



ZONING BOARD of ADJUSTMENT

Town of Hollis

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Minutes of January 23, 2020

The ZBA Meeting was held in the Community Room, Hollis Town Hall, and was called to order by Chairman Brian Major at 7:05 pm.

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

Major explained the policies and procedures.

Major said the voting members for this evening cases were as follows:

Case ZBA 2020-001: Major, Belanger, Tsao, Durham and Mason.

Case ZBA 2020-002: Belanger, Tsao, Durham, McGhee and Moseley.

Belanger lead the Pledge of Allegiance.

Moseley recused himself from Case ZBA 2020-001.

Case ZBA 2020-001

The application of Joseph Garruba, for an Appeal from an Administrative Decision, for the interpretations of the zoning ordinance made by the Planning Board on November 5, 2019 (work force housing project) Section XI, paragraph C. Wetland Conservation Overlay Zone (WCO), subparagraphs (2a-2c), and Section VIII, Definitions, Wetlands and Net Tract Area, located at 1A + 1B Old Runnells Bridge Road, property owned by Raisanen Leasing Corp., Map 010, Lot 031.

Joseph Garruba approached the ZBA.

Prior to Garruba's presentation, Mark Fougere addressed the ZBA with a procedural question asking whether a presentation should be allowed as there is no statutory right for the application to be appealed to the ZBA as discussed in his memo to the ZBA regarding this appeal ("Fougere Memo").

Major replied the best way to handle the application is to allow the applicant to address the points brought forth in the Fougere Memo concerning jurisdictional issues, and whether the ZBA has the right to hear the appeal. The presentation should be limited to why the applicant thinks the Planning Board made an error. Belanger said the applicant should only be allowed to present his reasoning on why the ZBA should hear the case, not the details of the entire Planning Board (PB) case. Tsao agreed.

Major allowed the applicant to present his case only on the issues of jurisdiction and why the applicant thinks the case should be heard by the ZBA.

Garruba expressed his appreciation for being allowed to present his reasoning on why he has standing to appeal. Garruba stated that he is appealing regarding the PB's interpretation of 6 wetlands-related definitions in the Hollis zoning ordinance contained in the PB's decision to approve the Bella Meadows development for 32 workforce housing units dated November 5, 2019.

Garruba said he has several concerns with the arguments in the Fougere Memo. His first concern is Fougere's argument that the PB does not make interpretations of the zoning ordinance. The Fougere Memo stated "*the Planning Board did not and does not make any 'construction, interpretation or application of the zoning ordinance' during its review of the Bella Meadows application, nor does it on any application. Zoning interpretations are made through cooperative discussions between planning staff and the Code Enforcement Officer*", which appears to state that the deliberative function of the PB does not include interpretation of the zoning ordinance. The language of RSA 676:5 specifically describes the process for appealing PB interpretations. The PB does make interpretations during its process while making a decision on an application. There would be no purpose of the PB if members

were not expected to interpret or apply the zoning ordinance. The Town appoints residents as members of the ZBA and PB to interpret the zoning ordinance. The interpretations are not solely left to staff. The point Fougere has that the PB does not interpret the zoning ordinance is not logical.

The second argument in the Fougere Memo is that Garruba's appeal is invalid because the project involves inclusionary zoning, which includes work force housing. Garruba stated that this assertion relies on the misreading of RSA 676:5 which states "...such decision may be appealed to the board of adjustment...; provided, however, that if the zoning ordinance contains an innovative land use control adopted pursuant to RSA 674:21 which delegates administration, including the granting of conditional or special use permits, to the planning board, then the planning board's decision...cannot be appealed to the board of adjustment, but may be appealed to the superior court..."

Garruba asserted that the language in RSA 676:5 is specifically referring to the PB deciding on whether to grant a conditional use permit. The interpretation by Fougere fails to acknowledge the PB decisions, made pursuant to delegation of authority to grant conditional use permits, are the only ones that go to the Superior Court and cannot come before the ZBA. None of the definitions in his appeal have to do with the granting of a conditional use permit. Garruba said he agreed with the PB decision in granting the conditional use permit and he is not appealing the work force housing decision.

Garruba said his appeal is concerning the following definitions:

1. Surface Waters, Section XI
2. Wetland, Section VIII, Definitions
3. Hydric Soils, Section XI, Overlay Zoning
4. Net Tract Area, Section VII, Definitions
5. Buffer zone, Section XI, Overlay Zoning
6. Conservation Commission Approval of dredge and fill permits, Section XI, Overlay Zoning

None of the definitions in his appeal are related to work force housing or even located within Section XVIII, Work Force Housing.

The next point made by Fougere was the appeal was submitted late. The claim is based on two faulty assumptions. The first assumption is the PB acceptance of an application as complete, somehow represents or begins the 30 day window for appeal. This assumption is not logical since any conditions the PB places on an application are done after the application is accepted as complete. Major asked what date did the PB accept the application as complete. Mason replied October 15, 2019. Fougere agreed.

The second assertion made by Fougere was the staff made comments during the PB meetings voicing interpretation of the ordinance and that those comments should have been appealed at the time they were made. This again relies on the faulty assertion that the staff's input at the PB meetings are final decisions, and not just advisory to the board, which makes the final decisions. Technically, you cannot appeal something that has not been decided.

The PB did vote to approve the application and placed several conditions of approval, which would not have been known until the final approval was granted. The PB's interpretations of the ordinance cannot be known until the PB votes on the conditions or votes to approve. The appeal was filed on 12-4-2019 and the final approval was granted on 11-5-2019 based on the dates the 30 day requirement to file an appeal to the ZBA is achieved. Major asked when the PB made the decision concerning the interpretations of the wetlands regulations. Garruba replied the decision was made during the 11-5-2019 PB meeting because until the PB set out what the conditions were, there was no decision made. The PB could have put conditions of an approval which would have satisfied the concerns of Garruba. The PB did not put anything in writing before 11-5-2019. Major asked if minutes of the meeting addressed the concerns. Garruba said yes.

Garruba noted that Fougere Memo s NH Supreme Court case *Accurate Transport, Inc. v. Town of Derry* supports his positions. However, the language quoted specifically refers to decisions of the PB which occurred in the beginning of the application review process such as whether application is complete and can be accepted. The reference does not include PB interpretations which are made later in the process as conditions of approval which are not known until the approval of an application. The appeal in the referenced case was written against the code enforcement officer and the interpretation of the proposed use, not the PB's interpretation, which due to its deliberative nature can only be known once a decision is reached. The concept that this case applies to his appeal is incorrect. Garruba said his appeal is not about the use of the property. Major asked if it is correct that the PB had discussion concerning the wetlands issues. Garruba replied yes; however, up until the very end, there was uncertainty on whether certain ponds were man made. Until a decision was made concerning the ponds, no appeal can be submitted against the interpretation of the zoning ordinance. Major said indications were made that Garruba attended 7 meetings concerning the project. Garruba agreed. Major asked Garruba how many times he appeared before the PB. Garruba replied as many times he was allowed

as some of the meetings did not have public comment.

Garruba felt he had standing to appeal because, the NH Supreme Court set out 4 criteria to evaluate standing in the case *Weeks Restaurant v. Dover*. These are (1) the proximity of the appealing party to the property; (2) the type of change being proposed; (3) the immediacy of injury; and (4) the appellant's participation in hearings. Garruba states that his appeal meets all 4 criteria because his property is close to the development site, and he often drives by the site. The development being proposed is significant because of its high density. The higher density has a higher impact on Town residents, and more than direct abutters are affected. McGhee asked what the distance between his property and the project was. Garruba replied roughly 3 miles. Major asked what the immediacy of injury was. Garruba replied he drives on Old Runnells Bridge Road on trips to Main Dunstable Road soccer field and the Nashua River Rail Trail, and he will suffer increased traffic. In addition, his children attend school in Hollis, which has a shortage of bus drivers requiring that the bus routes be combined. His daughter rides the school bus for more than 40 minutes for the return trip from the elementary school. The addition of 16 to 20 more students will certainly make the situation worse. Garruba said he pays taxes in the Town and the development would have a significant tax increase due to the additional costs of provided services. The development would not increase the tax revenue to offset the additional costs. In addition, to the personal injury and loss, Garruba is a member of the Hollis Watch who are residents dedicated to preserving the rural character of Hollis. Major asked what relevance is there being a member of Hollis Watch as it pertains to the appeal. Garruba replied some members of the group are direct abutters any many live close to the development. Major said the direct abutters could have appealed and as direct abutters may have been more directly affected.

Garruba said improper interpretations directly damage the rural character of Hollis. The term "rural" is defined as low population density. Attributes of rural character includes lack of traffic and traffic controls. The proposed development inflicts a direct injury on myself and members of Hollis Watch by causing an increase in traffic and a reduction in open space beyond what is allowed by the proper interpretation of the zoning ordinance.

West said the interpretations made by the PB were pursuant to the issuance of the permit regarding work force housing, and therefore the interpretations Garruba is appealing are part of the permit. Garruba disagreed saying the appeal is not related the work force housing permit, but only to the definitions.

Garruba said he has a direct and definite interest in the project having attended all 7 PB meetings and supplied oral and written testimony whenever possible. For these reasons, he requested that the ZBA accept and hear his appeal.

He concluded stating that the Town has a unique rural character that was preserved for us by the efforts of Town residents who preceded us. The legacy provided includes more than just historic buildings and monuments; it also includes carefully crafted zoning. The point of the appeal is to ensure the zoning ordinance is followed and shortcuts are not taken. Abutters and Town residents often do not have the time or money to pursue justice in the courts. Residents can only hope the Town's appointed board members enforce the ordinance that residents voted for.

Belanger said the appeal application centers on an appeal of the discretionary powers of the PB. This is appealed directly to the Superior Court and beyond the powers or authority of the Zoning Board.

*Belanger moves to dismiss the application as it is beyond the jurisdiction of the Zoning Board.
Seconded by McGhee.*

Mason said he would like more clarification on the discretionary powers of the PB that are not appealable to the Superior Court. Major recommends that Fougere should be heard from to provide input. West said if the ZBA credits the idea that the PB has the discretion to make the zoning interpretations and the PB made them pursuant to their review of the work force housing and not made separately, the interpretations were inherently part of their decision regarding the permit for work force housing. It is clear the appeal needs to go to Superior Court. Major said if you divorce the wetlands issue from the work force housing issue, there is less of an argument for a direct impact to the applicant. West agreed. Belanger said the appeal is for one piece of the entire application and is beyond the ZBA jurisdiction. The case cannot be heard in Belanger's opinion. West agreed.

Major asked the members if they would like to hear from Fougere so he can provide the ZBA with input. Garruba said he would like to briefly outline the appealed definitions because they are not related to work force housing. Major said the application approved by the PB was for work force housing. The connection for the applicant is not the wetlands it is for work force housing. Garruba disagreed and stated that he thinks work force housing should be at the property, and that he is appealing the definition of surface waters, which has nothing to do with work force housing and is not even in the same section of the ordinance. Major said Garruba's reasons as to why he has standing all have to do with the property becoming work force housing which was a PB application. Garruba said because the rules were not followed pertaining to surface waters, net track area, wetlands, and others the

density of the overall project is higher than what is allowed. Major said the PB has discretionary functions, and there are some things the PB has more knowledge than the ZBA. Garruba said the law says the ZBA cannot hear appeals for conditional use permits or inclusionary zoning. Belanger moves the question. Mason asked if the ZBA would consider hearing from Fougere. Belanger said the reason he moved the question was to eliminate the back and forth and if the conversation goes on it is leaning towards re-hearing the entire PB application in front of the ZBA and the ZBA does not have the authority or powers to do so. Major suggested two options: to move the question or allow Fougere to present. The members voted to hear Fougere.

Mark Fougere, Hollis Town Planner, said Garruba is unfortunately misunderstanding the law. The Town adopted the work force housing ordinance roughly 10 years ago, under RSA 674:21, inclusionary zoning. All aspects associated with the work force housing application fall under the umbrella of an innovative land use including traffic, wetlands, and interpretation of zoning. An innovative land use control (work force housing) permit is only appealable to the Superior Court when there are zoning interpretations. In Fougere's opinion, it would be a dangerous precedent in the community if the ZBA inserts themselves into the PB's decision making regarding this permit. .

The plan was reviewed in excruciating detail for over 1 year with many hours of testimony. There were discussions with the Building Inspector throughout the process. The state contains varied communities, some have staff, and some do not. It is often in smaller communities that the PB does make zoning interpretations, and those decisions are often made at PB meetings. However, Hollis has a professional staff and a Code Enforcement Officer which under the zoning ordinance is designated to make zoning interpretations. A submitted plan does not go to the PB for review without being vetted prior to submission. There are no zoning questions once presented to the PB, but zoning questions can come up during the PB process.

Fougere said his memo dealt with other issues such as timeliness and standing. Fougere felt the argument dealing with State Statue is clear, and the review is covered by the State Statue. Of course, any application presented to the PB has many facets: the zoning ordinance, site plan review regulations and subdivision regulations. However, all facets are part of the same application which falls under innovative land use control.

Major asked when the PB made a final determination concerning the wetlands. Fougere replied the wetlands were discussed throughout the process and any issues were resolved prior to the formal submission and acceptance of the application which was October 15, 2019. The acceptance date is important because it means the PB has enough information to make a decision, and it must do so within 65 days. There are no zoning questions at this stage of the application. The issue concerning the wetlands came up in the spring and there were questions from the State. Depending on who we spoke to at the State some administrators said you need a permit and others said you did not need a permit to fill in a manmade pond. The PB believed the ponds were man made, and still does. The first pond without question was man made since it was constructed 15 years ago when the site was pitch and put and the other pond was a farmers' pond. Because of this case the state came up with a new procedure that any pond which is claimed to be manmade has to file for the permit and the state will make the determination if a permit is required.

Fougere addressed the issue of standing stating that Garruba's driving by the property going to soccer camp does not rise to a standing level. Further, there were meetings with different department heads and town officials regarding impacts, including with the Town Superintendent regarding school impacts. . Due to declining enrollment in the community, the Superintendent did not foresee any issues regarding school size or teachers with the application.

Applicant rebuttal

Garruba said Fougere implied that zoning decisions are made by him and the Town Building Inspector, Bill Condra. He noted that Bill does not attend PB meetings, and asked if the Town staff was making zoning board decisions ahead of time. The PB is voting on these matters, and that is the point of counting yes or no votes. If that is the case would you appeal everything that was said during a meeting? Unless someone acts on something and puts the outcome in writing a person cannot be expected to appeal everything that is said. Those decisions are offered as guidance just like an attorneys' advice. RSA 676:5 the language says decision that are made pursuant to the authority to a delegation to review conditional use permits. If the ZBA took the stand that just because the project was work force housing nothing can be appealed, the rest of the zoning ordinance would not apply. Fougere brought up the determination of wetlands and the details. Garruba asked if he could address the wetland determinations made. Major denied the request.

McGhee said Garruba is only mentioning some of the RSA 676:5 to back up his appeal however, the RSA goes on to say "...including the granting of conditional or special use permits, to the planning board, then the planning board's decision...cannot be appealed to the board of adjustment, but may be appealed to the superior court..." The Town has professional staff that vet applications and there was a year's worth of work to determine. It does not sound like there are decision being made within the office willy-nilly. Garruba said if decisions are being made outside of a public meeting without a vote then how would an aggrieved

party file an appeal.

Major asked if Garruba agreed the plan was accepted as completed on October 15th. Garruba agreed however, an appeal cannot be taken then as the process is not complete, and the plan may change during the process. The only time you could file an appeal is at the end of the process. Mason said he reviewed state law and could not find much information other than acceptance means the application is complete. You could appeal on the completeness of the application; however, Mason agrees that no decision has been made at that point. Decisions are made by the PB, not by administrative officers, and decisions cannot be appealed until PB makes them. Mason has no issues with the timeliness of the appeal since the decision was made on November 5, 2019.

Belanger moves to dismiss the application as it is beyond the jurisdiction of the Zoning Board. This application centers on an appeal of the discretionary powers of the Planning Board. This is appealable directly to the Superior Court and is beyond the powers or authority of the Zoning Board.

Seconded by McGhee

Discussion

West suggested adding that the PB permit is discretionary and appealable to the Superior Court “*because it is a work force housing application*” to the motion. Major asked the ZBA if it should enter into deliberations and address the other points, such as standing. Belanger said if any one part of the application is beyond ZBA jurisdiction, we are being asked to overrule the PB decision to grant a permit the case cannot be heard.

McGhee would like to add innovative land use control to the motion.

The ZBA had a brief discussion regarding whether the zoning ordinance contained an innovative land use provision and was the PB delegated as the permit granting authority. It determined that the Town adopted an innovative land use control section (March 2009) contained in Section XVII: Work Force House; and it states that the Section shall be administered by the PB.

Belanger moves to accept the changes to his motion; the revised motion reads as follows:

This application centers on an appeal of the discretionary powers of the Planning Board regarding an application of an innovative land use control under RSA 674:21. This is appealable directly to the Superior Court and beyond the powers or authority of the Zoning Board.

Seconded by West.

Motion unanimously approved.

No Further Questions from the Board and none from the floor – hearing portion of the case closed.

Major recused himself from Case ZBA 2020-002.

Belanger assumed the chair.

Case ZBA 2020-002

The application of James Brooks, property owner, for a Variance to Section G1, paragraph 1, Permitted Uses to permit the conversion of Horse and Hound Physical Therapy (previously approved) to Hollis Quick Office, a flex office business containing 6 individual office units, located at 288 South Merrimack Rd., Map 049, Lot 043.

James Brooks, the co-owner of Horse ‘n Hound Physical Therapy (HNHPT), is requesting the variance due to the unexpected death of his wife, Jennifer H. Brooks on June 9th, 2019, who was the primary medical clinician of HNHPT. HNHPT diligently sought a replacement for Jennifer, but unfortunately, was unable to do so; and HNHPT closed its doors as of January 18, 2020.

Brooks said the variance requested is to convert HNHPT to Hollis Quick Office (HQO). HQO would consist of 6 rental offices and would be occupied by white collar desk work such as professional sales, accounting, engineering or other services conducted primarily by phone or computer.

Brooks said prior to his purchase of the property, the Zoning Board approved HNHPT. Once the approval was granted in 2014, the purchase of the property was completed. The home and the 6,500 square foot barn were renovated extensively (over \$300,000

in 2014-2015), and the barn contains 6 offices. There will be no changes to the exterior except a smaller HQO sign will replace the existing HNHPT signage. The signage design is in the attached information packet. Other than a sign swap, no external changes to either building will be made for this transition and the beginning of this new venture. The interior of barn would have minimal updates (repainting and the like) to allow for the transition from HNHPT to HQO. The new proposed business will stay in compliance with the original ZBA variance granted on April 24, 2014 (Case 2014-005) and Planning Board approvals (file #2777, starting at line 308).

The Variance will not be contrary to the public interest because it will transform the existing HNHPT clinic into rented office space for desk and computer type work. There will no longer be any animal or physical therapy work at this site, and the requested transition to HQO will entail no external changes and minimal internal updating. The parking areas and all external facets of the operation will be at or below the limitations of the present zoning variance granted for HNHPT. The public impact will be negligible as the average passerby and/or road traffic might only notice the sign will have changed.

The spirit of the ordinance is observed because the existing 6500 square foot barn, renovated extensively in 2014-2015 by James and Jennifer (deceased) Brooks, presently contains 6 offices. There will be no changes to the exterior of the barn and minimal updates to the interior spaces to allow for the transition from HNHPT to HQO. This change will stay in compliance with the original zoning variance). The property is a residence, and to all appearances, is an agricultural site. The public is accustomed to this site being a small local business since the 1990s and many town residents have used the services of HNHPT for care for their dogs and pets.

Substantial justice is achieved because the general public will not be harmed by converting the existing HNHPT business to HQO providing rented office space. HQO will be renting existing offices, using the same parking available now, and have the same, or possibly less, traffic flow for HQO versus the present HNHPT. HQO will be at or below the presently granted 26 visits per day granted by the Zoning Board via Case 2014-005 in April 2014.

The values of surrounding properties are not diminished because there will be no observable or physical changes to the house or the barn because of this transition of business model. The owners' renovations to the property from its challenged state in 2014 to its current restored state likely increased the property values of the surrounding properties in our area. The property will continue to reflect the rural and agricultural character of the Town of Hollis and serve as a visually welcoming sight when a traveler enters Hollis from the northeast corner.

Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship because the property consists of 14.11 acres of open, flat pastureland and will continue to be maintained in this present state. The new business model will use the existing renovated barn interior on the mid-floor of the barn that previously hosted the HNHPT clinical site. Less automobile traffic is expected under this new business model using the same parking areas as exists today based on the prior zoning variance. Because of the substantial investment of time and money to create the 6 office units in the barn, it would be a hardship for Mr. Brooks to be unable to utilize this space for an income generating activity.

Owing to the special conditions identified above, no fair and substantial relationship exists between the general public purposes of the ordinance and the specific application of that provision to the property because the property is at the north eastern edge of Hollis, abutting the Amherst town line at the corner of S. Merrimack Rd and Witch's Spring Rd. This section of road is highly traveled by both commuters and shoppers visiting the commercial/retail areas of Route 101 A in Amherst, Merrimack and Nashua. Our existing variance (granted by the Zoning Board via Case 2014-005 in April 2014) allows 26 trips per day, which will be sufficient for the new business model of Hollis Quick Office. Therefore, there will be no net traffic increase or decrease resulting from this change of scope from HNHPT to HQO. Finally, the property is still a residence, with a functional horse barn and paddocks, and thus will continue to honor the heart of the residential and agricultural zoning intent.

The special conditions of the property that distinguish it from other properties in the area are as follows. The property is not an ideal residential dwelling for a young family due to the heavy traffic flow on S. Merrimack Rd and the house's close proximity to this roadway. The Brooks family has invested significant time and funds into the renovation of the barn and home restoring them both to full functionality and pleasant appearance over the past 5 years. The property will not be changed in any way as a result of changing from HNHPT to HQO, other than replacing the existing HNHPT sign with a smaller one for HQO. The barn on this property has 6,500 square feet of usable space, and it would be a shame to let it sit idle after an untimely death forced the premature closing of HNHPT. HQO will honor the parameters set by the prior HNHPT variance granted by the Zoning Board via Case 2014-005 in April 2014. The property will continue to be a visually welcoming sight to those visiting and returning to Hollis center from the north eastern corner of our town.

Owing to the special conditions identified above, 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 because, due to the investment by the Brooks and the positive visual impact of this property which made HNHPT a viable business, it would be a waste of potential to not allow this fully functional office space to be utilized by the remaining owner, James W Brooks. Further, as there are no external changes to either the house or barn; the present variance, granted by the Zoning Board via Case 2014-005 in April 2014, will fully enable a smooth transition to the business model of HQO. To our neighbors and passersby, it will be "business as usual" with nothing observable changing. There will be no overnight HQO activities, no retail sales, nor any noise generating work as a result of starting HQO. With HQO there will no longer be dogs and other pets present as there were for HNHPT. All activities will be daytime desk based business actions, confined to the interior of the barn.

Mason asked Brooks whether a condition of approval limiting the number of non-residents would be reasonable. Brooks said yes. Mason asked Brooks to explain what the ZBA should consider as a hardship. Brooks replied the land is not suited for any other use due to its wetlands, location, past approved commercial uses and the amount of investment into the property. Belanger said the previously approved commercial uses of the property could be considered the hardship. Belanger said he would recommend limiting the business to 9 non-residents, 6 offices for rent and imposing some of the past conditions noted on the previous approval.

Spoke in Favor

Tom Dufresne, Pound Road

Dufresne said, as a member of the Hollis Conservation Commission and a resident of Hollis, he supports the application and added the proposed use is a good use for the barn.

Peter Baker, 40 Buttonwood

Baker supported the application if there is a limit set on the number of offices available to rent and if the septic system is adequate for the proposed use.

Belanger said the ZBA will consider limiting the HQO to 9 non-residents and 6 offices available for rent as a condition of approval.

Beth Frankle, 287 S. Merrimack Rd

Frankle was completely in favor of the application.

Applicant rebuttal

Brooks said the property has two septic systems – one for the house and a separate one for the barn. Brooks does not foresee any issues with the septic systems. In Brooks' opinion, the septic system for the barn was used substantially when the property was used for Hollis Line Machine as there were many more occupants.

No Further Questions from the Board and none from the floor – hearing portion of the case closed.

DELIBERATIONS

Case ZBA 2020-002

The application of James Brooks, property owner, for a Variance to Section G1, paragraph 1, Permitted Uses to permit the conversion of Horse and Hound Physical Therapy (previously approved) to Hollis Quick Office, a flex office business containing 6 individual office units, located at 288 South Merrimack Rd., Map 049, Lot 043.

Belanger said he had no concerns with the application since the property has been used for residential and commercial purposes for many years. Mason said he was in favor of the application; however, Mason had concerns regarding the application meeting the hardship criteria. Belanger said changing the use from what was permitted in 2014 would be overturning an already permitted commercial use and create an unnecessary hardship. The ZBA members agreed.

Durham moves for a condition of approval:

1. *The business shall be limited to 6 offices available for rent.*

Seconded by Tsao.

Motion unanimously approved.

Belanger moves for a condition of approval:

2. *The business shall be limited to 9 non-residents on the premises at any given time not counting visitors.*

Seconded by Tsao.

Motion unanimously approved.

Belanger moves for a condition of approval:

3. *The business shall be limited to 26 vehicle trips per day, not including residents.*

Seconded by Tsao.

Motion unanimously approved.

Belanger moves for a Finding of Fact:

1. *The board finds the proposed “use” is consistent with the commercial “use” granted in 2014 and the historical commercial “use” of the structure. Changing the use from what was permitted in 2014 would be overturning an already permitted use and create an unnecessary hardship.*

Seconded by Durham.

Motion unanimously approved.

No further discussion.

Questions - Variance

- Question 1. The variance will not be contrary to the public interest.
 Question 2. The spirit of the ordinance is observed.
 Question 3. Substantial justice is done.
 Question 4. The values of surrounding properties are not diminished.
 Question 5a (1). No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property.
 Question 5a (2). And, the proposed use is a reasonable one.

Board Member	Question #1	Question #2	Question #3	Question #4	Question #5a(1)	Question #5a(2)	Total Yes	Total No
Belanger	Yes	Yes	Yes	Yes	Yes	Yes	5	0
Tsao	Yes	Yes	Yes	Yes	Yes	Yes	5	0
Durham	Yes	Yes	Yes	Yes	Yes	Yes	5	0
McGhee	Yes	Yes	Yes	Yes	Yes	Yes	5	0
Moseley	Yes	Yes	Yes	Yes	Yes	Yes	5	0

THEREFORE, THE VARIANCE WAS GRANTED WITH THE FOLLOWING CONDITIONS AND FINDINGS OF FACT:

CONDITIONS:

1. **The business shall be limited to 6 offices available for rent.**
2. **The business shall be limited to 9 non-residents on the premises at any given time not counting visitors.**
3. **The business shall be limited to 26 vehicle trips per day, not including residents.**

FINDINGS OF FACT:

1. **The board finds the proposed “use” is consistent with the commercial “use” granted in 2014 and the historical commercial “use” of the structure. Changing the use from what was permitted in 2014 would be overturning an already permitted use and create an unnecessary hardship.**

Major assumed the chair.

Other Business

Major said the Planning Board did not agree with the Board's proposed zoning change concerning the side yard setback, and thus the proposed change would not be put on the Town ballot. Major asked Setaro what was the PB's reasoning for not supporting the change. Setaro replied she was unaware of the exact reasoning but would request the PB staff to circulate the minutes from the meeting to the Zoning Board once completed.

Major asked Setaro to create a list of board members including email addresses and phone numbers and distribute the list to all members. Setaro replied OK.

Review of Minutes

Belanger moved to approve the minutes of December 19, 2019.

Seconded by Tsao.

Motion unanimously approved with Durham, Mason and McGhee abstaining.

Donna Lee Setaro, Building and Land Use Coordinator
Hollis Zoning Board of Adjustment