



ZONING BOARD of ADJUSTMENT
Town of Hollis
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Minutes of November 16, 2023

The Zoning Board of Adjustment meeting was held in the Community Room, Hollis Town Hall, and was called to order by Chairman Brian Major at 7:03 pm.

MEMBERS OF ZONING BOARD OF ADJUSTMENT PRESENT: Brian Major, Chairman; Jim Belanger, Vice Chairman; Regular Members – Cindy Robbins-Tsao, Drew Mason; Alternate Members – Kat McGhee, Bill Moseley, Meredith West.

MEMBERS ABSENT: Regular Member – Rick MacMillan, and Alternate Member – Stan Swerchesky.

STAFF PRESENT: Kevin Anderson, Town Planner & Environmental Coordinator; Donna Setaro, Building and Land Use Coordinator.

J. Belanger led the Pledge of Allegiance.

B. Major explained the policies and procedures.

B. Major stated that the voting members at this meeting will be J. Belanger, C. Robbins-Tsao, D. Mason, K. McGhee, and Bill Moseley.

ZBA2023-008

Withdrawn by the applicant on 11-04-2023

The application of Vivian Girard, property owner, for clarification or removal of condition 1. “No amplified sound equipment shall be used during outside events” imposed on a variance granted by the ZBA for a non-permitted use, case ZBA2021-012., located at 162+162A Broad St., (Map 003, Lot 019) in the Residential/Agricultural Zone.

The ZBA received notification from the Applicant via email.

Determination of Regional Impact

By unanimous vote, the Zoning Board of Adjustment (ZBA) found no regional impact for case ZBA2023-007.

ZBA2023-007

The application of Thomas Lynch, property owner, for a Special Exception to Section XII; paragraph C, Non-conforming structure, of the Zoning Ordinance, to construct a 22’ x 31’ addition 66 feet from the front setback (required 100 feet) located at 27 Worcester Rd., (Map 003, Lot 019) in the Residential/Agricultural Zone.

Applicant: Thomas Lynch. Stated that he and his wife have lived at 27 Worcester Road for 27 years. They want to build an addition. Their original plan was to build off the front of the house, with a gable; he started filling out the building permit, and realized that it’s a 100 foot setback. He checked the plans, and realized that the house is

at a 65-foot setback from Worcester Road. The best that they know, the house was built in 1956. They therefore changed their plans. Their new plan is to tear down the existing 12' x 21' addition, as that room has some problems that he would like to address. They would then rebuild, making that room ten feet wider to the side, and stay within the existing 65' setback of the house. The addition would have a 66' setback. They would carry the roofline from the front of the house, and make that a porch. The new living space would be 22' x 31', ten feet wider than it is now. T. Lynch stated that aesthetically, the new addition would look a lot better. The current addition looks like a bolt-on; it's too small, has different siding than the house and different windows than the house. With the new addition they would match the siding and windows of the house. There are structural issues with the existing addition – it was built on a slab that sits above the house foundation, and about two inches off of it, leading to rotting that is pinned in by the slab and difficult to fix. The proposed addition would have a full foundation so that all of those issues may be addressed.

D. Mason asked about the side setback for the existing structure, to which T. Lynch replied that it is 45'. The new one would be about 36-37'. T. Lynch stated that the setback is at an angle from the house right now, so in moving ten feet in line with the house the setback difference would be not quite ten feet. D. Mason pointed out that the side setback requirement is 35', and this would be within that.

K. McGhee asked to clarify that the 1956 house, at a 65' setback, conformed to the requirements at the time; T. Lynch replied that he assumes so. The proposed new addition doesn't make it any worse, and does not infringe on the side setback.

M. West pointed out that in going to a 66' setback with the new addition, it would be an improvement on the existing nonconformity.

K. Anderson asked about the sketch submitted with the application; T. Lynch stated that it is the original plot plan that came with the mortgage, and he added on to it. K. Anderson asked how the Applicant measured the distance from the side yard setback to the house, to which T. Lynch replied that he used a wheel from the stone wall depicted on the plan. That is the same way that he measured the front setback, as well. K. Anderson stated that he asked because he has a recorded plan from the abutting property that depicts the Applicant's house, and it shows different measurements. Obviously, that plan wasn't intended to depict the Applicant's property, so it's not necessarily a correct survey – but it suggests that the new addition would have a 25' side setback rather than the 37' the Applicant shows. K. Anderson stated that typically the Building Department requests that the distances be staked out and verified prior to the start of construction. B. Major asked the Applicant if that would be a reasonable condition to put on the application, to which T. Lynch agreed. If the inspection showed that the proposed new structure would violate the required side yard setback, the Applicant would have to come back before the ZBA for a variance. As long as the measurements for the side yard setback come to 35' or greater, the Applicant would be in compliance and not have to come back before the Board.

No further questions from the Board and none from the floor. The hearing portion of the case was closed.

DELIBERATIONS AND DECISION

ZBA2023-007

The application of Thomas Lynch, property owner, for a Special Exception to Section XII; paragraph C, Non-conforming structure, of the Zoning Ordinance, to construct a 22' x 31' addition 66 feet from the front setback (required 100 feet) located at 27 Worcester Rd., (Map 003, Lot 019) in the Residential/Agricultural Zone.

B. Moseley stated that, short of resolving the question of the side yard setback, he does not have an issue with this application.

D. Mason stated that the application clearly falls within the approved situations for a special exception on a non-

conforming lot.

K. McGhee concurred, and stated that she is in favor of the special exception and the recommendation to have the Planning Department verify the side yard setback.

The Board in general did not have any issues with the application.

B. Moseley moved for the following condition;

- 1. The approval is contingent upon a determination by the Town Planner that the side set-back will not be violated.*

Seconded by D. Mason.

Motion unanimously approved.

Questions/Special Exception

Question #1 Is the Exception specified in the Ordinance?

Question #2 Are the specified conditions under which the Exception may be granted present?

Question #3 Should the Exception be granted with the specified conditions and restrictions?

Board Member	Question #1	Question #2	Question #3	Total-Yes	Total-No
J. Belanger	Yes	Yes	Yes	3	0
Cindy Robbins-Tsao	Yes	Yes	Yes	3	0
D. Mason	Yes	Yes	Yes	3	0
K. McGhee	Yes	Yes	Yes	3	0
B. Moseley	Yes	Yes	Yes	3	0

THEREFORE, THE SPECIAL EXCEPTION WAS GRANTED WITH THE FOLLOWING CONDITION;

- 1. The approval is contingent upon a determination by the Town Planner that the side set-back will not be violated.**

Other Business

Potential Zoning Ordinance Changes

B. Moseley stated that because of his position on the Planning Board, he is recusing himself from this discussion.

1. ADUs.

D. Setaro drafted the verbiage to be sent to the Planning Board:

SECTION IX: GENERAL PROVISIONS, K: ACCESSORY DWELLING UNITS

1. PURPOSE: For the purpose of providing expanded housing opportunities and flexibility in household arrangements, accessory dwelling units (in-law apartments) shall be permitted ~~by special exception granted by the Board of Adjustment~~ in any district in conformance with these regulations as a matter of right per RSA 674:72.1, unless deemed necessary by the building official to be reviewed by the Zoning Board of Adjustment.

M. West stated that she completely agrees that it makes sense to put this language in place.

D. Setaro stated that the Building Department specifically requested the language in blue to be added back in.

B. Major pointed out that an issue could be that if the Building Department approves an ADU, there wouldn't be any notice to abutters. M. West responded, however, that anything that is a matter of right would not include such notice.

It was clarified that, per statute, a town "must" allow ADUs, but can set limitations.

K. Anderson stated that the Planning Department usually has associated conditional uses, so they are granted either by right, by conditional use permit, or by special exception.

B. Major stated that he is in favor of the language – the Town could adopt an ordinance change allowing ADUs as a matter of right, in which case if the Building official gave a permit for an ADU, an interested party could say that it doesn't meet the requirements of the ordinance. And if the Building official said no to the ADU, the applicant could appeal to the ZBA regarding the administrative decision. It gives the Building official the ability to send an application to the ZBA. The burden is still on the landowner to establish a right to the ADU.

K. McGhee pointed out that the language is already saying that there is a right to an ADU.

M. West stated that her feeling is that the vast majority of these applications are completely within the regulations. Coming before the ZBA is an additional hurdle for a property owner. How much oversight do we need if the vast majority of applications are in compliance? She trusts the Planning Department and the Building Department to get it right.

J. Belanger stated that if you want to do something in Town that complies with the ordinance, and meets every stipulation, there is no reason to notify everyone else. They know that it can be done.

M. West stated that if someone complains about an ADU that is completely within the ordinance, the only thing they can do is file a spite appeal – and if one spite appeal happens, it's one too many.

K. McGhee stated that in general, if anything seemed out of order with an application, the Planning Department would refer it to the ZBA. We would still have a functional process that additionally meets the criterion of preventing an undue burden.

M. West stated that there is a benefit of being able to legitimately say that the Town of Hollis recognizes the need for diversity of housing, so we have made this change. That is not nothing, and it reads really well in front of judges and State agencies. We removed a hurdle, and this will provide housing for our elderly, for our kids who want to remain in Town, and it will help with affordability. It also doesn't add to density. That is a strong position to take for very small risk.

J. Belanger stated that he has no issue with sending this proposed zoning ordinance change to the Planning Board.

K. Anderson commented that these are all valid points with which he agrees, though he has two points of concern. One is that the burden of making the decision would now be put on the Building official, who already makes difficult decisions on a daily basis. Secondly, there is an interpretable part to the Town's ADU ordinance in regard to the internal heated wall. If it was black and white, and measurable, like a setback, it would be very clear – but in this case, it is not. There is an interpretation that an individual has to make. There is a gray area.

M. West agreed, adding that she trusts the Building Inspector. If the Building Inspector thinks that there is an inconsistency, or has a question, they can send an application to the ZBA.

K. Anderson pointed out that interpretations might differ even from Building Inspector to Building Inspector; enforcement could vary depending on who reviews an application.

M. West stated that the Building Inspectors are the zoning enforcement officers in her opinion; they have the final word.

J. Belanger stated that the intent of the heated wall is that the heated living space in the main dwelling and the heated living space in the ADU have to have a wall between them – both sides have to be heated, and it can't be a stairway. This is so that you can put a door in the heated wall and access the ADU as part of the main dwelling when converting the ADU back into part of the original home.

B. Major stated that he suspects the Board doesn't get a lot of bad ADU applications because they are screened out initially – people are told that there is a problem with the application, and it is suggested to them that they rethink it. What the ZBA reviews has already been vetted.

J. Belanger and M. West concurred.

D. Setaro concurred with K. Anderson that the wording surrounding the heated wall issue is gray; the Board could consider changing that verbiage to remove any confusion.

B. Major stated that he thinks the ZBA has been able to deal with these issues, and that the Building Department will probably deal with them the same way, with a common sense approach. If there is a gray area, there is no harm in forwarding an application to the Board.

B. Major asked if this proposed zoning ordinance would be workable, and K. Anderson responded that he believes they are staffed appropriately to vet these situations. There is plenty of experience within the Building Department. He did want to point out that it may now be one person's judgment call, whereas the ZBA makes determinations as a Board.

D. Mason asked if we're aware of any municipalities in New Hampshire that allow ADUs as a matter of right, that might also have a zoning ordinance that is relevant. Such cases might help the Planning Board get behind this proposed amendment. J. Belanger suggested that Manchester might. There are a great deal of ADUs in Manchester.

The Board in general agreed to send the proposed zoning ordinance change to the Planning Board.

2. Special Exception vs. Variance for Setback Requirements.

J. Belanger stated that he'd propose adding one sentence to the existing ordinance, amending the language of Section XII.B.4, regarding special exceptions for non-conforming lots, by referring to language in Section XI.C.3(c), regarding pre-existing lots in terms of wetland regulations.

B. Major pointed out that right now, owners of pre-existing non-conforming lots who want to build an addition that would maintain their current setback need to apply for a special exception; if they want to go further into the setback, they need to apply for a variance. He had thought that the intent of this proposed zoning ordinance change was to make it easier for owners of undersized lots to get a special exception.

J. Belanger asked why, if it's already in the ordinance as a special exception, the Board is hearing such cases in terms of a variance. He stated that another issue is that Section XII.B.4 makes reference to the Historic District. In these cases we're not talking about the Historic District – we're talking about any pre-existing non-conforming lot, for any reason, in terms of setbacks. He does not see that there is any section of the ordinance which addresses that.

K. McGhee suggested that perhaps reference to the Historic District should be removed.

B. Major stated that it's actually easier to get relief from the ordinance in the Historic District than it is in any other district in Town because there is a recognition that historic properties were built closer together and closer to the road. It's a different situation.

D. Mason pointed out that in cases where the owner of a pre-existing non-conforming lot wants to build a garage, it can be difficult to define a hardship in order to grant a variance. What he thinks we're grasping for, in terms of this proposed zoning ordinance change, is a way to turn those applications into special exceptions. There is unlikely to be a substantial hardship in such cases, but there is nothing else that the owners can do in order to build a garage.

B. Major stated that, however, we have to have a standard. As previously discussed, we could apply the setback requirements of a HOSPD to pre-existing undersized lots. The problem with that is that it wouldn't be fair, as not all the non-conforming lots in Town are contiguous.

J. Belanger suggested simply removing language referring specifically to the Historic District from Section XII.B.4. It would still include the Historic District if the specific mention is taken out, and would then cover any non-conforming lot.

D. Mason suggested, alternatively, adding a number 5 that would state something along the lines of 'The ZBA may grant a special exception to setback requirements for non-conforming lots of less than two acres for lots that pre-existed the zoning ordinance of 1967', and then add conditions.

K. McGhee stated that we would still be putting ourselves in a bit of a box if we did that.

M. West suggested deleting the reference to the Historic District, and adding reference to all zoning districts that permit single-family dwellings.

B. Major stated that the problem with that is that it doesn't get beyond the need for a variance.

K. Anderson pointed out that the core of the ZBA is to review those situations on a case-by-case basis, as every lot is completely different.

M. West pointed out that the issue is that we do gymnastics in some cases to try to find a hardship.

B. Major pointed to the hypothetical situation of someone with a ¼ acre lot who wants to build a 4000 square foot addition for space for their family – as sympathetic as they might be, his guess is that the Board would have some difficulty with the application. If it's going to take up the whole lot, it's probably not something that would be allowed. He agreed that we sometimes do gymnastics over hardship, but it's not as bad as it

was.

M. West stated that the nice thing about special exceptions is that it seems like they'd be pretty straightforward, but there is the perimeter vs. volume determination. We can say that a proposed volume is not acceptable. There is more wiggle room under special exceptions than we sometimes take.

J. Belanger and K. McGhee agreed with the idea of taking out reference to the Historic District in Section XII.B.4, as the Historic District would still be covered. We don't even have to add reference to all or other districts; it becomes inclusive. M. West concurred.

B. Major wondered how Town voters would react to seeing language being stricken from the ordinance, however. M. West responded that it would be cleaning up the by-law, as it is redundant. K. McGhee pointed out that there are explanations given to the voters along with the proposed amendments.

B. Major asked if this would accomplish what we want to do. D. Mason stated that it means that we can translate such applications to special exceptions if strict adherence to existing setbacks would cause inconsistency in the massing of buildings, or would be inconsistent with the setbacks of existing adjacent buildings, or if the structure as designed takes into consideration architectural and spatial elements of adjacent buildings.

B. Major stated that that is what we do, anyway. K. McGhee concurred – that is the point of the Board.

D. Mason stated that if an applicant didn't qualify under those conditions, they could still apply for a variance.

K. Anderson pointed out that section B refers to non-conforming lots, whereas section C refers to non-conforming structures. They are two separate things.

B. Major stated that he believes the problem we're trying to address is non-conforming lots. His understanding is that this proposed change would not apply to lots that are in conformity – applications on such lots would still be a variance. We're not trying to rectify the problem of a house that was built in the 1940s, too close to the lot line.

B. Major asked how fair it would be to have a house on a ¼ acre lot with the structure 15 feet from the side yard setback, and the owner wants to make some improvements and go a little bit closer under a special exception – vs. an owner who has a two acre, conforming lot under the ordinance, with a home that for some reason was constructed 30 feet from the side yard setback, and who wants to go a little bit closer, but has to apply for a variance. M. West said that at some point we have to draw the line somewhere. B. Major asked if that is our intent, though.

K. McGhee stated that we see the issue arising more with non-conforming lots. Based on the language of the ordinance, it becomes more of a call as to whether an applicant's proposal is a reasonable thing to do.

B. Major asked J. Belanger if he felt that removing the reference to the Historic District would fix the issue that we're trying to solve. J. Belanger stated that yes, he does. M. West agreed.

B. Major pointed out that people with a two acre lot have more options. M. West agreed, and stated that if they have a situation where, for example, they're pushed up against ledge or cliff, that is a definable hardship.

D. Mason stated that while two acres is something of an arbitrary distinction, the voters have clearly made a choice between what is a conforming lot and what isn't – and the rules are, by design, different.

B. Major asked Staff if this solution is workable. K. Anderson replied that there are multiple parts to this, which were grouped into separate sections of the ordinance. He can appreciate the removal of reference to the Historic District, which doesn't lessen any review by this Board – the issue is just making sure that all the other language in the ordinance works with that. D. Setaro had pointed out to him that the ordinance on non-conforming lots, section 1 states “Provided, however, that any alteration, expansion, new construction or change that can be accomplished in a manner that will comply with the applicable setbacks for that district” – is that conflicting with what we're trying to do?

M. West suggested that the Board take time to read through the relevant sections of the ordinance, and continue discussion to the next meeting.

B. Major stated that his one concern is about the fairness between non-conforming and conforming lots.

B. Major moved to continue the discussion on the potential zoning ordinance change to the December 28, 2023 meeting.

Seconded by J. Belanger.

Motion unanimously approved.

3. Political signs.

B. Major moved to table the discussion on political signs to the December 28, 2023 meeting.

Seconded by J. Belanger.

Motion unanimously approved.

Review of Minutes

D. Mason moved to approve the minutes of October 26, 2023.

Seconded K. McGhee.

Motion unanimously approved with Cindy Robbins-Tsao abstaining.

Meeting Adjourned

The ZBA meeting adjourned at 8:30 pm.

Respectfully submitted by:

Donna Lee Setaro, Building and Land Use Coordinator,
and Aurelia Perry, Recording Secretary.