



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

**Minutes of July 28, 2016**

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 –David Gibson, Susan Durham, Drew Mason, Kat McGhee and Bill Moseley.

Tsao explained the policies and procedures.

**Case 2016-009**

This application was tabled at the June 24, 2016 ZBA meeting-The application of Hollis Montessori School for an Appeal of the Administrative determination per RSA 676:5, II (b), made by the Hollis Building Inspector/Code Enforcement Officer for operating the Hollis Montessori School outside of the conditions imposed by the Zoning Board of Adjustment and the Planning Board. Property located at 9 South Merrimack Rd., (Map 036, Lot 032) in the Residential Agricultural Zone.

Tsao noted the ZBA received a letter dated June 28, 2016 from town counsel. In his opinion counsel contends that the ZBA does not have jurisdiction to hear this appeal as it involves an appeal from a decision of the code enforcement officer which constitutes a decision claiming that the applicant violated conditions of approval and directing the applicant to cease and desist. As such, the decision is not an interpretation of the terms of the zoning ordinance but a "...discretionary decision to commence formal or informal enforcement proceedings...", which is expressly excluded from the ZBA jurisdiction by RSA 676:5 as cited in his opinion. Therefore, if the voting members agree with the opinion, a motion to decline to hear case 2016-009 as it is beyond the jurisdiction of the ZBA, would be on order. Major suggested if the members agree to allow the applicant to speak only on the jurisdiction issue.

*Tsao moves to decline to hear Case 2016-009 as it is beyond our jurisdiction.  
Seconded by Major.*

Brad Westgate, Attorney representing the Hollis Montessori School thanked the Zoning Board of Adjustment (ZBA) for allowing him to speak. Westgate stated he anticipated the motion put on the table by Tsao. Westgate disagrees with the opinion of Attorney Drescher concerning the ZBA jurisdiction matter. Westgate felt a significant legal debate here was not warranted since Attorney Drescher was not present. Westgate suggested he will bring to the table a comprehensive way to analyze the schools "use" and the questions of its scope of "use" in terms of what they think of as a regular school day operation, after school operations and evening operations. They are prepared and intend to file a special exception to address all this in significant detail. The application would be filed prior to the August 25, 2016 ZBA meeting deadline. That way they have the proper forum without debating the ZBA's jurisdiction in this context to analyze the issue. Westgate suggested, rather than dismissing the case tonight because of lack of jurisdiction would the ZBA consider deferring action on this appeal until the August meeting

Westgate also stated that if in fact the ZBA adopts tonight's motion and declines the appeal on the basis of jurisdiction, he would be compelled to file a rehearing request with the board saying no that's not the right decision; it will come before the board at the August meeting as a rehearing and this will just frankly complicate matters a little more procedurally and unnecessarily.

*Major moves to amend the prior motion, to table Case 2016-009 to the August 25, 2016 ZBA meeting.  
Seconded by Belanger.*

*The motion to table passed by a vote 4-1 with Moore opposing.*

Tsao and Belanger recused themselves from Case 2016-010  
Vice Chairman Moore assumed the chair.

Moore appointed Gibson and Durham as voting members for Case 2016-010

**Case 2016-010**

The application of Venu Rao, Hollis Brookline Rotary Club, for a Variance to Section XIV, Sign Ordinance, Paragraph H.3 Prohibited Off-Premise Signs of the Zoning Ordinance to permit the installation of four (4) 7.58 square foot, Rotary Club Signs, located at the following locations Map 001, Lot 035; Map 027, Lot 004; Map 011, Lot 028 and Map 045, Lot 044, all signs are in the Residential Agricultural Zone.

Venu Rao, 37 Arbor Lane presented Case 2016-010 on behalf of the Hollis Brookline Rotary. Rao explained that the Hollis Brookline Rotary helps individuals when they experience hard times. It might come as a surprise that even well-to-do towns like Hollis and Brookline have families in dire need of help. Some people that need help, are discovered after-the-fact because they are unaware the Rotary was in town and could have helped. The main reason we are proposing the signs is to let residents know that the Rotary is in town and can help when needed. The Hollis Brookline Rotary raises over \$30,000.00 per year, was chartered in 1996 since then we has raised and donated over \$600,000. 00.

Rao stated he has contacted the State DOT to find out what their procedures were for installing signs within the state right of way. The State DOT told him that if the organization was a non-profit the State did not have any regulations. However, the signs would have to be installed in a way that would not cause any safety issues with line of sight and if the State receives any viable complaints the Rotary would be notified and the signs would need to be removed. Once Rao completed the state investigation Rao went before the Board of Selectman for their approval and they unanimously approved the signs. The last step was to receive Zoning Board of Adjustment (ZBA) approval since the signs were off premises prohibited signs. Major asked why wasn't the sign application filed as an informational sign instead of a business sign. Setaro replied a determination was made that the signs were an off-premises sign advertising or identifying a non-agricultural business. Major noted the sign would be used to direct residents where the meetings are held and that Hollis does have a Rotary in case they need help. The ZBA used this type of argument to approve the signs proposed in the Beaver Brook case. MacMillan asked where on the sign does it say a person can come to the Rotary for help. Rao replied people are aware that Rotary's help people; the problem is that people do not know the town has a Rotary. MacMillan asked if surrounding towns have Rotary signs. Rao replied yes, Milford, Brookline and Nashua. Gibson asked if the sign was stand alone. Rao replied yes but at the Selectman's meeting we agreed that if another non-profit or service organization requested a sign that organization would be added to the same pole. However, if another organization wanted a sign to be added they would need to seek selectman approval prior. MacMillan asked if there were to be two signs combined into one for the Rotary. Rao replied yes the square sign under the logo would have "Meets at town hall, Wednesday at 7:15am" Major questioned if the agricultural signs installed around town were approved. Setaro replied agricultural signs are allowed. That was the reasoning since these signs are not agricultural they needed to be approved. Mason asked if there were any Rotary signs already installed in the town. Rao replied no.

**Spoke in Favor of the application**

James Belanger, 32 Plain Road

Belanger stated the Rotary Club did have signs on the four roads entering town at one time. There was a complaint made concerning the signs and instead of pursuing the complaint we decided to remove the signs. If the ZBA approves the signs a condition should be set, if a different organization made a request to be added to the sign, the sign should be a combination sign and sign should obtain property owner permission as well.

**Spoke in opposition of the application**

Wayne Crystal, 110 W. Hollis Road

Crystal stated he was not informed of the proposed sign until he received the ZBA notification in the mail. He has a blind spot coming out of his driveway already. If the sign was placed at the proposed location the blind spot will be aggravated even more. Moore asked if the sign location was moved would he agree to the sign. MacMillan noted the Mr. Crystal opposes the sign.

**Applicant Rebuttal**

Rao stated the locations of each sign were evaluated by Tom Bayrd, Department of Public Works Director, for sight

distance and obstruction to any driveways. However, if a problem arises the sign can be moved to the other side of the road. Major questioned if the proposed locations for each sign were in a non maintained section of the property. Rao replied the locations are within the state right-of-way.

**Spoke in opposition of the application**

Cynthia Crystal, 110 W. Hollis Road

Crystal stated her property is the last house in Hollis and does not have a lot of space between their property and the bridge. If the location was towards the bridge it would be a problem when the town plows and would be visible from their house. They already have to look out the Mass. State line sign and the posted speed limit. Crystal prefers not to have the sign located on her property.

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

Tsao assumed the chair.

Tsao appointed all regular members to vote on Case 2016-011 and Case 2016-012.

**Case 2016-011**

The application of Traci Weaver, property owner, for a Variance to Section XI.5a, Minimum Lot Area of the Zoning Ordinance to permit a lot line relocation which will create a 1.103 acre lot (required 2 acres), located at 0 Depot Rd., (Map 050, Lot 013) in the Town Center Zone.

Tom Hildreth presented Case 2016-011 on behalf of the property owner. Hildreth stated the proposed lot line adjustment will take approximately 0.9 acres from Traci Weavers lot 50-13, which will then be added to the lots of two of her neighbors – lot 50-11, John Burns and 52-61, Tom Hildreth. The area in question is completely unusable to Weaver. The area is much more naturally connected to lots 50-11 and 52-61. Those lots share much longer boundaries with the land in question; are directly affected by its appearance/views; and more motivated, interested and inclined to care for the land. Weaver seeks to be relieved of the cost/responsibility for insuring, maintaining, monitoring, and paying taxes on the land, which has little relevance and little connection to her home. If the Variance is granted the application must also seek approval from the Planning Board for the proposed lot line adjustment.

Granting this variance is not contrary to the public interest and does not violate the basic zoning objectives of the Hollis Zoning Ordinance (HZO). It will not alter the essential character of the neighborhood, threaten public health, safety or welfare or otherwise injure public rights. The character of the neighborhood will remain completely unchanged. No new buildable lots are created. The land in question is more likely to be better cared for because it will be attached to lots with greater natural interest in the care of the land.

The spirit of the ordinance is observed by granting this variance because it more strongly leads to the preservation of the character of the neighborhood by adjoining the land in question to existing lots with stronger natural interest in caring for the land.

Substantial justice is done because the altered lot lines pose no threat to surrounding property, are consistent with the area's present use, and do not harm abutters. As "the general public would realize no appreciable gain from denying this variance. Many properties in the Town Center area are smaller than the resulting lot following the lot line adjustment.

The value of surrounding properties are not diminished. The Property currently houses a single family home and barn. The property's use will not change as a result of the lot line adjustment, no new buildable lots are created. Local property values will remain unaffected.

Owing to special conditions of the property that distinguish it from other properties in the area 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 in question. The special conditions of the property include:

1. The odd shape of the lot which puts the vacant field around the corner and out of sight from her home, and more naturally connected to the rear yards of two of her neighbors;

2. The lot line adjustment creates no new buildable lot;
3. The proposed lot is considerably larger than many in the Town Center area;

The lot abuts the Town Hall on one side and approximately 200 acres of Brookdale Fruit Farm on another; the orchard is protected by a conservation restriction such that no further development can occur on that land.

For these reasons, no fair and substantial relationship exists between the general public purpose of the ordinance and the specific application of that provision to the Property. Moreover, the proposal is a reasonable one because it leads to the prospect of better long term care and attention to the property in question thus preserving the character of the neighborhood.

Belanger asked if the variance and lot line relocation was approved the resulting lots would be; 50-13 (Weaver) 1.103 acres; 50-11 (Burns) 1.584 acres and 52-61 (Hildreth) 2.493 acres. Hildreth replied yes which is a good point even with the lot line relocation the variance would not create an additional building lot for any of the lots in question. Belanger asked if the septic and well were located on the land in question. Hildreth replied no. Belanger asked what the future plans for the property in question were. Hildreth replied the land use would not change, it would remain as it is. The only change would be who would maintain the land. MacMillan asked if the ZBA does not grant the variance what would change. Hildreth replied the land most likely would not be maintained.

Traci Weaver approached the ZBA. Weaver stated she would continue to maintain the land in question but would like to simplify the lot. MacMillan asked what type of hardship exists. Weaver replied she was a single Mom and would like to reduce her costs of \$190.00 per mowing, time and energy. Belanger stated to meet the hardship criteria the hardship can't be financial.

MacMillan asked how the proposed lot is different from others in the area and does the reason that a property owner does not use a portion of his land warrant granting a variance. Hildreth stated in certain circumstances. "The hardship criteria is met if there are special conditions of the property that distinguish it from other properties in the neighborhood. The property is unique; abuts Town Hall, Brookdale Fruit Farm, the lot is substantially larger than many of the homes in the town center area and the lot is odd shaped. Taking those facts into consideration the proposal is a reasonable one it leads to the prospect of better long term care since it will be attached to lots that have a more natural boundary. MacMillan stated if the variance was granted the result would be a non-conforming lot. Hildreth replied yes but the Burns lot would become less non-conforming. Major noted currently the 3 lots in question based on acreage standpoint; 1 conforming and 2 non-conforming lots. The variance, if approved, would create 1 non-conforming lot, 1 less non-conforming lot and 1 conforming lot. Hildreth agreed. Major asked would there be enough room to replace the septic at 0 Depot Rd. if the current septic failed. Hildreth replied yes.

Gibson stated it seems to be a question on the ability to maintain the area in question. Will Burns maintain the land if approved. John Burns, Cleasby Lane, (50-11) stated he will maintain his portion since the land is visible from the two others lots and not from the applicant's. Burns stated during an earlier conversation with Weaver she was unaware that the land in question was actually hers.

Belanger stated in his opinion the application meets the first 4 variance criteria; it is the hardship criteria that we cannot vary. Hildreth replied the law on hardship has gone through a significant evolution within the last few years. An evolution in favor of private property rights, the standards set to obtain a variance is not what it once was, which is if you can make any reasonable use of the land in its present state you will not be granted a variance. The property is a very unique setup. The uniqueness of the land includes the special features of this land as stated; shape, relative size to neighboring lots, abutting a non-residential use, abutting a vast permanently protected conservation land on one side. All of those factors make the property unique. Coupled with the fact it is a reasonable proposal because it leads to better long term care and would benefit not only the property owners but the town center area. Belanger agrees but the owner purchased the property as it was. McGhee stated the hardship could be that the property owner has the responsibility for maintaining the area but has no benefit of reasonable use of the property. Major stated predominately the lot sizes in the town center are 1 acre and the proposed lot is larger. Moore asked how the special conditions of the property and the current zoning regulation interfere with the owners reasonable use of the land. Hildreth replied the owner is responsible for maintaining the area but has no benefit or reasonable use. The proposed land really has no relationship to the rest of property. The land in fact, has more relationship to the other two lots. Moore noted the proposed lot was created some time ago and the property owner purchased the lot the way it was and the property owner is making the decision not to use the area. Hildreth agreed but in his opinion there are enough reasons strictly on a legal point of view that the request is reasonable. Mosley asked if a plot plan was obtained prior to the purchase. Weaver replied no, the sale was made quickly, she actually walked up to the front door and asked if they wanted to sell. A survey was never done and she did not envision the property going

along the back was actually attached to the rest of the property.

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

**Case 2016-012**

The application of Robert Baskerville, Bedford Design Consultants, for a Variance to Section XXI.1a, Housing for Older Persons, occupied by persons 62 years of age or older and Section XXI.1e, Minimum lot area of the Zoning Ordinance to permit the construction of a Housing for Older Persons Development, to be occupied by persons 55 years of age or older (required 62 years of age or older) and with a lot size of 18 acres (required 30 acres), property owned by James Prieto, located at 441, 443, 445 and 447 Silver Lake Rd. (Map 046, Lots 007-010) property owned by James Seely, located at 449 Silver Lake Rd. (Map 046, Lot 006) in the Agricultural Business Zone and Residential Agricultural Zone.

Robert Baskerville, Bedford Design Consultants, presented Case 2016-012 on behalf of the property owners. Baskerville explained the property owners are seeking two variances to allow a development for Older Persons on the five lots (map 46 lots 6, 7, 8, 9, and 10) which are approximately 18 acres where 30 acres is required and allowing a restriction that all residents must be over 55 where 62 is required.

The five lots would be consolidated into one lot as part of a Planning Board application if the variances are approved. The existing 5 lots are being used as a Flea Market as well as having three residences on them. The Silver Lake Flea market has been run by the same family since 1974. The three residences on the parcels are rented. In addition to three houses on the property, there are structures to serve as amenities and restrooms for vendors and visitors. All of the current structures would be removed with the exception of one house towards the back which was recently renovated. The process of developing these parcels into an active adult community will allow the family to retire the flea market on these parcels. The front of these lots is zoned Agricultural and Business Zone and the rear of these lots are zoned Residential and Agricultural. The use is one that is allowed in the zoning regulations and one that is currently in high demand. It would also replace a use that taxes town services and the land to a higher degree than our proposed use. It would reduce the amount of curb cuts from 5 to 1 and traffic onto a state highway, reduce impervious surfaces, enhance the green space in the community, reduce the draw on several town services, provide additional assessed value, and provide a use that is needed in the community. While the public will not see any significant harm from the land owners they will see several benefits. The new development will create dramatically less traffic than the flea market. The land will see an increase in open space and a probable decrease in impervious surfaces. The number of vehicles that will be parked on this land will be greatly reduced. These changes will improve the buffers to both of the adjacent wetlands, flood plains, and Witches Brook.

The noise, activity, parking issues, and high traffic of the flea market will be replaced with 13 new homes that can be placed along a single road with a turnaround that can handle moving trucks and/or fire trucks. The new development will be a quiet and attractive community of new homes with drives, lawns, and open space maintained by the development association. It will increase buffers to abutting residential properties, provide a more scenic neighborhood, and we believe it will raise the property values of the surrounding properties. Our proposed development would have lesser impacts than the current use and the Open Space of our development will probably double the 40% minimum open space that the ordinance calls for. We can reduce the impervious surfaces, let larger wetland buffers re-vegetate into a more natural state, improve the storm water treatment on the parcels, and replace older wells and septic systems with more modern systems designed to state and local regulations.

Belanger asked the applicant to address the criteria for the variances requested and not issues pertaining to a site plan review as those issues would be dealt with by the planning board.

Baskerville stated that we are seeking relief from the section of the zoning ordinance "Housing for Older Persons Development" to be occupied by persons 55 and older instead of the required age 62 and older. Belanger noted RSA 354A:15 defines housing for elderly at age 62. Baskerville stated the Fair Housing Act was written in 1968. That Act prohibited discrimination for a variety of reasons including race, color, religion and age. Until 2011 it appears that this section of the Hollis zoning ordinance referred to "Retirement Communities" and the term "Older Persons" replaced the term "elderly and disabled". Much of the spirit of this ordinance seemed based on our ideas of Retirement Housing being for the Elderly and Disabled. It was not until 1995 when the Federal Housing for Older Persons Act (HOPA) was passed. This new act allowed for an exemption to the Fair Housing Act as long as one of two criteria was met: The first was that every resident must be age 62 or over, Or, that at least 80% of the units have at least one person over 55 years of age. We are proposing a development with this restriction. Children and

younger persons can visit for short periods, but they cannot live in this development. All residents must be over 55 years of age. If a unit passed as an inheritance to a person under 55, they can sell the unit or rent the unit to persons over 55. But they cannot live there. This is becoming the new norm. And the ordinances of surrounding communities and the market demand for these units places a hardship on the development as many NH communities have adapted to allow for 55+ developments. Amherst, Milford, Hudson, and Nashua ordinances all allow for 55+ developments. Indeed, in the past two years our office has worked on large over 55 developments in Londonderry, Bedford, and Concord NH. A requirement that requires all residents to be over 62 where almost all of the competing projects allow for 55+ would create an insurmountable hardship for the marketing and sales of an individual home project for older persons. Major questioned for what reasons would the ZBA consider varying the 62 age requirement. Baskerville stated that the hardship is that most of the surrounding towns have changed their regulation to age 55 and over, and Hollis has not.

Baskerville stated in regards to the 30 acre size limitation, this type of active adult community does not need a large central building with dining halls and nursing services. We strongly feel that this proposal does meet the spirit of the ordinance. We believe that this ordinance was designed around the idea of a Retirement Home building. That would require a larger size lot. This development of smaller homes will fit nicely into this neighborhood. The ordinance would require that our proposed use would require a lot of at least 30 acres. But that provision does not indicate how many of those 30 acres would need to be developable. And the number of allowed units is based on the developable area or density, not on the total lot area. So what was the reason behind the 30 acre requirement if it was not density. Major stated the 30 acre requirement may have been put in place because the residents did not want this type of development all over town. Major asked was a HOSPD development considered seeing that the property owner could construct roughly 9 homes without ZBA approval. Baskerville replied yes but the costs associated with that type development would not be feasible. MacMillan stated to meet the hardship criteria the hardship can't be financial. Major noted the proposed properties could be developed in other ways as well.

#### **Spoke in opposition of the application**

Bob Labednick, 11 Truell Road

Labednick stated the new entrance will create additional sight issues coming off Ames Road and the traffic will be impacted since the proposal is for 13 units with cars coming in and out daily.

Janine Byron, 5 Ames Road

Byron stated the fleamarket is held once a week and if the development is approved the traffic will increase and the roads will be impacted more.

Philip Lavergne, 11 Ames Road

Lavergne stated his biggest concern is varying the 30 acreage requirement. Lavergne pointed out, as noted on the supplied plan, the property has 5 acres within the flood plain and can't be developed. Removing the flood plain area leaves a 13 acre parcel which can be developed. This equates to a 40% reduction of the 30 acre requirement and should not be allowed.

#### **Applicant rebuttal**

Baskerville agreed with the sight distance concern and noted the entrance can be moved away from Ames Road. The traffic will actually be less intrusive than the current use, most 55 and over developments average 6 trips per day per unit. The 30 acreage requirement is not tied to any other development types within zoning or planning regulations. The hardship to the property is why the 30 acre requirement imposed only to an older persons development and not other types of developments.

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

*The ZBA recessed at 8:55pm and reconvened at 9pm.*

#### **DELIBERATION AND DECISION**

Vice Chairman Moore assumed the chair.

**Case 2016-010**

Discussion of the application of Venu Rao, Hollis Brookline Rotary Club, for a Variance to Section XIV, Sign Ordinance, Paragraph H.3 Prohibited Off-Premise Signs of the Zoning Ordinance to permit the installation of four (4) 7.58 square foot, Rotary Club Signs, located at the following locations Map 001, Lot 035; Map 027, Lot 004; Map 011, Lot 028 and Map 045, Lot 044, all signs are in the Residential Agricultural Zone.

Mason stated since the sign is not a business sign he feels the sign is not prohibited. However, what is prohibited is a off-premises sign advertising or identifying a non-agricultural business. The Rotary is a charitable organization not a business. MacMillan stated the Rotary is a great organization but sign pollution is horrendous and more signs are not going to help; nowhere on the sign does it say the Rotary can help. The sign is actually advertising the Rotary. Under section H.17 any other sign not expressly permitted is a prohibited sign; the ordinance is perfectly clear. Major stated we determined that when Beaver Brook applied for their signs, the ZBA determined that they were informational in nature and approved the request. In Major's opinion the Rotary signs should be treated the same way. The sign would foster community involvement as well. Mason disagreed that the sign violates section H.17. McGhee stated under section XIV.A, the ultimate goal of the sign ordinance is to ensure traffic safety, prevent obstructions in right-of-ways, allow the existence of signs that aid orientation and identification of uses and activities to the public without degradation of the surrounding property or properties in any area. The ZBA has latitude but we need to decide if the sign is actually needed. MacMillan asked if anyone has missed not having the Rotary sign in town. McGhee replied no. Moore stated the administrative board that was appointed by the Board of Selectman (BOS) shall be responsible for that interpretation and administration of the provisions of the sign ordinance. The ZBA is not the administrative board. Within the application package the sign permit has been signed by Dave Gagnon but approved or denied is not circled. So why is the application before the ZBA. Mason replied the Moore brought up that same issue with the Beaver Brook signs so maybe the fact is that the BOS has not appointed an administrative board so the decision needs to be made by the ZBA. Major feels the variance should be acted on by the ZBA as we did in past cases. Moore disagrees; if the BOS has not appointed an administrative board the ZBA does not have the authority to approve the request unless the ZBA is appointed as that board. Moore would like to receive direction from the BOS. "Is the ZBA the appointed administrative board and, if not, who has been appointed to administer the sign ordinance?"

*Major moves to table Case 2016-010 until the August 25, 2016 ZBA meeting.*

*Mason seconded.*

*Motion unanimously approved.*

Tsao assumed the chair.

**Case 2016-011**

Discussion of the application of Traci Weaver, property owner, for a Variance to Section XI.5a, Minimum Lot Area of the Zoning Ordinance to permit a lot line relocation which will create a 1.103 acre lot (required 2 acres), located at 0 Depot Rd., (Map 050, Lot 013) in the Town Center Zone.

McGhee stated in her opinion the applicant meets the hardship criteria because she has the burden and responsibility of the property in question and does not have the use and enjoyment due to the lot configuration. The request is a reasonable one due to the fact the property is more naturally attached to the other two lots. Belanger agrees the lot is not easily accessible from the applicant's lot. MacMillan stated there is no hardship because the lot was purchased the way it is configured. Major stated one way to look at the application is that the prevailing lots within the town center are less than 1 acre. What enforcement of the ordinance is accomplished by not granting the variance? The outcome of the lot line relocation would in fact create 1 lot closer to conforming and 1 lot non-conforming. The planning board also has a provision on creating odd lot configurations. Moore stated that it tortures logic to find a technical hardship but, nevertheless, the applicant is not creating an additional building lot, the application results in the maintenance of the status quo use of lot, and he would favor granting the variance. Belanger agreed the hardship is with the configuration of the land and its inability for the owner to use the land.

*Moore moves for a finding of fact;*

- 1. The unique shape and location of the lot in relation to surrounding lots limits the applicant's reasonable use of the lot.*

*McGhee seconded.*

*Motion unanimously approved.*

*Major moves for a finding of fact;*

2. *The final configuration of the three (3) lots creates no additional building lots and is consistent with the configuration and sizing of lots in the surrounding area.*

*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
Cindy Robbins-Tsao	Yes	Yes	Yes	Yes	Yes	Yes	5	0
Gerald Moore	Yes	Yes	Yes	Yes	Yes	Yes	5	0
Brian Major	Yes	Yes	Yes	Yes	Yes	Yes	5	0
James Belanger	Yes	Yes	Yes	Yes	Yes	Yes	5	0
Rick MacMillan	Yes	Yes	Yes	Yes	Yes	Yes	5	0

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

1. **The unique shape and location of the lot in relation to surrounding lots limits the applicant's reasonable use of the lot.**
2. **The final configuration of the three (3) lots creates no additional building lots and is consistent with the configuration and sizing of lots in the surrounding area.**

**Case 2016-012**

Discussion of the application of Robert Baskerville, Bedford Design Consultants, for a Variance to Section XXI.1a, Housing for Older Persons, occupied by persons 62 years of age or older and Section XXI.1e, Minimum lot area of the Zoning Ordinance to permit the construction of a Housing for Older Persons Development, to be occupied by persons 55 years of age or older (required 62 years of age or older) and with a lot size of 18 acres (required 30 acres), property owned by James Prieto, located at 441, 443, 445 and 447 Silver Lake Rd. (Map 046, Lots 007-010) property owned by James Seely, located at 449 Silver Lake Rd. (Map 046, Lot 006) in the Agricultural Business Zone and Residential Agricultural Zone.

Belanger stated he feels that the applicant spent 85% of his time explaining planning board issues such as; traffic, access, size of the lots and who would be living in the home. The only issues we should have been addressing are the variances. One being the 30 acre requirement and the second dealing with the age requirement of 62. Secondly, the application has requested two variances on a single application and not separately. If the ZBA members are in favor of one variance and not the other, the ZBA member would have to vote no. MacMillan is against the application; it is a gross deviation of the ordinance. Mason stated he would find it difficult to vary the age requirement. MacMillan stated the applicant testified that the hardship was financial which can't be considered.

Moore stated the conceptual plan submitted tonight does have merit and in his opinion the planning board should look into revising the zoning ordinance. However, there was no case to support the variances. The ZBA members agreed.



**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
Cindy Robbins-Tsao	No	No	No	Yes	No	Yes	2	4
Gerald Moore	No	No	No	Yes	No	Yes	2	4
Brian Major	No	No	No	Yes	No	No	1	5
James Belanger	No	No	No	Yes	No	Yes	2	4
Rick MacMillan	No	No	No	Yes	No	No	1	4

**THEREFORE THE VARIANCE WAS DENIED.**

**Review of Minutes**

*Major moves to approve the minutes of June 23, 2016*

*Seconded by Moore.*

*Motion unanimously approved with Belanger and MacMillan abstaining.*

**Meeting Adjourned**

The ZBA meeting adjourned at 10 pm.

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