



**BOARD of ADJUSTMENT**

**Town of Hollis**

Seven Monument Square  
Hollis, New Hampshire 03049  
Tel. 465-2209 FAX 465-3701

**Minutes of November 29, 2018**

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

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

Major explained policies and procedures.

Major appointed Mason as a voting member this evening.

Moseley recused himself from ZBA case 2018-016.

**Case ZBA 2018-016**

**Re-Hearing** of the application of Patricia Panciocco, for a Variance to Section XXI.1, Housing for Older Persons, Paragraph e, Minimum lot area & Section VIII Lot Definition of the Zoning Ordinance to permit the construction of a Housing for Older Persons Development on a noncontiguous 20 acre lot (contiguous lot required), property owned by James Prieto, located at 436, 441, 443, 445 and 447 Silver Lake Rd. (Map 045, Lot 041 and Map 046, Lots 007-010) and property owned by James Seely, located at 449 Silver Lake Rd. (Map 046, Lot 006) in the Agricultural Business Zone and Residential Agricultural Zone.

Patricia Panciocco, Attorney for the applicants, noted her concerns on the ZBA rehearing case 2018-016. One being that her office and the applicant were not notified that the motion for rehearing was received, or that the meeting was scheduled for the October 25, 2018 ZBA meeting. If noticed, Panciocco would have submitted documentation against granting the re-hearing request. The applicant does not oppose the rehearing being granted for the limited issue to determine regional impact. However, the applicant does oppose a full rehearing of the case. If tonight's meeting is a full rehearing, Panciocco is not prepared and feels a full rehearing lacks merit.

Major stated within the application there was a submittal received on November 11, 2018 from Panciocco in response to the motion for rehearing dated October 18, 2018 submitted by Attorney Allard. Panciocco agreed the submission was sent however; since she was not noticed of the motion for rehearing, Panciocco is requesting the ZBA affirm its decision and deny Cormier's request that the ZBA's approval of her client's variance application be reversed. Major replied since the ZBA granted the rehearing a rehearing, is required. The rehearing would be a full rehearing or possibly limited.

Bret Allard Attorney for Leo Cormier. The ZBA did make a procedural error by not determining regional impact. The ZBA also did not address any of the additional points within the rehearing request and did not grant the rehearing with any limitation. Since there were no findings and/or limitations attached to the rehearing request being approved on October 25, 2018 and the legal notices were sent as a "rehearing" of case 2018-016, the ZBA, in Allard's opinion, granted a full rehearing with no limitations. The applicant would not agree to a limited rehearing.

The ZBA members addressed Panciocco's concern on not being noticed. Per RSA 6773:3, the ZBA must consider the motion and act to grant or deny it. This is a public meeting subject to the minimum posting requirements but is not necessarily a public hearing and no formal notice is required to either the applicant, abutters or moving party. In the future the ZBA may consider sending notices out and will be asking Town counsel for an opinion on the matter.

Major asked if Panciocco wanted to recess case 2018-016 to allow her time to discuss options with her client. Panciocco agreed.

*Belanger moved to recess ZBA case 2018-016 until the public hearing of case 2018-023 is completed.*

*McMillian seconded.*

*Motion unanimously approved.*

**No further questions from the Board and none from the floor - hearing portion of the case closed.**

**Case ZBA 2018-023**

The application of Craig & Kelly Weimer, property owners, for a Variance to Section XG, Zoning District, Paragraph 4.d, Minimum Side Yard Width of the Zoning Ordinance to permit the construction of a 18' x 26' Garage 25 feet from the side yard width (required 35 feet) located at 111 Wright Rd (Map 014, Lot 060-002) in the Residential/Agricultural Zone.

Craig Weimer explained that since his prior application for a 16 foot variance from the side yard setback was denied. (case 2018-018), Weimer moved the proposed 18' x 26' garage closer to his home and is requesting a 10 foot variance from the side yard setback.

Weimer stated adding the garage in the proposed location was a recommendation that was provided during the last variance request. The garage will be situated at the top of the driveway, much closer to his home, but will also leave ample room for passage between the home and garage for large trucks to occasionally service his pool, trees and septic. The left side of the property is inaccessible due to his pool and a large hill along the outer perimeter. He stated that his options were severely limited due to the angles and locations of his home and the driveway on the lot, along with adverse winter conditions. Any other location will create egress and potential personal injury risks.

Major asked why the garage couldn't be moved back 4 to 5 feet to meet the setback. Weimer replied moving the garage back would encroach on the only flat portion of the yard.

Belanger noted the town's people voted on the ordinances and the ZBA is charged with protecting the ordinances. For the ZBA to grant a variance, an applicant must meet the 5 criteria for a variance, one of which is hardship. A hardship exists when a piece of property can't be reasonably used for its intended purpose. Belanger asked Weimer what the hardship was if the garage variance was not approved. Weimer replied approving the variance would eliminate congestion in the driveway, especially in the winter, leaving an additional car outside could pose a safety issue. Also, the abutting property owners are in favor of the application.

Major noted the garage could be moved to meet the side setback. In Major's opinion the hardship criteria is not met. The ZBA members agreed.

**Letters received in favor of the application**

Setaro stated the ZBA had received 3 email all in favor of the application. The emails were from the following;

1. Charles Roy, 18 Sherwood Drive
2. Mark and Margaret Ackerly, 113 Wright Road
3. Michael Bishop, 107 Wright Road

**No further questions from the Board and none from the floor - hearing portion of the case closed.**

*Major moved to reconvene ZBA case 2018-016.*

*MacMillan seconded.*

*Motion unanimously approved.*

**Case ZBA 2018-016**

**Re-Hearing** of the application of Patricia Panciocco, for a Variance to Section XXI.1, Housing for Older Persons, Paragraph e, Minimum lot area & Section VIII Lot Definition of the Zoning Ordinance to permit the construction of a Housing for Older Persons Development on a noncontiguous 20 acre lot (contiguous lot required), property owned by James Prieto, located at 436, 441, 443, 445 and 447 Silver Lake Rd. (Map 045, Lot 041 and Map 046, Lots 007-010) and property owned by James Seely, located at 449 Silver Lake Rd. (Map 046, Lot 006) in the Agricultural Business Zone and Residential Agricultural Zone.

Major asked what would be the preference of the applicant. Would the applicant prefer to table the rehearing until the December meeting?

Panciocco approached the ZBA and stated the handbook for the ZBA is inadequate as it pertains to granting a motion for rehearing. She indicated that the new version of NH practice reads as follows: the NH Supreme Court has made it clear in the furthest and finality of decision, just like in the case Fisher v Dover. Rehearing should not be lightly granted. While a person is automatic right to request a rehearing, which is not disputed, the board does not have to grant the rehearing and it must keep in mind trying to be fair the requestor. It may be unfair to the opposing party who may have to defend their position for the permit a second time. Panciocco feels the rehearing is unfair. As a general rule a rehearing should only be granted if the petitioner demonstrates the board commented a technical error or that there is new evidence that was not available at the time of the first hearing. Such new evidence should reflect the change in condition which occurred subsequent to the original hearing or which was unavailable at the time of the first hearing. It should not be evidence which was available but not produced due to the applicant's lack of being prepared.

A technical error need not result in a new decision. The board is free to grant a rehearing to correct its reasoning in a decision in which it feels it reached an incorrect result. The handbook for ZBA published by the Office of Regional Planning points out the reasons to grant a rehearing should be compelling. The ZBA has no right to reopen a case on the same set of fact presented unless the board is convinced there has been an injustice.

Major feels a rehearing is required and since no limitations were imposed either in error by the ZBA or a misunderstanding, a full rehearing should take place. Panciocco disagrees and stated if the rehearing was completed and the ZBA denied the application, she would file a motion for rehearing since her client would be an aggrieved party. The process would continue until all avenues of appeal are extinguished then the matter would go to court.

Allard agrees a full re-hearing is required since the ZBA in fact, granted the rehearing with no limitations. Also, legal notification of the motion for rehearing was not required per State RSA.

Major asked Setaro to seek legal advice on motion for rehearing notifications and if the rehearing should be a full or limited rehearing since there are procedural objections on both sides of the application. Major's opinion was a full rehearing would be required.

*MacMillan moved to table case ZBA2018-016 until the December 27, 2018 meeting.*

*Belanger seconded.*

*Motion approved 4 to 1 with Mason opposed.*

### **DELIBERATION AND DECISION**

#### **Case ZBA 2018-023**

Discussion of the application of Craig & Kelly Weimer, property owners, for a Variance to Section XG, Zoning District, Paragraph 4.d, Minimum Side Yard Width of the Zoning Ordinance to permit the construction of a 18' x 26' Garage 25 feet from the side yard width (required 35 feet) located at 111 Wright Rd (Map 014, Lot 060-002) in the Residential/Agricultural Zone.

The ZBA members discussed the application, and most of the ZBA members determined the application was not substantially different from the prior application which was denied. The Fisher doctrine bars subsequent application unless: (a) they materially differ in nature and degree from the prior application; or (b) there are changed circumstances surrounding the application.

*MacMillan moved to deny case 2018-023 since there was no material difference in nature and degree from the prior application.*

*Belanger seconded.*

*Motion approved 4 to 1 with Major opposed.*

*Mason moved for a finding of fact;*

- 1. The board finds the application is not for a use that materially differs in nature and degree from the applicants previous application case 2018-018.*

*MacMillan seconded.*

*Motion unanimously approved.*

#### **Review of Minutes**

*Durham moved to approve the minutes of October 25, 2018.*

*Belanger Seconded.*

*Motion unanimously approved.*

**Discussion on proposed zoning change**

Amend second XIV: Sign Ordinance, Section L. Exemptions, Paragraph 4 to insert after the second sentence:

Historic site markers approved by the New Hampshire Department of Transportation, Bureau of Traffic are exempt from the restriction on sign surface area.

The ZBA decided not to submit the change to the Planning Board for review.

Amend section X. C. Industrial Zone, 1. Permitted Uses in the Industrial Zone

The ZBA discussed and given the demonstrated nature of the changes in the uses for an Industrial Zone. The ZBA decided to submit a zoning change to the Planning Board. The requested change is as follows;

Add section:

- h. Indoor sports or fitness businesses, including but not limited to batting cages, health clubs, golf driving ranges, and gymnastic clubs.

**Meeting Adjourned**

The ZBA meeting adjourned at 8:30 pm.

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