



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

Minutes of February 23, 2017

Meeting was held in the Community Room, Hollis Town Hall, and was called to order by Chairman Cindy Robbins-Tsao at 7:00pm.

MEMBERS OF ZONING BOARD OF ADJUSTMENT: Cindy Robbins-Tsao, Chairman; Gerald Moore, Vice Chairman; Regular Members –Brian Major; James Belanger and Rick MacMillan, Alternate Members –Susan Durham, Drew Mason, Kat McGhee and Bill Moseley.

Tsao explained the policies and procedures.

Belanger recused himself from voting on Case 2017-001.

Tsao appointed Durham a voting member for Case 2017-001.

Case ZBA-2017-001

The application by Paul Skinner, property owner, for a Variance to Section XG, Residential and Agricultural Zone, Paragraph 4H (iii) which reads: “No building shall be erected on backland closer than 200 ft from an existing public road.” The application is being made to permit the applicant to leave an existing garage 139.9 ft from a public road, which is located at 81 Jewett Lane, Map 009, Lot 009, in the Residential and Agricultural Zone.

Thomas J. Leonard Attorney, 29 Factory Street, Nashua, NH presented case 2017-001 on behalf of the property owner, Paul Skinner. Leonard stated the application is for a variance to the front yard setback for the lot. The Skinner family currently resides at 81 Jewett Lane. Leonard presented a recently approved subdivision plan to the Zoning Board of Adjustment (ZBA), as the original 20+/- acre parcel was subdivided into 4 lots. As part of the subdivision approval, the Planning Board required that the access to all four lots be via an existing driveway on the parcel, and said driveway to become a privately maintained road.

All existing buildings on the parcel are lawful and permitted. These include the residence and several outbuildings, one of which is a three-car garage located one hundred thirty nine and nine tenths (139.9) feet from a Town owned parcel, which is an unpaved portion of the public road known as Fieldstone Drive. The subject garage is approximately two hundred forty (240) feet from the paved and travelled portion of the public Road.

As a result of the subdivision and the interaction between the definition of several terms (frontage, front yard and public road) the technical interpretation of the Zoning Ordinance is that what used to be the rear yard is now the front yard. As the front yard set-back for a back lot is two hundred (200) feet from a “public road” which is “approved or maintained” by the Town, the existing garage is noncompliant.

The proposal will not be contrary to any public purpose or public interests in the Hollis Zoning Ordinance. There will be no change in the character of the neighborhood as all buildings presently exist. There will be no threat to the public health, safety or welfare of the Town of Hollis because the essential spacing required by the Town ordinances presently exists and will continue to exist based upon the subdivision approval. There is no conflict between the ordinance’s purpose and the proposed variance request. To be contrary to the public interest or injurious to the public rights of others so as to justify denial of a variance, the variance: “must unduly, and in a marked degree, conflict with the ordinance such that the variance violates the ordinance’s basic zoning objectives.”

The Zoning Ordinance and the defined terms require that what was formerly the backyard of the Applicant’s property now be considered the front yard. There will be no change to the access for those existing buildings. The Planning Board approval required the Applicant to continue to use the existing driveway. Therefore, the spirit of the ordinance is observed completely. There will be no change to the public road known as Fieldstone Drive and there will be no change in the existing space between existing houses, public property and existing building on the Applicant’s property. There will also be no change to the vegetation or the public road along the property lines. Clearly, the requested variance will not alter the essential character of the neighborhood, threaten public health, safety or welfare or otherwise injure the public rights.

The subdivision approved by the Hollis Planning Board was a cooperative collaborative effort between the Applicant, the Planning Board and the abutters. The Planning Board approved the subdivision with stipulations; remove the garage or seek a variance from the ZBA. The ordinance requires that the very substantial existing garage be removed, creating unnecessary disruption to the area with no perceivable benefit to the private or public area. The spacing, view and relationship of the existing building, public infrastructure and natural topography will remain as they are if the variance is granted.

MacMillan asked if the subdivision originally proposed had access from Fieldstone Drive. Leonard replied no, upon discussions with staff and abutters neither wanted access from Fieldstone Drive. If they were accessed via Fieldstone Drive, the Town would have to maintain the road. Moore asked would there be any visual changes to the ground; the only change would be describing the setback from front to rear. Leonard replied yes. Major asked would there be any reason known that the Town would ever extend Fieldstone Drive beyond the cul-de-sac or forested area. Leonard replied no, during the Planning Board process one of the abutters on Fieldstone requested that there be no changes to the vegetation or trees in that area. The important factor of the proposal is that the building exists. Major asked if a reasonable condition was set that there would be no changes to the vegetation or the buffer, would that be acceptable. Leonard replied the condition would not be necessary because the area is not planned to be changed.

McGhee noted that the regulation states “...no building shall be erected on backland closer than two hundred (200) feet from an existing road....” The Applicant is not erecting the structure; the structure exists. Leonard replied the application is for the existing structure. The only reason for the application is so the Applicant does not have to remove the structure at a substantial cost with no benefit to the Town.

Belanger asked if the Applicant considered purchasing the dirt portion of Fieldstone Drive from the Town so that the structure would meet the set-back. Leonard replied no; even if the land was purchased the garage would not meet the setback. Belanger asked when was the garage built. McGhee replied 2003; Setaro supplied the information. Belanger stated his opinion the application meets the first four criteria but he does not think the hardship criteria is met with this application. Leonard replied the hardship criteria refers to special conditions of the property; frontage on an unconstructed public road but access through an already constructed common drive. This, together with an existing lawful and permitted useful building of substantial nature, along with the uniqueness of a four lot subdivision created the two back lots with an access to a private road. There is no fair or substantial relationship between the general public purposes of the ordinance provision and the strict application of that provision. There is no benefit to the Town if the variance is granted or not. All that would happen is the Applicant would have to remove the garage or build a road; both of which are not in the interest of the Town or the abutters. If the goal of the ordinance is to preserve open space for efficient use of resources, then the purpose of the ordinance is still met. The use is existing, permitted and the zone allows for single family homes with accessory structures.

Belanger noted a hardship can't be self imposed or financial. Leonard replied the hardship is not self imposed, and can be financial. If there is no reason to force an owner to spend sums of money that does not advance any goal, then a hardship can be financial. The hardship exists due to the four lot subdivision; if the variance is not granted, the applicant will be forced to expend additional funds to remove the building, and the possibility of having to construct a new road, instead of utilizing the existing driveway, will add to his costs, thus creating a financial hardship. McGhee stated the approved subdivision created the variance request because the frontage requirement is met off of Jewett Lane and there needed to be a road to access the two back lots. Leonard replied somewhat but the Planning Board came up with a plan which could use the existing driveway as a common drive and that common driveway was approved by the Fire Department which again makes this property unique.

Major stated the ZBA has existing precedent on this case. The case was on Broad Street with a wide state right-of-way and they wanted to expand. Mason asked if there was any discussion on making the driveway a town road. Leonard replied no, neither the applicant nor the Town wants this to be a town road. The plan was approved with a common driveway, not a town road. The Applicant would have to return to the Planning Board for that change. MacMillan stated if the garage was removed, the variance would not be needed. Leonard replied yes but the garage is large and would cost a substantial amount of money to move or take it down.

Major stated that he had read the application, and he felt the request for variance was clear and thanked Leonard for his presentation.

Spoke in Favor of the application

Paul Skinner, property owner, 81 Jewett Lane

Skinner stated he was aware of the garage issues since the first meeting with Randy Haight, Meridian Land Services, who was hired to create the subdivision plan. There were several ways to engineer around the garage issue but he decided not to do. Some of the remedies to this issue were creating a hammer head off of Fieldstone Drive which the abutter did not want; creating a twenty (20) foot strip off of Fieldstone Drive. Both of these alternatives would cause significant alteration of the view and topography of the areas, additional construction disturbance to abutters, along with a sizable cost for unwanted changes. The current subdivision is clean and would not disrupt Fieldstone Drive.

No one spoke in opposition of the application

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

DELIBERATION AND DECISION

Discussion of the application of Paul Skinner, property owner, for a Variance to Section XG, Residential and Agricultural Zone, Paragraph 4H (iii) No building shall be erected on backland closer than 200 ft from an existing public road of the Zoning Ordinance to permit the applicant to leave an existing garage 139.9 ft from a public road (required 200ft), located at 81 Jewett Lane Map 009, Lot 009, in the Residential and Agricultural Zone.

Moseley agreed with McGhee the structure exists and is not being erected. Major has no issues with the case; the case is the same as that previously granted on Board Street. There is no reason the Town would ever extend Fieldstone Drive and as a practical matter-is, the garage is over two hundred (200) feet from the edge of pavement on Fieldstone Drive. Tsao agreed.

Belanger noted that he had recused himself as an abutter approached him, and a hypothetical discussion of the plan occurred. Belanger was not aware, until he reviewed the actual plan, that the discussion related to this application. Belanger clarified that on all other Boards and Committees which he serves, including those at the State level, recusing oneself from voting on the application does not mean you cannot participate in the proceedings. Belanger stated he does not have the problem with the ZBA granting the variance but he does not find a hardship. The hardship that McGhee and Moseley brought up would induce people to erect structures prior to a subdivision. McGhee stated the Planning Board created the hardship when the subdivision was granted; the Planning Board created the frontage aspect which did not exist when the garage was built. MacMillan stated the Planning Board does not initiate the plan, the property owner does. He felt there is a case for a self induced hardship; however, this is a special case. Moore stated on most variance applications you need to apply some logic to find a way to grant the application. However, this application was the easiest approval he has seen in quite some time. There is no reason to make the Applicant tear down or relocate the garage. The ZBA members agreed.

Tsao moves to approved Case 2017-001 as submitted.

Seconded by Major.

Motion unanimously approved.

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
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Tsao	Yes	Yes	Yes	Yes	Yes	Yes	6	0
Moore	Yes	Yes	Yes	Yes	Yes	Yes	6	0
Major	Yes	Yes	Yes	Yes	Yes	Yes	6	0
MacMillan	Yes	Yes	Yes	Yes	Yes	Yes	6	0
Durham	Yes	Yes	Yes	Yes	Yes	Yes	6	0

THEREFORE THE VARIANCE WAS GRANTED.

Review of Minutes

Moore moves to approve the minutes of December 23, 2016.

Seconded by Tsao.

Motion unanimously approved.

Meeting Adjourned

The ZBA meeting adjourned at 7:40 pm.

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