



ZONING BOARD of ADJUSTMENT

Town of Hollis

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Minutes of December 19, 2019

The ZBA Meeting was held in the Community Room, Hollis Town Hall, and was called to order by Chairman Brian Major at 7:00 pm.

MEMBERS OF ZONING BOARD OF ADJUSTMENT: Brian Major, Chairman; Jim Belanger, Vice Chairman; Regular Members – Cindy Robbins-Tsao, Rick MacMillan; Alternate Members –Bill Moseley, Meredith West and Stan Swerchesky.

Major explained the policies and procedures.

Major said the voting members for the cases this evening are as follows;
Case ZBA 2019-012: Major, Belanger, Tsao, MacMillan and Moseley.

Major recused himself from Case ZBA 2019-013.

Case ZBA 2019-013: Belanger, Tsao, MacMillan, Moseley and West.
Case ZBA 2019-014: Major, Belanger, Tsao, MacMillan and Moseley.

Belanger lead the Pledge of Allegiance.

Case ZBA 2019-012

The application of Sheryl Morrison Rev. Trust, for an Equitable Waiver to Section XG, Residential & Agricultural Zone, Paragraph(s) 4.d, Minimum Side Yard Setback, to allow the continued use of a detached garage where a portion of the structure is 25'8" from the side property line (required 35 feet), property owned by Alan & Sheryl Morrison as Trustees, located at 260 South Merrimack Road, Map 047, Lot 027 in the Residential & Agricultural Zone.

Alan Morrison said he purchased the property in 1993 and added the accessory detached garage in 1996. When the garage was built, the lot line was mistakenly thought to be near the property's existing dug well, and thus that the garage's location exceeded the required side yard setback. A permit was issued, and all required inspections were completed.

The actual location of the lot line and the garage's side yard setback was discovered about a year ago when the abutters obtained a survey of their property. Thereafter, Morrison obtained a survey of the property which confirmed the results of the abutters' survey. Both surveys determined that the well was located 18'1" outside of their property's lot line on the abutters' property, and the back corner of the garage was positioned 25'8" from the side lot line rather than the required 35'. The garage has existed in its current location since 1996; and prior to the surveys, neither the Morrisons, any abutters nor the Town had knowledge of the actual lot line or the garage's side setback error. Further, the structure does not constitute a nuisance, and does not, diminish the value of nor interfere with future uses of surrounding properties. Therefore, no public benefit will be gained by relocating the garage and, thus no justification to incur the expense to relocate the garage.

Major said the original permit application shows the garage located approximately 40' from the mistaken property line, and asked if the location was inspected prior to construction. Morrison replied yes. MacMillan asked if there was a survey of the property prior to the 2019 survey. Morrison replied that, prior to his purchase of the property, Bob Noly completed a survey in the 1970s. MacMillan asked if the well is shown on that survey. Morrison replied no. Major said the plan shows that only the back corner of the garage sits within the setback, and asked what was the total square footage of that area? Morrison replied just a small area, and then Morrison approached the board with a larger plan to determine the square footage amount. MacMillan calculated the area and replied approximately 125 square feet.

Major said it was a fact, the garage was constructed in 1996, and that, to date, the Town had taken no enforcement actions and the Morrisons had not received any comments from the abutters. Morrison agreed. Major asked that if the correct property lines were known at the time of construction, would the garage have been located to conform to the 35' side back requirements. Morrison

replied yes. Major asked if trees had been recently removed from the property. Morrison replied a lot of trees have been removed from the lot; but that only a few recently in the general area of the garage. MacMillan asked when the setback violation came to Morrison's attention. Morrison replied when the abutters, Mark and Cindy Tucker, had their property surveyed about 1 year ago. Thereafter Morrison had his property surveyed and the encroachment was confirmed. Major asked how much it would cost to relocate the garage. Morrison replied that he had no idea.

Belanger asked what the reason was for the application. Morrison replied that when his surveyor confirmed the encroachment, he suggested that the Morrisons apply for an equitable waiver to correct the setback issue; and that, if the property was sold, the issue could present a problem for him, or the buyer.

Belanger asked if the principal home was expanded since Morrisons purchased the home. Morrison replied no. Belanger asked if any abutters had changed since the construction of the garage. Morrison replied the Tuckers' property has changed hands multiple times since he purchased the property. Belanger stated according to the Town's records, the Tuckers bought their property in 1997, a year after the garage was built. Morrison agreed. Swerchesky asked if the garage was stick built on a concrete slab, and did the structure have electrical service. Morrison replied yes.

No one spoke in favor of the application.

Letter received in opposition the application.

Mark and Cindy Tucker, 262 South Merrimack Road

Major read the letter dated December 13, 2019. The primary objections stated within the letter were as follows;

- Zoning ordinances are established to ensure a uniformity and quality in neighborhoods to prevent overcrowding, promote safety and ensure privacy;
- Fire hazard risk to their property due to the garage's close proximity to their property line and the lack of fire hydrants or water sources;
- The "use" as a garage/body shop for their racing team
- The potential to convert the space into living area;
- Parking of vehicles and boats, further intruding into the buffer between the properties (picture in file).

See file for complete letter.

Major asked if Morrison would like to respond to the letter. Morrison replied he would like time to review the letter prior to responding. Belanger gave Morrison a copy of the letter for his review and told him he could comment on it later in the hearing.

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

Major recused himself from Case ZBA 2019-013.

Belanger assumed the chair.

Case ZBA 2019-013

The application of Dynamic Installations, for a Variance to Section XG, Residential & Agricultural Zone, Paragraph(s) 1, Permitted Uses, to allow the operation of a warehouse/administrative office, property owned by James Siergiewicz, located at 295 South Merrimack Rd, Map 047, Lot 44 in the Residential & Agricultural Zone.

Gabriel Ungureanu and Bogdan Pavel, owners of Dynamic Installations presented case ZBA 2019-013. Ungureanu said Dynamic Installations currently occupies space on Clinton Drive in Hollis. The property in question has been put up for sale and would be a good fit for their business. The current use of the property is a machine shop, and they would like to change the use to a warehouse with a small office which is not allowed in the Residential & Agricultural zone. The proposed warehouse use, in Ungureanu's opinion, is less intrusive to the environment than the current use. Belanger asked if the person who wrote the application was here tonight since the application says, "see attached". Ungureanu replied no. Belanger said he was on the Planning Board (PB) when the original use was approved and is familiar with the structure. Belanger asked how the proposed use was different than the current use of the property. Ungureanu replied the proposed business would be receiving delivers from 1 to 4 tractor trailer per week. The trailers would be unloaded, and the contents would be stored on site. The items would be loaded into a 26' truck and delivered and installed at the job sites. There would be 1 to 3 employees onsite during the day, and the trucks would be entering and leaving the site from via Rte. 101 so there would be no impact on traffic. The property is 10 acres which

supplies an ample buffer between the residential properties in the area.

Belanger said the application reflects the proposed use as being a warehouse for materials and asked if there be any hazardous material stored on site. Ungureanu replied no, that the material being stored would be glass, aluminum and occasionally furniture. Belanger asked if any liquids would be store on site. Ungureanu replied no. Belanger asked if the applicant would object to a condition that no liquids be stored on site since the Zoning Board (ZBA) received a letter of objection from the Merrimack Village Water District stating their concerns of spillage of liquids into the watershed because the District's well abuts the property and the property is within the aquifer,. Ungureanu replied that he had no objection.

Moseley asked if the tractor trailers would be staying on site overnight. Ungureanu replied their business hours are 7:00 am to 3:30 pm, and the deliveries would happen during those times. He stated that the only truck that would be onsite would be their 26' truck used for deliveries.

MacMillan asked what the ZBA should consider as the hardship since a hardship needs to be present for the ZBA to grant a variance. Pavel replied the proposed use has less of an impact than the current machine shop. Tsao asked if there would be any maintenance done on company vehicles on the site. Pavel replied no.

Belanger said the variance is for a change in use and was not sure if a variance is even required. Belanger asked if there would be any expansion to the structure at any time. Pavel replied no. Ungureanu added currently there are 15 employees, and they have no plans to expand the business further.

Setaro said for clarification the Town staff determined that the applicant had to apply for a variance as a warehouse is not a permitted use within the Residential & Agricultural zone.

Ungureanu said the commercial structure is existing, and it can only be used as a commercial building. The proposed use is less intensive than the existing use, and would likely reduce any negative impacts to the area. If the proposed use is not granted the building could be sold as a machine shop without any additional approvals with 60 employees which would have a negative impact on the area. Belanger asked if there would be any noise coming from the operation. Ungureanu replied the only noise from the site would be the tractor trailers coming to and leaving the site.

Tsao said the application notes 15 employees and asked if those employees would be on site. Ungureanu replied no, and the company provides vehicles for their employees which they take home. The only time employees would be on site would be to pick up an additional item if required.

Spoke in favor of the application

Peter Baker, Buttonwood Drive

Baker said he was in favor of the application only if conditions are placed on the application prohibiting further expansion to the structure. Baker asked if the conditions placed of the machine shop approval would go forward to the new use. Belanger replied yes.

Setaro said Baker submitted a letter for the file as well. The letter contained the same information he discussed with the ZBA.

Elizabeth Wright, direct abutter

Wright said the previous approval (Hollis Line Machine) stated that the hours of operation said "should be" limited from 7:00 am to 7:00 pm. The current application states the business is open until 3:30 pm. If the ZBA considers working hours from 7:00 am to 7:00 pm for the proposed use, the condition should say "shall be" limited to 7:00 am to 7:00 pm not "should be" limited.

Wright said the area was re-zoned from Industrial to R&A in 1997 primarily because the Merrimack water supply abuts the property. Her family lives in Merrimack and has a great concern that the water would be contaminated. Belanger stated the ZBA had received a letter of objection from the Merrimack Village Water District and assured Wright if the application was approved, there would be conditions to address her concerns and those of the Merrimack Village Water District. Wright said when she built there was no need for a variance.

John Siergiewicz, property owner

Siergiewicz said his father started the company in 1962 in the barn and, at that time, the area was zoned Industrial. In 1970, a

contractor purchased 80 acres of abutting land and in response to his request, the Town re-zoned the area, including the property to R&A. Dick Walker, Selectman at the time, advised Siergiewicz's father that his use was grandfathered. The current building and use has been present on the property for 24 years.

Applicant rebuttal

Ungureanue said he was aware of the problems with the past approval. However, the commercial building and the use is approved. The requested variance is to change the current use to a new use which would be less impactful. MacMillan asked for confirmation that there will be no expansion of the current structure and that no liquids will be stored on site. Ungureanue affirmed. The proposed business would be receiving cubicle walls and some furniture which will be stored on site for a limited time, brought to the job site and installed. West asked if the ZBA imposed a condition that the operating hours be limited from 7:00 am to 7:00 pm would that be agreeable. Ungureanue replied yes.

Letter received in opposition of the application

Ronald Miner, Jr, Merrimack Village District Water Works

The letter's main point communicated its concern of regarding the potential for a hazardous spill into its Well #7 which supplies Merrimack with drinking water.

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

Major assumed the chair and re-opened the public hearing for Case ZBA 2019-012 for applicant's rebuttal to the letter from Mark & Cindy Tucker.

Case ZBA 2019-012

The application of Sheryl Morrison Rev. Trust, for an Equitable Waiver to Section XG, Residential & Agricultural Zone, Paragraph(s) 4.d, Minimum Side Yard Setback, to allow the continued use of a detached garage where a portion of the structure is 25'8" from the side property line (required 35 feet), property owned by Alan & Sheryl Morrison as Trustees, located at 260 South Merrimack Road, Map 047, Lot 027 in the Residential & Agricultural Zone.

Applicant's Rebuttal to the letter from Mark & Cindy Tucker

Morrison was allowed to speak again regarding the abutter's letters. Morrison said he had removed trees from the property. However, the Tuckers have a lot of trees marked recently by Pioneer Tree Service for removal. One of the Tuckers' concerns was the buffer between the properties with the number of trees marked the buffer will also be eliminated. The Tuckers asserted that Morrison was aware of the actual property line. Morrison denied this assertion and stated that he had assumed the survey completed by Bob Nolty was correct. Morrison stated that his boat shown on the side of the garage in the picture attached to the Tucker letter, was located there only in the winter months.

Major asked if Morrison would consider a condition of approval that no vehicles be parked along that side of the garage. Morrison replied that only a small rear portion of the boat sits within the setback. Major said by right the Morrisons can actually put the boat on the property line. Morrison addressed the Tuckers' issue of turning the garage into living space stating that this is not allowed under the Town's zoning. The ZBA members agreed.

Spoke in favor of the application

Kathy Kinnane, 268 South Merrimack Road

Kinnane said since she purchased the properties in 2017, the Tuckers have unintentionally encroached on her property, and that the property lines in the area have not been marked properly. Kinnane was in favor of the application.

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

Case ZBA 2019-014

The application of White Birch Builders, for a Special Exception to X1, General Provisions, Section K, Accessory Dwelling Unit to permit the construction of a 796 square foot Accessory Dwelling Unit, property owned by Chris Lamonaskis, located at 28

Snow Ln, Map 020, Lot 062-004 in the Residential & Agricultural Zone.

Major said he has worked with Bob Parodi, presenter for Case ZBA 2019-014 in the past, but feels he has no reason to recuse himself from the case.

Bob Parodi presented ZBA Case 2019-014 on behalf of the property owner. Parodi said the applicant is requesting approval for a 796 square foot Accessory Dwelling Unit (“ADU”) to be built as part of the new construction of a house on the 4 acre property. The septic system has been designed to be adequate for both the primary structure and the ADU. The ADU is shown on page A-3.1 of the submitted plans and is located on the right hand side of the home. The ADU would be 796 square feet within a home consisting of a total of 4,600 square feet. The ADU would be 17% of the total heated living area and could easily be incorporated back to primary structure. The entrance for the ADU is located on the side of the home with adequate off street parking. The ADU shares a common heated wall with the primary structure (see plan) When the home is constructed, it will have the appearance of a single family home (see plan). Belanger asked if the common heated wall has heated living space on either side. Parodi replied yes as the submitted plan shows.

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

The ZBA recessed at 8:00 pm.

The ZBA reconvened at 8:05 pm.

DELIBERATIONS

Case ZBA 2019-012

The discussion of the application of Sheryl Morrison Rev. Trust, for an Equitable Waiver to Section XG, Residential & Agricultural Zone, Paragraph(s) 4.d, Minimum Side Yard Setback, to allow the continued use of a detached garage where a portion of the structure is 25'8" from the side property line (required 35 feet), property owned by Alan & Sheryl Morrison, located at 260 South Merrimack Road, Map 047, Lot 027 in the Residential & Agricultural Zone.

Belanger stated that RSA 674:33-a requires the board “*to grant an equitable waiver from the requirement, if and only if the board makes all of the following findings a-d.*” (see file) If the board finds all of the requirements are met, the board has no choice but to grant the equitable waiver. Major noted Paragraph 2 provides that, in lieu of the findings required by the board under sections a and b, “*the owner may demonstrate to the satisfaction of the board that the violation has existed for 10 years or more, and that no enforcement action, including written notice of violation, has been commenced against the violation.*” Major said the ZBA needs to consider Paragraph 1, c and d, and the board could make a finding of Paragraph 2 in lieu of a and b. Belanger agreed.

Major asked if any board members felt the applicant has not satisfactory demonstrated that the violation has existed for 10 years or more, and that no enforcement action, including written notice of violation, has been commenced against the violation. The board agreed the applicant has met the requirement.

Belanger moved for the following finding of fact;

1. *The board finds that the applicant has demonstrated to the satisfaction of the board that the violation has existed for 10 years or more, and that no enforcement action, including written notice of violation, has been commenced against the violation during that time by the municipality or any person directly affected.*

Major seconded.

Motion unanimously approved.

Major asked if any board members felt the garage created a nuisance or diminished the property values of the neighboring lot. The board members answered no. Belanger said the neighboring lot was purchased after the garage was built. Tsao agreed.

MacMillan moved for the following finding of fact;

2. *The board finds that the physical or dimensional violation does not constitute a public or private nuisance, nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of any such property.*

Belanger seconded.

Motion unanimously approved.

The board all agreed that due to the degree of past construction or investment made in ignorance of the facts constituting the violation, the cost of correction so far outweighs any public benefit to be gained, that it would be inequitable to require the violation to be corrected.

Tsao moved for the following finding of fact:

3. *The board finds that due to the degree of past construction or investment made in ignorance of the facts constituting the violation, the cost of correction so far outweighs any public benefit to be gained, that it would be inequitable to require the violation to be corrected.*

Moseley seconded.

Motion unanimously approved.

The board discussed the parking concern presented and decided a property owner could park a boat or vehicle close to the property line. The board was concerned about setting a precedent if they were to place a condition of approval of that nature.

No further discussion.

The board voted and the results are as follows;

Board Member	In-Favor
Major	Yes
Belanger	Yes
Tsao	Yes
MacMillan	Yes
Moseley	Yes

THEREFORE, THE EQUITABLE WAIVER WAS GRANTED WITH THE FOLLOWING FINDINGS OF FACT;

- 1. The board finds that the applicant has demonstrated to the satisfaction of the board that the violation has existed for 10 years or more, and that no enforcement action, including written notice of violation, has been commenced against the violation during that time by the municipality or any person directly affected.**
- 2. The board finds that the physical or dimensional violation does not constitute a public or private nuisance, nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of any such property.**
- 3. The board finds that due to the degree of past construction or investment made in ignorance of the facts constituting the violation, the cost of correction so far outweighs any public benefit to be gained, that it would be inequitable to require the violation to be corrected.**

Major recused himself.

Belanger assumed the chair.

Case ZBA 2019-013

The discussion of the application of Dynamic Installations, for a Variance to Section XG, Residential & Agricultural Zone, Paragraph(s) 1, Permitted Uses, to allow the operation of a warehouse/administrative office, property owned by James Siergiewicz, located at 295 South Merrimack Rd, Map 047, Lot 44 in the Residential & Agricultural Zone.

Belanger said the use of the building is changing slightly, and most of the conditions set by the ZBA and PB when the building was approved for the existing use will continue to apply, but some will not. The conditions addressing the concerns of hazardous waste and liquids will still apply. MacMillan said condition #7 should be modified or removed since it dealt with limiting the structure to a precision metal machine shop. Belanger agreed.

Belanger said the ZBA must find a hardship when granting a variance. The hardship in Belanger's opinion was the building can only be used for a commercial purpose and, the existing use was approved, but is not permitted in the R&A zone. West said the land was also zoned industrial which allowed the use and the construction of the building, and the subsequent re-zoning to R&A further limited the use of the property. Moseley said the present machine shop use is more hazardous than a warehouse. Swerchesky said he understands the water district's concerns, but in his opinion, the proposed use is far better than the current use. MacMillan said the water district had no idea what was being warehoused, and they wanted to make sure their concerns were

addressed. Swerchesky agreed.

The ZBA discussed the conditions set forth on the past approval, made modification to some, and removed others.

Belanger moved for the following conditions of approval;

1. *The applicant is to maintain and improve existing vegetative buffer of this structure from adjacent residential properties.*
2. *The Applicant is to maintain proper facilities and procedures for protection of wetlands from accidental spillage.*
3. *The hours of operation shall be limited from 7:00 am to 7:00 pm.*
4. *There will be no external storage.*
5. *There will be no expansion of the industrial use of water.*
6. *The Town has the right to inspect the storage facilities and disposal practices of industrial oils and other materials potentially hazardous to the aquifer at reasonable times.*
7. *The well shall be tested in conformance with State law at least once per year.*
8. *There will be no further expansion of the building.*

Tsao seconded.

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
MacMillan	Yes	Yes	Yes	Yes	Yes	Yes	5	0
Moseley	Yes	Yes	Yes	Yes	Yes	Yes	5	0
West	Yes	Yes	Yes	Yes	Yes	Yes	5	0

THEREFORE, THE VARIANCE WAS GRANTED WITH THE FOLLOWING CONDITIONS;

1. **The applicant is to maintain and improve existing vegetative buffer of this structure from adjacent residential properties.**
2. **The Applicant is to maintain proper facilities and procedures for protection of wetlands from accidental spillage.**
3. **The hours of operation shall be limited from 7:00 am to 7:00 pm.**
4. **There will be no external storage.**
5. **There will be no expansion of the industrial use of water.**
6. **The Town has the right to inspect the storage facilities and disposal practices of industrial oils and other materials potentially hazardous to the aquifer at reasonable times.**
7. **The well shall be tested in conformance with State law at least once per year.**
8. **There will be no further expansion of the building.**

Major assumed the chair.

Case ZBA 2019-014

The application of White Birch Builders, for a Special Exception to X1, General Provisions, Section K, Accessory Dwelling Unit to permit the construction of a 796 square foot Accessory Dwelling Unit, property owned by Chris Lamonaskis, located at 28 Snow Ln, Map 020, Lot 062-004 in the Residential & Agricultural Zone.

The ZBA had no issues or concerns with the application since, the criteria required to grant the special exception were met in their entirety.

No further discussion.

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
Brian	Yes	Yes	Yes	3	0
Belanger	Yes	Yes	Yes	3	0
Tsao	Yes	Yes	Yes	3	0
MacMillan	Yes	Yes	Yes	3	0
Moseley	Yes	Yes	Yes	3	0

THEREFORE, THE SPECIAL EXCEPTION WAS GRANTED.

Other Business

Proposed zoning change dealing with the said yard width setback. Major said he presented the proposed zoning change during the Tuesday PB meeting and the PB vote was divided in supporting the change. Major said he was asked how many times requests were submitted to the ZBA and Major said once every 18 months or so. Belanger said he had a discussion with Joe Garruba to consider modifying the zoning change so that the change only applies to existing lots with structures not new construction. The ZBA agreed. Belanger asked if it was too late to modify the wording for the special exception zoning change. Moseley replied Mark Fougere said it could be modified slightly. Belanger said he would check with Fougere regarding the proposed modification.

Belanger asked Moseley, PB chair if there was a zoning change submitted by petition concerning changing back the 30 acre requirement for elderly housing. Moseley replied there were several different changes submitted by petition and the petition must be presented to the voters as is and be placed on the ballot.

Review of Minutes

Belanger moved to approve the minutes of November 21, 2019.

Seconded by Moseley.

Motion unanimously approved.

Belanger moved to approve the minutes of December 5, 2019.

Seconded by Moseley.

Motion unanimously approved.

The ZBA meeting adjourned at 8:35 pm.

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