variance were made part of the Notice of Decision for the variance case. Alan Cilley made a motion to accept the minutes of Thursday, February 9, 2023 as written. Mardean Badger seconded the motion. The motion passed on a 3-0 roll call vote in the affirmative.

Charlie Bozzello inquired if any of the members of the Board had any conflict with the case being presented. There was no conflict. Charlie went on to explain to the applicant that he had a right to have the case heard by the present three member board or wait until a five member board could be convened. Josh Davis, applicant, agreed that the case should be heard by the current three member board. In order for the variance to be granted there needs to be three affirmative votes on all criteria. Josh Davis accepted the hearing of the variance by a three member board.

Mardean Badger made a motion to accept the application as complete. Alan Cilley seconded the motion. The motion passed on a 3-0 roll call vote in the affirmative.

Mardean made a motion to open the Public Hearing The motion was seconded. The motion passed on a 3-0 roll call vote in the affirmative.

PUBLIC HEARING

The Public Hearing opened at 6:35 PM.

Joshua Davis and Madison Davis owners of 30 Washington Street in Ashland, NH (T/M/L 111-040) in the Village Residential Zone are requesting a variance. The applicant is requesting a variance to house and care for 2-3 ducks on his property at 30 Washington Street. The 3.6a Zoning Ordinance specifies that in order to house any **farm** animals on the property the property needs to measure at least 2 acres. The Washington Street property under discussion does not meet the 2 acre minimum regulation.

Josh Davis, the applicant, presented his proposal to the Board. He made the following points:

- The goal is to purchase a couple of ducks
- The property at 30 Washington Street is secluded; the ducks would not be a nuisance
- The ducks would be housed inside a fence with a mesh on top of the fencing. There would be a second high fence erected to protect the ducks from natural predators and other wild animals in the area
- In addition a duck house will be erected and elevated against predators. The ducks would

occupy the house at night

- There would be a 6' x 3' wide fenced in run for the ducks
- The ducks wings would be clipped to discourage any flight
- The applicant explained that the children are homeschooled; his wife is an at home homemaker and grew up in the Midwest amid animals of all sorts. She is experienced in the care of all manner of animals. The applicant wants to introduce his children to animals and educate them on the discipline and responsibility of caring for animals. Duck eggs would be a benefit of the project.
- The applicant is proposing a deep litter method to deal with duck compost material. The fenced in area will be covered with straw and raked daily; this will be done for 6 months at which time the area will be cleared of deep litter and redone with straw.
- The applicant will purchase 2-3 ducks to start; the house purchased for the ducks can accommodate up to 12 ducks; the applicant proposes 10 ducks maximum but thought that 10 ducks could be too many
- Ducks would be friendly with kids; are less disease prone than chickens
- The applicant would observe all best management practices for poultry; the litter mix would be spread in the applicant's flower garden.

The applicant was asked to address the five-point criteria on which the variance would be based. The applicant made the following points:

- The applicant understands that his property does not have a protected area, however the neighbors would not be overwhelmed by the project.
- The proposed project would not be a nuisance; the property is nestled next to town property, a hill and the abutting Betty Marsh property; the backyard, an 80' x 50' or 4,000 square foot backyard would be fenced; there would be three entrances to the fenced in area: one at the front between the house and garage, and one each at the back corners of the enclosure.
- The ducks would stay on the property and inside either fencing or in their elevated house; the ducks would not infringe on the neighbors and not make excessive noise; any potential predator would be heard by our dogs and dealt with by the applicant.
- There would be no injustice done because there would not be much going on within the property; the property is tucked in the neighborhood; the feed for the ducks would be stored in our residence at all times.
- The value of the properties in the neighborhood would not be diminished; our neighbors would not know we owned ducks; the project will not impact housing costs.
- There is no hardship if we do not have ducks. Our children would be missing out on a learning opportunity as well as not being able to create a relationship with animals or learn the discipline and responsibility of caring for the ducks; there would be a financial hardship in that we would not have the benefit of the egg production.

Mardean Badger expressed the following concerns about the proposal as follows:

- I am pleased that the applicant is looking at implementing best management practices. Ducks are a unique animal with specific needs; how will the applicant handle the need for water? The applicant replied that a kiddie pool would be installed to start and graduate to a trough as the ducks grow; de-icer would be needed in the winter months.
- I am concerned about how composting will be dealt with. The applicant will remove the deep litter mix every six months and spread it in our flower garden and along the back fence line. My wife will oversee the project being a full-time at home homemaker. The applicant will also participate in the overseeing of the project.
- How will the applicant deal with prevention of predators on the property? The applicant will have dogs, will install a motion detector floodlight as well as install an electric wire in the

enclosure; the house will be built off the ground; the fencing will be installed one foot below ground to discourage predators digging under the fence.

Charlie Bozzello expressed the following concerns about the project as follows:

- The purchase of 10 ducks seems very close to having a farm situation; starting with 2-3 ducks would be preferable; the childrens' involvement in the project is positive; the noise level of ducks is quieter than those of roosters

Mardean Badger had the following concerns:

- The purchase of 10 ducks is too much
- The Zoning Ordinance specifies that the property needs to be 2 acres minimum. The Washington Street property is only a 1/3 of an acre.

Charlie advised that with this particular project the abutters need to be able to handle it.

Alan advised that the proposed project could bring numerous noise complaints.

Mardean Badger made a motion to close the Public Hearing. The motion was seconded. The Public Hearing closed at 7:05 PM.

The Board discussed the proposed project.

Charlie advised that the proposal has a reason for the project. The project is a family-oriented activity which is worth some consideration. 10 ducks would create a nuisance. A maximum of 4 ducks would work for a 1/3 acre lot.

Mardean Badger could see 4 ducks on the property that size.

Alan Cilley doesn't like putting a number limit on the project. 10 ducks would make the house crowded. Alan would suggest a maximum of 6 ducks for the project.

Mardean expressed the following concerns:

- The Washington Street neighborhood is a neighborhood of small lots throughout. This is the reason for the Village Residential Zone.
- The Zoning Ordinance has asked for a minimum of 2 acres in order to allow farm animals on the property.
- Lots in the neighborhood measure .6 acres (Methodist Church lot), .4 acres, .6 acres. The Davis property on Washington Street measures .6 acres.
- The Village Residential Zone definition is that it is a zone of smaller lots and denser coverage. This project has an impact on the neighborhood.
- Ducks attract predators. There is concern about more predators traveling in the neighborhood

Charlie Bozzello had concerns about the proposal:

- The requested variance flies in the face of the ordinance

Mardean expressed the following concern:

- This is a unique lot; it is not dense and does not have any hedges to muffle any noise from the ducks
- This lot has no unique characteristics and no different from other lots in the neighborhood and does not create a hardship.

Charlie Bozzello expressed the following concerns:

- The Zoning Ordinance does not allow for rabbits or chickens and bars pets. It is specific for

non-commercial projects.

Alan Cilley expressed the following concerns:

- This Zoning Ordinance was written in 1985. The wording was changed in 1998 and 2000. The documentation did not indicate the changes; but everything seems to be excluded; there are no **farm** animals allowed in the neighborhood as far as we know.

Charlie commented:

- If we risk granting this variance we are making an exception for pets in this neighborhood. The Board may be opening the door for **farm** animals in this neighborhood. Families would have pets limited to dogs and cats.

Alan Cilley commented:

- The Board is telling the applicant the number of dogs he can have. Alan inquired of the applicant the number of ducks needed for eggs to make the egg production worthwhile. The Board needs a reasonable guideline. The Zoning Ordinance leaves no compromise. The Board by passing the variance would create a precedent.

Charlie continues to have concerns about predators. Alan Cilley indicated that although the ducks are protected predators will find a way to get in the enclosure.

Charlie Bozzello asked if the Board was going to allow a variance for a specific ordinance that says no to this project.

Mardean raised a concern about creating a precedent if the Board grants the variance.

Charlie inquired if the Board was going to create a variance precedent.

Mardean agrees the impact on abutters is only part of the decision making process. The applicant needs to install protection at all levels of the project.

Charlie commented that if the Board grants the variance the variance will need restrictions as part of the variance. Mardean advised that the restrictions could be handled as conditions imposed as part of the granting of the variance.

Alan Cilley remains concerned about noise from the ducks. The noise ordinance may need to be addressed as part of the proposed project.

The Board discussed the criteria.

1. The variance will not be contrary to the public interest.

Mardean: the variance is not contrary to the public interest

Charlie: This project offering control, a family-oriented endeavor

Mardean: The Board should set aside the family-oriented endeavor; it is not important. The family-oriented endeavor is not part of the criteria we are discussing.

Charlie advises that the Zoning Ordinance has a strict interpretation of the size of the lot and what is not allowed.

Mardean has concerns and issues with Criteria 1, 2 and 5. Village Residential Zone has density and small lot sizes throughout the zone; the Village Residential Zone is intended for residential not agricultural use.

Charlie advises that a line needs to be drawn between agriculture and pets.

Alan Cilley pointed out that by granting this variance the Board is technically rewriting the Zoning Ordinance. The Board is not authorized to do this.

Charlie Bozzello made a motion to move to the vote on the variance. Mardean seconded the motion.

The motion passed on a 3-0 roll call vote in the affirmative.

**CRITERIA**

Criteria 1: **The variance will not be contrary to the public interest.**

Badger: No                      Bozzello: No                      Cilley: No

Badger: The nature of the zoning area impacts this activity. This activity has impact on the neighborhood; the noise of the ducks, predators drawn to the area; disposal of waste impact the neighborhood.

Bozzello: The applicant can't guarantee that this project is not contrary to the public interest with substantial impact on the public interest.

Cilley: There is no room to go outside of the variance.

Criteria 2: **The spirit of the ordinance is observed.**

Badger: No                      Bozzello: No                      Cilley: Yes

Badger: The zoning in this area are for small lots, denser lots; it is not designed for agricultural activities; there is a difference in the size of the individual lots. The Zoning Ordinance specifies a minimum of 2 acres.

Bozzello: There is no intrusion of farm-like animals.

Cilley: The variance is not way out of line.

Criteria 3: **Substantial justice is done.**

Badger: Yes                      Bozzello: Yes                      Cilley: Yes

Bozzello: The element of justice for variance is educational

Criteria 4: **The values of the surrounding properties are not diminished.**

Badger: Yes                      Bozzello: Yes                      Cilley: Yes

Badger: I don't know of any impact on surrounding properties.

Bozzello: I can't calculate the value of the surrounding properties.

Cilley: For the reasons already stated.

Criteria 5: **Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.**

Badger: No                      Bozzello: No                      Cilley: Yes

Badger: There is nothing unique to suggest hardship

Bozzello: No

Cilley: Yes. I don't think this is unreasonable for the applicant's reasons for wanting to do this.

The vote on the variance:

Mardean Badger: To deny variance. Yes  
Charlie Bozzello: To deny variance: Yes  
Alan Cilley: To deny variance. No

Mardean Badger made a motion to deny the variance for reasons given in criteria 1, 2 and 5. Charlie Bozzello seconded the motion. The motion passed. The variance was denied.

### **Appeal Procedure**

The Notice of Decision will be sent to the applicant. The applicant can request a rehearing within 30 days of the meeting. The ZBA will decide whether to rehear the appeal and if there are new grounds for a rehearing.

Mardean made the motion to deny the variance

### **ADJOURNMENT**

Charlie Bozzello made a motion to adjourn. The motion was seconded. The motion passed on a 3-0 roll call vote. The meeting adjourned at 7:50 PM. The next meeting of the Ashland Zoning Board of Adjustment will be Thursday, May 11, 2023 at 6 Collins Street.

*Minutes submitted by Paula Hancock*

**Zoning Board of Adjustment  
Town of Ashland  
PO Box 517  
Ashland, NH 03217**

**Notice of Decision  
Case No. 2023-01**

At its duly notified meeting on Thursday, March 23, 2023, the Ashland Zoning Board of Adjustment voted 2-1 to Deny the Variance for Joshua Davis and Madison Davis owners of 30 Washington Street in Ashland, NH (T/M/L 111-040) in the Village Residential Zone to house and care for up to 10 ducks on the property. Section 3.6a of the Zoning Ordinance specifies that in order to house any farm animals, the property needs to measure at least 2 acres. The Applicants' property does not meet the 2-acre minimum regulation. Findings of Fact: That the applicant has met criteria 3 and 4; the applicant failed to satisfy the Board that it will not be contrary to the public interest, that the spirit of the ordinance is observed, or that the hardship criterion was met due to special conditions of the property were not established.

1. The variance will not be contrary to public interest:

Village Residential Zone has density and small lot sizes throughout the zone; the Village Residential Zone is intended for residential not agricultural use. The nature of the zoning area impacts this activity; the noise of the ducks, predators drawn to the area; disposal of waste impact the neighborhood.

2. The spirit of the ordinance is observed:

Zoning Ordinance has a strict interpretation of the size of the lot and what is not allowed. The zoning in this area is for small lots, denser lots; it is not designed for agricultural activities; there is a difference in the size of the individual lots. The Zoning Ordinance specifies a minimum of 2 acres.

3. Substantial justice is done:

The benefit to the applicant that it is educational does not outweigh the public interest. All agreed.

4. The values of the surrounding properties are not diminished:

No reasonable testimony given that this project will have negative impact to the neighborhood's home values.

5. Literal enforcement of the provisions of the ordinance would result in unnecessary hardship:

“A. Owing to the special conditions of the property that distinguish it from other properties in the area, no fair or substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; B. and the proposed use is a reasonable one.”

Findings of fact that the Board heard no special conditions of the property presented as a need for a variance to be granted. Testimony was that it would be a loss of educational opportunity for Applicant's children and eggs produced.

Charles Bozzello

Chair, Zoning Board of Adjustment

March 24, 2023

Note: Any person affected has a right to appeal this decision. If you wish to appeal, you must act within thirty days of the date of the decision, the day following the decision being day one. The necessary first step, before any appeal may be taken to the courts, is to apply to the Board of Adjustment for a rehearing. The motion for rehearing must set forth all the grounds on which you will base your appeal. See New Hampshire Revised Statutes Annotated, Chapter 677 for details.