



**BOARD of ADJUSTMENT**  
**Town of Hollis**  
Seven Monument Square  
Hollis, New Hampshire 03049  
Tel 465-2209 FAX 465-3701

**Minutes of August 24, 2017**

Meeting was held in the Community Room, Hollis Town Hall, and was called to order by Vice Chairman Jim Belanger at 7:00pm.

**MEMBERS OF ZONING BOARD OF ADJUSTMENT:** Jim Belanger, Vice Chairman; Regular Members –Rick MacMillan and Susan Durham; Alternate Members – Drew Mason, Kat McGhee and Bill Moseley.

Belanger explained the policies and procedures.

Belanger appointed Mason and McGhee as voting members for the cases tonight.

**Case ZBA 2017-009**

The application of Michael Bishop, property owner, for a Variance to Section X, Paragraph(s) G4.d Minimum Side Yard Width of the Zoning Ordinance to permit the construction of a 20' x 26' garage 15 feet from the side yard property line (required 35 feet), located at 107 Wright Road, Map 014, Lot 060-001, in the Residential and Agricultural Zone.

Bishop stated he is seeking a variance to the side yard setback to construct a 20' x 26' garage 15 feet from the property line. Bishop stated he received a building permit for the garage and when the project started it was determined the garage could not be placed where originally thought. Currently two vehicles remain outside because the current 2 ½ attached car garage is used to house 3 motorcycles, hydraulic motorcycle lift, two rolling tool boxes and a large lawn mower. The additional garage will increase security for personal assets from theft and the environment. One of the neighbors has a large barn and several other neighboring lots have 3 car attached garages with additional detached garages. The proposal will be in keeping with the neighboring lots.

The proposal will not be contrary to the public purpose or public interests in the Hollis Zoning Ordinance. There will be no change in the character of the neighborhood. There will be no threat to the public health, safety or welfare of the Town of Hollis. There is no conflict between the ordinance's purpose and the proposed variance request because the ordinance was set so that neighbors would not be on top of each other. The proposed garage will be set 15 feet from the property and there is an additional 200 plus feet of open space between the neighboring home. Clearly, the requested variance will not alter the essential character of the neighborhood.

The property was designed in a way which limits the placement of an additional structure. The location of underground cables, propane tank, septic/leach field, perimeter drain and swimming pool, the septic/leach field and the perimeter drain extend out from the front of the house preventing heavy vehicles from accessing the backyard from the south side of the home. Behind the home is the well and an in-ground swimming pool. The 15 foot variance will allow 9 feet between the pool fence and the requested location of the garage and prevents the moving of the underground cables and propane tank. It has been recommended not to excavate and disturb the underground cables. Due to the conditions of the property the proposed location is the only place the garage can be placed. Moseley asked if there is a propane tank between the home and the proposed garage. Bishop replied yes the tank is located underneath the bushes shown in the supplied picture. Moseley asked if the underground lines ran in front of the proposed garage. Bishop replied the lines would run through the foundation and would need to be relocated. MacMillan asked who told Bishop the lines would have to be relocated. Bishop replied once Dig Safe marked the lines, Eversource Energy told him the lines would need to be relocated. Mason asked what

type of lines were underground and in the way. Bishop replied electrical, cable and telephone. McGhee asked what the height of the garage was. Bishop replied 2 story with a small storage area above. MacMillan asked if the utility lines were placed in sleeves. Bishop replied he was unsure. MacMillan asked if the garage could be moved back so that it would meet the setback requirements. Bishop replied the garage is 7 feet away from the pool and there is no way to move it to a different location to meet the setbacks. Belanger asked if the garage could be built on a slab instead of a foundation. Bishop replied he was not sure. Belanger stated the spirit of the ordinance is to allow separation between individual lots and in his opinion the hardship criteria has not been met in this application. The applicant could live without the garage. Bishop replied the statement was correct however, he would like to keep his vehicles inside the garage to protect them.

**Letter received in opposition of the application**

Belanger read the received letter from Thomas and Sherry Trella, 16 Sherwood Drive as follows;

*“As abutters of 107 Wright Road, we are concerned that the waters, aquifers and trees will be impacted by the construction and placement of the new garage requested by the owners. Kindly review and protect our concerns”*

Bishop stated that there would be no trees removed and the structure would not affect any water. The Trella’s property is at least 150 feet away from the proposed structure. MacMillan asked if Mr. and Mrs. Trella discussed their concerns with Bishop. Bishop replied no.

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

**Case ZBA 2017-010**

The application of Richard Snell, property owner, for a Variance to Section VIII, Definitions, Building Area, and Section X, Zoning Districts, Paragraph (s) G4g Building Area, of the Zoning Ordinance to permit the development of a residential building lot within a 110’ x 200’ building area which will encroach the wetland buffer in two locations, located at 19 Flagg Road (Map 007, Lot 045) in the Residential/Agricultural Zone.

Attorney Jeffrey Zall presented Case 2017-010 on behalf of the property owner, Richard Snell. Zall explained his client is requesting a variance to Section VIII, definitions, building area and Section X, paragraph G4g, building area. Currently, the property owner is subdividing an 11 ½ acres parcel. When the subdivision is completed, there will be two lots, one lot consisting of 5 ½ acres and the other lot would be 6 acres. Section X, paragraph G4g requires a buildable area of 100 feet by 200 feet rectangle or circle which shows there is a buildable area within the lot which does not encroach the wetland buffer. The created lot will have two small wetlands buffer encroachments; one being 485 square feet and the second 405 square feet. There are no building setback encroachments on the created lot. The regulations require a building area of 20,000 square feet. The proposed lot will have a building area of 19,110 square feet which is 95.55% of the requirement. The proposal is requesting a variance of 4.45% of the building area requirement. The purpose of requiring a building area of 20,000 square feet is to show that there is an area on the lot which allows for construction of a building in a location that will meet zoning requirements with no buildings encroaching into the setbacks or buffers. In this case with 19,110 square feet of area outside of the buffers, there will be ample room within the building area to construct a house and other structures without encroaching the buffers. Granting the variance is justified because it will not be contrary to the public interest since there won’t be any encroachment into the buffers and wetlands will not be impacted. The spirit of the ordinance will be preserved because the stated purpose of the building area is to insure that the lot is capable in meeting zoning requirements and that within the building area of 19,100 feet there is ample room outside of the buffers to locate the house. Substantial justice will be done since it is the only location on the lot for the building area. There will be no harm to the general public or abutters since wetlands and wetlands buffers will not be impacted.

Zall stated referring to the plans handed out to the Zoning Board of Adjustment (ZBA) the buffer areas have been highlighted around the building area. Along the upper left hand corner of the new lot (007-0045-001) the area is all within the buffer, the wetlands run almost all the way around the lot lines. The right of the building area is all within the buffers and wetlands as well, and the front of the lot is all within the wetlands buffers. The only place to put the

building area on the entire lot is where it is shown on the plan. Substantial justice is done because it is the only place the building area can go. The building area at this location has no impact on the public or the abutters because there will be no building setback violations. Values of surrounding properties will not be diminished because the house will be on a 5 ½ acre lot. The house will be constructed towards the back of the lot and the home will be constructed within the building setbacks protecting any abutting neighbors. Literal enforcement of the building area requirement would result in an unnecessary hardship because the amount and locations of wetlands and the wetland buffers on this lot makes this situation particular to this lot, it creates an unnecessary hardship. Literal enforcement of the building area requirement is not necessary to achieve the general public purpose of the ordinance. The purpose of the ordinance is to insure that there is room to build a house without violating the zoning ordinance and 19,100 square feet of area is ample room to construct a home without violating the zoning ordinance. The proposed location of the building area is reasonable and it is the only location for the building area. There is precedence for this case two years ago, the ZBA granted a variance for property on Federal Hill Rd. for a building area which had 2 minor encroachments within the wetlands buffers and 2 minor encroachments within the buildings setbacks. The case was very similar because of the existing wetlands and buffers. The amount of building area that was left outside the buffers was almost the same as this proposal. Zall recalls the variance granted on Federal Hill Rd was for an area of 19,400 square foot encroachment, this proposal is for 19,110 square feet of encroachment.

The applicant will be presenting the plan to the Planning Board (PB) for a subdivision which there will a public hearing to discuss any concerns. A condition precedent to the PB meeting was to obtain ZBA approval for a building area variance. The Hollis Conservation Commission (HCC) was given a copy of the plan with anticipation on going before the PB, not necessarily the ZBA. The HCC gives recommendations to the PB and within the minutes of their meeting on August 16, 2017 the HCC stated they are not prepared to make a recommendation at this time since it application is not before the PB. However, they recognized that the proposed location was the only location for the building area. Zall stated in his opinion the case is simple and straight forward and feels strongly a hardship is evident and all criteria for a variance approval are met in this case.

MacMillan asked if the HCC stated it was a good idea to construct the home at the location. Zall replied he did not attend the HCC meeting. However, he believes that was what the HCC said. Belanger stated the HCC did not use those words, there are two paragraphs from the minutes that mostly discussed the driveway and the bridge being built. They did say that there would be minimal impact to the buffers with this placement. MacMillan asked if the well radius was touching the building lot. Zall replied the well radius of 100 feet would be within the building area which only means they would not be able to install the septic system within the radius. MacMillan asked if there was room for the septic, the plan submitted does not seem to be schematically correct. Durham asked whether or not the septic system and the home would be within the building box. Zall replied the house and the septic system do not have to be placed within the building box, the building area is a requirement of the ordinance to show there would be at least a 100' by 200' area which is buildable, the home can be built outside of the building box as long as it does not violate the zoning ordinance. Mason asked if the subdivision process was completed. Zall stated the subdivision process has not started. The applicant must be granted the variance for the building area prior. Mason asked if it would it be a reasonable condition to require the house to be built in the building area. Zall replied the condition would in fact limit the flexibility for placement of structures. Belanger asked would there be room for a second septic system if the first septic system fails. Zall replied he does not know, that would be a determination by the PB during the subdivision approval process. Belanger agreed. MacMillan asked Zall if he agreed that the primary purpose of the ordinance is to protect the wetlands. Zall agreed, since all of the improvement will be constructed outside of the buffers, the wetlands would be protected.

**No one spoke in favor of the application.**

**Spoke in opposition of the application.**

John Mandzy, 93 North Pepperell Road, Hollis

Mandzy stated he is not necessarily against the application. However, his concern is the impact to his lot

when the construction starts. Mandzy stated his lot is 7 acres and almost half of the lot is wetlands. Wetland areas are connected, the use of heavy equipment and materials being added may have an adverse effect on his lot. Mandzy stated he would like some guarantee that the neighboring lots and wetlands area will not be impacted. Belanger replied there is no way to give a guarantee that there would be no impact. Belanger stated he is more concerned about the septic going into the wetlands. Mandzy stated the ZBA should only grant the variance if there is a sound reason to waive the wetlands ordinance. MacMillan asked as a citizen of Hollis due you feel if the variance is granted it would set a bad precedent for the wetlands. Mandzy replied yes, he does sympathizes with the property owner. However, the wetlands are there and they should be considered. When he purchased his lot he was aware of the fact, roughly 4 acres were unusable due to the wetlands.

Zall stated all of the improvements such as the house and septic system will be outside of the 100 foot protected buffer. The ordinance states you can build a house as long as the house, septic system and other improvements are outside of the buffers. The building area is used to show that the improvements can be made outside of the wetlands buffers, as you can tell by the plan the improvements will be outside of the buffers. When the application goes to the PB there will be a public hearing and the PB could place conditions on the construction such as placing protective barriers around the wetlands and buffers so during the construction the wetlands and buffers will be protected. Zall stated he is quite certain the PB would place condition on the construction. For those two reasons, the abutters should be comfortable that there will be no adverse effect on the wetlands.

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

The ZBA recessed at 7:50 pm and reconvened at 8:00 pm.

### **DELIBERATION AND DECISION**

The discussion of the application of Michael Bishop, property owner, for a Variance to Section X, Paragraph(s) G4.d Minimum Side Yard Width of the Zoning Ordinance to permit the construction of a 20' x 26' garage 15 feet from the side yard property line (required 35 feet), located at 107 Wright Road, Map 014, Lot 060-001, in the Residential and Agricultural Zone.

Mason stated there is a hardship tied to the land there is no other place the garage can go. The garage is large enough to require a 35 foot side setback. The only other place the garage could go is towards the back of the lot which would not make sense for accessibility. Mason stated in his opinion the application meets the criteria for granting the variance. Belanger disagrees the spirit of the ordinance is not met in this case. The applicant could put a smaller structure and meet the side yard setback. MacMillan stated the ZBA should not grant the variance as precedent would be set for future applications. The ZBA had a similar case which the property owner actually owned the lot next to the variance request for a side setback and the ZBA denied the application. McGhee stated the intent of the side setback was to have separation between lots.

*Belanger moves for the following finding of fact;*

*1. The spirit of the ordinance is not observed.*

*Seconded by MacMillan.*

*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	No	Yes	Yes	No	n/a	3	2
MacMillan	Yes	No	No	Yes	No	n/a	2	3
Durham	Yes	No	No	Yes	No	n/a	2	3
Mason	Yes	No	Yes	Yes	Yes	n/a	1	4
McGhee	Yes	No	No	Yes	Yes	n/a	2	3

**THEREFORE THE VARIANCE WAS DENIED WITH THE FOLOWING FINDING OF FACT;**

**1. The spirit of the ordinance is not observed.**

**Case ZBA 2017-010**

The discussion of the application of Richard Snell, property owner, for a Variance to Section VIII, Definitions, Building Area, and Section X, Zoning Districts, Paragraph (s) G4g Building Area, of the Zoning Ordinance to permit the development of a residential building lot within a 110' x 200' building area which will encroach the wetland buffer in two locations, located at 19 Flagg Road (Map 007, Lot 045) in the Residential/Agricultural Zone.

Belanger noted his concern whether or not there was room for a second septic system, however, his concern would be addressed during the Planning Board review of the subdivision. MacMillan stated since the area is quite small the installation of a new septic may also be impacted by the well radius and the wetland buffer area. The ZBA did grant a variance on Federal Hill Road but the impact area to the buffer was smaller, roughly 2%. The wetlands are very important. McGhee stated the impact is to the buffer not the actual wetlands. MacMillan stated the variance is for relief from the wetlands ordinance and he is not in favor of the application. On the other hand he is in favor of individuals being able to use their property. Incrementally the ZBA is allowing more encroachments and believes there needs to be a limit. Belanger stated in his opinion the encroachment is minimal and is in favor of granting the variance. Durham stated as the map shows, the wetlands are connected to other lots. If we grant this variance she feels it may impact the other lots. McGhee stated the prior testimony from Mr. Mandzy was he bought his lot knowing there was wetlands on a portion of the lot. Belanger stated the applicant is subdividing the lot to create a buildable lot. MacMillan stated the lot towards the front is wetlands as well. Durham agreed and stated the driveway would have to cross the wetlands as well. McGhee stated in her opinion by the plan shown this lot is not a buildable. Mason stated the impacted area which is roughly 100 feet by 5 feet is in the buffer area not wetlands. Durham stated the wetland buffers are in place for a reason. Mason agreed. Moseley stated a 2% impact on Federal Hill was approved previously, this application is for a 5% impact. If we are going to grant all of the variances maybe the ordinance should be changed. MacMillan agreed the residents voted for the wetlands ordinance and if a request comes in to alter the ordinance there should be a good reason to deviate from the ordinance. MacMillan stated in his opinion the variance should not be granted. After a lengthy discussion, the sentiment of the majority of board members in deliberation was the spirit of the ordinance was not met and the wetland might be compromised if the variance was granted. Mason asked if the applicant can configure the subdivision differently so that it complies with the ordinance. MacMillan stated the plan was submitted knowing the plan did not comply with the ordinance. The ZBA needs to act on the application as submitted. Durham stated most of the lots on Flagg Road are large due to the wetland areas. After the discussion the sentiment of the majority of ZBA members in deliberation was the spirit of the ordinance was not met and the wetland might be compromised if the variance was granted.

**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	6	0
MacMillan	No	No	Yes	No	Yes	No	2	4
Durham	No	No	Yes	No	Yes	No	2	4
Mason	Yes	Yes	Yes	Yes	Yes	Yes	6	0
McGhee	No	No	Yes	No	Yes	No	2	4

**THEREFORE THE VARIANCE WAS DENIED.**

**Review of Minutes**

*Mason moves to approve the minutes of July 27, 2017.*

*Seconded by McGhee.*

*Motion unanimously approved with Belanger, MacMillan and Durham abstaining.*

**Meeting Adjourned**

The ZBA meeting adjourned at 8:25 pm.

Respectfully submitted, Donna L. Setaro, Building & Land Use Coordinator