



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

**Minutes of March 24, 2016**

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

**MEMBERS OF ZONING BOARD OF ADJUSTMENT:** Jim Belanger, Chairman; Cindy Tsao, Vice Chairman; Regular Members – Brian Major, Gerald Moore; Alternate Members – Susan Durham and Kat McGhee.

Belanger explained the policies and procedures.

Belanger appointed Durham as a voting member for the cases tonight.

**Case 2016-002**

The application of John Lingley, for a Variance to Section XIV, Sign Ordinance, Paragraph Q1a, Business and Industrial Signs of the Zoning Ordinance to permit the installation of an additional 7.51 square foot business sign bringing the total sign square footage to 41.6. (32 square feet allowed) property owned by Lawrence Lingley, located at 7 Ash Street (Map 052, Lot 042) in the Agricultural Business Zone.

John Lingley explained he is seeking a variance to install an additional business sign located at 7 Ash Street. The sign will include the business name, street address and telephone number. Hollis Auto has been in business for the last fifty years and never had a sign that said Hollis Auto. Several years ago the large Jenney sign was removed, the requested sign is smaller and Lingley feels they should be able to install the new smaller sign. Major asked why the applicant needed an additional sign. Lingley replied for delivery drivers and out of town customers. The sign would also have the phone number so if a customer had issues with the gas pumps they could call us. Major asked if the proposed sign was approved by the Historic District. Lingley replied he will be attending the next Historic District meeting for approval. S. Durham stated she appreciated the pictures within the application showing the proposed sign, location and comparison to the existing signs. Durham stated she has no problem with the application. Belanger stated he feels that the application is reducing the size of an already non conforming sign and has no problems with the sign. Major asked when was the Jenny sign removed was. Lingley replied late 1980s or early 1990s when the station changed to Sunoco.

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

**Case 2016-003**

The application of Keith & Tina Carlson, for a Variance to Section X, Zoning Districts, Paragraph H.1, Permitted Uses in the Rural Lands Zone of the Zoning Ordinance to permit the operation of a tree service known as “Carlson Tree”. Property owned by George Burton, Located at 154 Proctor Hill Rd., (Map 012, lot 018) in the Rural Lands Zone.

Tina and Keith Carlson approached the ZBA. T. Carlson explained they are seeking a variance for a home occupation. The tree service has been operating at 154 Proctor Hill for the past nine years. T. Carlson did not realize the home business needed to be approved until she requested the business be added to the town business directory website. Major asked if the applicant applied for a variance due to the fact the home business could not comply with the restrictions for a home business. Primarily the restriction which states “*Any motor vehicle and equipment used for commercial purposes...shall not be visible from a public way or any surrounding properties.*” Belanger stated he was involved in the determination of the application and it was decided a Variance should be sought in case the Zoning Board felt the application did not meet the requirements for the Home Business under the Special Exception criteria.

Major asked was there any place on the property the vehicles and equipment could be parked out of public view. T. Carlson replied no. Major asked since you rent from G. Burton, could the vehicles be parked on his property across the street. T. Carlson replied no. Major asked how many vehicles and what type of equipment does the

applicant have. T. Carlson replied one pickup truck, one log truck and a tow behind wood chipper. K. Carlson stated the vehicles are currently parked on the side of the barn; they are really not visible from the road unless you are looking for them. Major asked how far off the road are the vehicles parked currently. K. Carlson replied roughly 210 feet. Major asked if the applicant could install any type of screening to obscure the visibility of the vehicles. T. Carlson replied they do not own the property. K. Carlson stated he feels that the equipment is used for an agricultural use, the business taxes are filed under an agricultural business and the property is agricultural. The use should be allowed. Major stated the business would not be considered agricultural since the trees are not being harvested on the property. K. Carlson disagrees.

Tsao asked if they had any employees. T. Carlson replied no. S. Durham asked if the Town can regulate a tree service since the State classifies the tree service as agricultural and the State can't regulate it. Major stated the business is not the same as raising crops, animal husbandry and other farming activities. Belanger noted if the ZBA members wish to look up the regulations pertaining to the case they can find them under RSA 674:32-a and 674:32-c.

**Spoke in favor of the application**

George "Bill" Burton, 157 Proctor Hill Road and property owner of 154 Proctor Hill Road

G. Burton asked the ZBA if the second truck could be placed on the side of the barn next to the other vehicle. Both vehicles would be roughly 210 feet from the road. Belanger stated the ZBA will be discussing remedies during the deliberations session. The ZBA first needs to determine if the "use" is agricultural based on the Town Ordinances and State law. Once the determination is made, the ZBA can apply conditions or remedies if required. Belanger asked if the ZBA finds that planting trees or putting up some kind a fence is required, would Burton be opposed to such a condition. Burton replied no and added the property has been used agricultural for many years for things such as planting corn, hay field and even an apple orchard. Burton stated the vehicles could be parked in the back. Major asked how far back the vehicles could be parked. Burton replied the property line is roughly 400 feet from the road. Major asked if there was a roadway or path the vehicles could use to access the rear of the property and how close would the Testa property be from where the truck could park. Burton replied yes there is an agricultural path which is roughly 60 feet away from the Testa property. Tsao asked if the trucks were to be to parked in the back could you see them more from the road. Burton replied you would be able to see the nose of the truck.

**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.**

The ZBA took a recess at 7:20 pm.

The ZBA reconvened the meeting at 7:30 pm.

**DELIBERATION AND DECISION**

**Case 2016-002**

Discussion of the application of John Lingley, for a Variance to Section XIV, Sign Ordinance, Paragraph Q1a, Business and Industrial Signs of the Zoning Ordinance to permit the installation of an additional 7.51 square foot business sign bringing the total sign square footage to 41.6. (32 square feet allowed) property owned by Lawrence Lingley, located at 7 Ash Street (Map 052, Lot 042) in the Agricultural Business Zone.

Belanger stated since the proposed sign is smaller than the original "Jenney" sign. The applicant is actually lessening the non-conforming sign area. Belanger is in favor of granting the variance as long as the ZBA can present findings of fact to support the variance. Major stated he disagrees since you really can't consider lessening a non-conforming sign which has been down for many years. However, the parcel is unique in the area and the sign could be considered directional in nature. Belanger stated the ZBA could find that the sign does not violate the spirit of the ordinance because of the size and that it would not be noticed amongst the other signs. McGhee stated she appreciated the pictures showing the scale of the other signs and feels the proposed sign is a reasonable request. Tsao stated since the business has self serve gasoline the sign with a phone number on it would be helpful to the customers in case a problem arises. Gagnon stated that the sign also has the street address which is required.

*Major moved for following Findings of fact;*

1. *The nature of the property makes it a unique parcel in the community.*

*Seconded by Belanger.*

*Belanger moved for the following Findings of Fact;*

2. *The proposed sign identifies the property by name and address meeting the other provisions of the zoning ordinance.*

*Seconded by Major.*

*Belanger moved for the following Findings of Fact;*

3. *The current sign is substantially smaller than the former sign at the same location on the building.*

*Seconded by Major.*

*Major moved for the following Finding of Fact;*

4. *The sign is practical and utilitarian and directional in nature.*

*Seconded by McGhee.*

*The ZBA voted in favor on all 4 Findings of Facts unanimously.*

#### 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
Tsao	Yes	Yes	Yes	Yes	Yes	Yes	6	0
Major	Yes	Yes	Yes	Yes	Yes	Yes	6	0
Moore	Yes	Yes	Yes	Yes	Yes	Yes	6	0
Durham	Yes	Yes	Yes	Yes	Yes	Yes	6	0

#### **THEREFORE THE VARIANCE WAS GRANTED WITH THE FOLLOWING FINDINGS OF FACT;**

1. **The nature of the property makes it a unique parcel in the community.**
2. **The proposed sign identifies the property by name and address meeting the other provisions of the zoning ordinance.**
3. **The current sign is substantially smaller than the former sign at the same location on the building.**
4. **The sign is practical and utilitarian and directional in nature.**

#### **Case 2016-003**

Discussion of the application of Keith & Tina Carlson, for a Variance to Section X, Zoning Districts, Paragraph H.1, Permitted Uses in the Rural Lands Zone of the Zoning Ordinance to permit the operation of a tree service known as “Carlson Tree”. Property owned by George Burton, Located at 154 Proctor Hill Rd., (Map 012, lot 018) in the Rural Lands Zone.

Belanger stated that if Brookdale Fruit Farm was before us, conducting a business which we determined was agricultural; we would not ask them to put up a fence to hide their tractors or put the tractors behind the store. I believe if the ZBA determines the “use” at Procter Hill Road is agricultural the application should be looked at in the same way we would if it was Brookdale. The first burden of proof is if the operation is agricultural or not. The applicant stated when they file their federal income tax it is under agricultural. RSA 674:32-b states:

*“Any agricultural use which exists pursuant to RSA 674:32-a may without restriction be expanded, altered to meet changing technology or markets, or change to another agricultural use, as set forth in RSA 21:24-a, so long as any such expansion, alteration, or change complies with all federal and state laws, regulations, and rules including best management practices adopted by the commissioner of agricultural, markets and food; subject, however, to the following limitations;*

- (a) Any new established, re-establishment after disuse, or significant expansion of an operation ...may be subject to special exception, building permit, or other local land use board approval.*
- (b) Any new established, re-establishment after disuse, or significant expansion of a farm stand...or other use involving on-site transactions with the public, may be made subject to applicable special exception...and may be regulated to prevent traffic and parking from adversely impacting adjacent property streets and sidewalks, or public safety.”*

Belanger stated in his opinion the property has been used agriculturally and has been altered. The property is no longer in the same agricultural “use” as it was prior. However, the fields are still being used agriculturally and the tenant is trying to run a home occupation. Belanger feels the ZBA has enough criteria to grant a Special Exception under RSA 674:32-b. “Moore stated that Dave Gagnon pointed him to RSA 21:34-a, Article 11, which only lists “forestry” in subsection (11).” McGhee stated because of the definition of agricultural, the proposed business fits within the definition. Major disagrees because the tree service is not cultivation or harvesting on the location. Moore stated he agrees with Major because under the definitions in the RSA, the terms “agriculture” and “farming” mean all the operations of a farm, including subsection (11), indicating that the activity of “forestry” be conducted on the premises. The applicant is not harvesting or producing on the site. McGhee agreed. Major stated if this use was agricultural you could have a tree service on a small lot housing several pieces of equipment, unless the harvesting or forestry is conducted on the property the use should not be considered agricultural. Moore and Major suggested to the ZBA that the application should be handled as a variance from the one requirement the applicant does not meet for a Home Shop special exception. Belanger stated that the ZBA does not have the authority to grant a variance to any of the home occupation requirements. The application has to be dealt with by a granting a variance with a condition that the applicant plants trees or shrubs to limited the visibility of the vehicles.

Moore stated could the application be considered an existing non-conforming use since the business has been at the location for 7 years. Major stated the business would be considered an illegal use since the home shop regulations did not exist 7 years ago. Belanger stated the only way to grant the application is to one; determine if the use is agricultural, grant a special exception pursuant to RSA 674:32 or two; grant a variance with conditions. It seems like the biggest concern in granting the application is that the applicant does not meet criteria of Section XXII.3. (v) which states; “Except as otherwise provided, the home occupation shall not create any exterior evidence of its activity (e.g. outside storage of material, specialized equipment, etc.) or create any visual variation from the residential character of the property.” The location is not a residential area. Major agreed the proposed equipment is not much different than the existing equipment already used on the property. Belanger suggested the ZBA consider granting a variance with the same conditions of a home occupation ordinance. The ZBA members agreed. Major suggested a condition be placed on the application to limit the scope and size of the operation since a variance will go with the property not just the applicant.

*Major moved to re-open the hearing for Case 2016-003*

*Seconded by Belanger.*

*Motion unanimously approved.*

Belanger asked the applicants to approach the ZBA for further questions.

The Carlsons approached the ZBA. Belanger asked how many pieces of equipment does the business park on the property and are there any plans to obtain additional equipment in the next five years. Carlson replied they have three vehicles associated with the business and no plans to obtain any additional equipment. Belanger asked if the ZBA imposed a condition that no more than five commercial vehicles or specialized equipment be onsite at any given time would they agree. Carlson replied yes.

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

*Major moved for a condition of approval;*

- 1. The applicant shall comply with all the requirements set forth in section XXII.4, Home Shop b., excluding sub-paragraph (vii) See Notice of Decision, Case 2016-003 for full text.*

*Seconded by Durham.*

*Motion unanimously approved.*

*Belanger moved for a condition of approval;*

2. *No more than five (5) commercial vehicles or specialized equipment shall be on site at any given time. Not including farm equipment associated with the agricultural operation existing on the property and adjacent property.*

*Seconded by Durham.*

*Motion unanimously approved.*

*Moore moved for a condition of approval;*

3. *The variance is limited to the business operation as described within the application and testimony.*

*Seconded by Tsao.*

*Motion unanimously approved.*

Major stated if the ZBA grants the variance finding of fact should be considered to justify the variance. The ZBA agreed.

*Belanger moves for the following a findings of fact;*

1. *The proposed use is not discernible from the existing farm “use” on the property.*
2. *The proposed use is consistent with the existing “uses” on the parcel.*

*Seconded by Major.*

*Motion unanimously approved.*

*Major moves for a finding of fact;*

3. *The ZBA finds that the size of the parcel mitigates the need for a visual buffer.*

*Seconded by Belanger.*

*Motion unanimously approved.*

*Moore moves for a finding of fact;*

4. *The proposed use of the property by the applicant is indiscernible from the storage and movement of farm equipment on the property.*

*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
Belanger	Yes	Yes	Yes	Yes	Yes	Yes	6	0
Tsao	Yes	Yes	Yes	Yes	Yes	Yes	6	0
Major	Yes	Yes	Yes	Yes	Yes	Yes	6	0
Moore	Yes	Yes	Yes	Yes	Yes	Yes	6	0
Durham	Yes	Yes	Yes	Yes	Yes	Yes	6	0

**THEREFORE THE VARIANCE WAS GRANTED WITH THE FOLLOWING CONDITIONS AND FINDINGS OF FACT;**

#### Conditions:

1. The applicant shall comply with all the requirements set forth in section XXII.4 Home Shop, b. (Note: sub-paragraph (vii) in the below list was specifically omitted by the board)
  - (i) Home shops shall be conducted in a manner which does not affect the character of the neighborhood.
  - (ii) One sign announcing the home shop is allowed, provided that it does not exceed 4 square feet of sign surface area. Mailboxes designed as an advertisement shall not be allowed for a home shop. No business vehicle or equipment may be parked in such a way as to be used as advertising for the home shop.
  - (iii) No merchandise, stock, commodities, or parts shall be offered for sale to the public on the premises.
  - (iv) Not more than three (3) employees are permitted on the premises at any time, including the resident employee(s). Parking for these employees must be off-street.
  - (v) Except as otherwise provided, the home shop shall not create any exterior evidence of its activity (e.g. outside storage of material, specialized equipment, etc.) or create any visual variation from the residential character of the property
  - (vi) The home shop may not generate more than an average of 12 vehicular trips per day on days of operation. “Trip” shall be as defined in the ITE Trip Generation Manual, 5<sup>th</sup> Ed.
  - (viii) Objectionable circumstances such as noise, vibration, dust, smoke, excessive traffic, electrical disturbances, odors, heat, or glare shall not be produced.
  - (ix) The home shop may not involve any process which results in the discharge of any hazardous material (as defined by the State of New Hampshire) into the air, ground, or into any surface water bodies.
  - (x) Any home shop, which will involve the use, production, or storage of any hazardous material (as defined by the State of New Hampshire) shall submit a written request for review to the Hollis Fire Department, prior to submitting application for special exception. This request shall list all such materials that may be used, produced or stored for the home shop. The ZBA may deny or conditionally approve said application, based on the Hollis Fire Department’s written recommendations, if it is determined that said operation may be a potential public hazard.
  - (xi) The existing or proposed septic systems must be certified by a licensed septic designer or engineer as adequate to handle and treat the increased waste volumes generated by the home shop in accordance with New Hampshire RSA 485-A:38 and the Town of Hollis septic regulations. If the existing septic system is not capable of adequately handling and treating the waste of the principal dwelling unit and the home shop in accordance with New Hampshire RSA 485-A: 38 and the Town of Hollis septic regulations, a new or upgraded septic system conforming to the most recent state and local septic standards and regulations shall be required. No more than five (5) commercial vehicles or specialized equipment shall be on site at any given time. Not including farm equipment associated with the agricultural operation existing on the property and adjacent property.
2. The variance is limited to the business operation as described within the application and testimony.

**Findings of Fact:**

1. The proposed use is not discernible from the existing farm “use” on the property.
2. The proposed use is consistent with the existing “uses” on the parcel.
3. The ZBA finds that the size of the parcel mitigates the need for a visual buffer.
4. The proposed use of the property by the applicant is indiscernible from the storage and movement of farm equipment on the property.

**Review of Minutes**

*Durham moves to approve the minutes of January 28, 2016 as written.*

*Seconded by Major.*

*Motion unanimously approved.*

**Other Business**

**Upcoming House Bill**

Belanger requested that Major look into a house bill which states, each of the five criteria for a variance must be voted on separately like we do. Currently the Hollis ZBA requires the same three members to vote yes on all five criteria. The house bill does not require the same three members to vote yes. The question is does the Hollis ZBA have the authority to specify that the same three members must vote yes on all five criteria.

**Election of Officers**

Belanger stated since the ZBA changed to a rotation schedule for Officers he has heard that some members like the change and some do not. Belanger has instructed Setaro to bring ballot forms to the April meeting, at which time the Chairman and Vice Chairman will be elected by secret ballot. Belanger stated he has no problem with rotating the Officers but it should be the consensus of the board, not just a few.

**Meeting Adjourned**

The ZBA meeting adjourned at 8:35 pm.

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