



BOARD of ADJUSTMENT
Town of Hollis
Seven Monument Square
Hollis, New Hampshire 03049
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Minutes of May 3, 2018

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

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

Major explained the policies and procedures.

Major appointed Mason and McGhee as a voting members this evening.

Major stated the Zoning Board of Adjustment (ZBA) was given a petition during the last meeting (April 26, 2018) which was added to the record. The submission seems to be a series of text messages regarding a request to have people sign a petition against the applications. Within the submission are posts from out of the country, out of State and the individual posts are not signed. Belanger stated a petition needs to have legible signatures which can be verified as voters of Hollis. Otherwise, the petition is invalid in Belanger's opinion. The ZBA members agreed.

Mason moved to reject the submission and have the submission removed from the record.

Seconded by MacMillan.

Motion unanimously approved

DELIBERATION AND DECISION

Case ZBA 2018-002

The application of Peter Bennett, Trustee of the Pauline Jonis Trust and Michael S. Jonis and Jon Jonis, Trustee of the Julius Jonis Trust, for a Special Exception to Section XII, Nonconforming Uses, Structure and Lots, Paragraph A.3, Nonconforming Uses, Alterations of the Zoning Ordinance to permit the construction of up to 12 residential condominium units on the site, property owner Pauline A. Jonis Trust, located at 11 Federal Hill Road, Map 059, Lot 024, in the Recreational Zone.

Moseley stated under section XII.2, Discontinued Use "*Whenever a nonconforming use has been discontinued for more than two years for any reason...*" The use is considered abandoned the applicant read into the record that some of the properties have not been rented for three or more years. In addition, the permitted uses in the recreational zone states single family and two family homes are allowed. When Moseley reviewed RSA 359:b nothing stated the type of dwelling the RSA only discussed the type of ownership. West expressed wonder how can the ZBA determine if the use does not affect things such as traffic, since we have no evidence either way, just the statement from the applicant that traffic would not be affected. Major replied back in the day he has seen 40 to 50 cars parked in the area and they all most likely would leave about the same time with no apparent traffic issues. In Major's opinion the proposal would not impact the traffic. McGhee stated the traffic on Federal has already increased due to the 27 house development approved on Keyes Hill Rd.

Belanger stated the applicant applied for a special exception to section XII.a.3 alterations. The application needs to satisfy the three criteria *“the proposed alteration, expansion or change will not change the nature or the purpose of the original use.”* It was Belanger's opinion the application does not meet criteria a. McGhee stated the application was portrayed as a 12 for 12 comparison. Which it is not, the property would be going from a light use, seasonal to a full time use. The plan shows a larger density, trees being removed or moved, higher traffic, the additional proposed paving and the possibility of light pollution. The application is in fact a big change to the current conditions. Criteria b is not met because multi family dwelling are not in keeping with the nature of the neighborhood. Also, the increase in population has already weakened the water quality of Silver Lake and over development in the area would make a substantial difference as noted in the report from the Department of Environmental Services (DES) submitted as evidence. The report also stated that 60 percent of the soils in Hollis are medium to very low on being able to absorb discharge. We have been given no evidence that the soils could handle the type of capacity of the new septic systems. Major asked would it be fair to burden the applicant on already known issues with the water quality of Silver Lake. McGhee stated the charge of the ZBA is to take into consideration the health, safety and water quality. Mason stated the testimony stated the septic systems would be improved dramatically from the current situation on the site. The previous testimony also stated the site can support the 12 unit development and the system would be subject to all Town and State regulations. If project can't meet the regulations the project would not go forward.

MacMillan stated Attorney Westgate stated that Simplex did away with most of the case law within the OEP handbook. MacMillan contacted the Office of Energy and Planning (OEP) and spoke to Bill Klass. Klass stated the examples given within the OEP are their best efforts to demonstrate case law that is pertinent in spite of Simplex. Klass stated the Simplex decision didn't invalidate all previous case law and examples given are to guide boards in their decision making. Klass also reaffirmed the ZBA's authority and expertise on deciding if an application affects the character of the neighborhood. Without giving names or specific details. Klass stated if it is the position of the applicant that a number of dwelling units presently exists then the applicant would not need to variance. The ZBA also should consider a past case located at the Hollis Flea Market for a 15 unit senior housing development, the ZBA denied that application based on lot size. The Special Exception should not be granted. According to the applicant's testimony these seven non-conforming structures have not been in use for a number of years. Moreover these units do not meet the standards for a dwelling unit. Allowing the special exception is asking the ZBA to determine that those structures are dwelling units and can be used in determining the number of new dwelling units that would be allowed as condos. Mason stated the use existing today is 5 dwelling units. MacMillan agreed stating the proposed application would change the nature and purpose of the original use. There were never 12 condominiums or 12 year round dwelling units. Major stated evidence was submitted by Mr. Tobiason who researched the Town's accessing record and found most of the camps used are 500 to 600 square feet in size.

Belanger stated the application should be reviewed on its merits, some mis-statements were made in the application such as; changing 12 residential units into 12 residential units. That statement was untrue. We have heard testimony that some units have no bathrooms, kitchens and sinks. The criteria which need to be met in granting the Special Exception are not met. The application would substantially change the nature of the neighborhood and there is a substantial increase in heated living space. Belanger stated he would vote no on the application. Major stated there was no mis-representation and the applicant, was clear on the current uses during the testimony. Belanger stated the application stated the property contains 12 seasonal and non-seasonal residential units which is not true and the application indicates they would be replacing 12 residential units with 12 residential units. That statement is also misleading. If some members of the ZBA were not aware of the property and current conditions, the way the application is written could be taken differently. The application does not reflect an accurate picture of the property. Major asked if Belanger would feel differently if the application was requesting 5 condominium units instead of 12. Belanger replied yes however, Belanger feels it still would not meet the ordinance. Moseley stated a smaller

proposal would be more in-line with the current area. Mason asked would the feeling be different if the application was for 5 detached dwelling units. Belanger stated the ZBA has to act on the application presented. The application requested is for 12 condo units and 3 additional buildings on a relatively small parcel. McGhee stated the application submitted may or may not happen, so how can the ZBA grant anything if they are not sure what would actually be placed on the site. West agreed adding that a developer needs to commit to a plan not a conceptual plan. Major stated the proposal is a drastic change to the use of the property. The proposal is for 3 building 2 story high which is not in keeping with the surrounding area.

MacMillan stated the zoning ordinance in and of itself is a referendum of what the townspeople feel is best for the town. It was written and voted on. MacMillan feels a responsibility to support applications to the ZBA that stay within the Ordinance. MacMillan feels the application does not meet the ordinance and should not be granted.

Belanger moves for a finding of fact;

1. *The applicant's application for a Special Exception under XII:A.3 does not meet sub section a and b.*

Seconded by MacMillan.

Motion adopted unanimously.

Major moves for the following findings of fact;

2. *The proposed change in use of the property, from the existing one house and four small, residential units and 7 cabins described as for "seasonal use" to one of twelve year-round condominium units represents a change in the nature and purpose of the original use.*
3. *The density requirements of the ordinance presently provides 2 acres per dwelling unit in the recreational zone; the ordinance further allows the construction of condominiums within the district, provided that they comply with the density requirements of the ordinance.*
4. *The area surrounding Silver Lake contains predominately single-family homes situated on lots which are very undersized, and these lots and homes are pre-existing, non-conforming lots under XII.B of the ordinance; the applicant's lot is a pre-existing, non conforming lot under the ordinance as well.*
5. *The proposed use of the premises, as a 12 unit condominium, would change the nature and purpose of the original use, due to the current use of at least 7 of the units, the limited size of four year-round rental units; the proposed alterations of these units into 12 two bedroom, two story condominium units would fundamentally alter the nature and use of the property.*
6. *The proposed alteration and expansion of the building present non-conforming lot would entail a substantially different effect on the neighborhood, by increasing the density of building on the lot, and by alteration of the site to accommodate the proposed condominium building.*

Seconded by MacMillan.

Motion adopted unanimously.

Questions/Special Exception

Question 1 Is the Exception specified in the Ordinance?

Question 2 Are the specified conditions under which the Exception may be granted present?

Question 3 Should the Exception be granted?

Board Member	Question #1	Question #2	Question #3	Total-Yes	Total-No
Major	Yes	No	No	1	2
Belanger	No	No	No	0	3
MacMillan	No	No	No	0	3
Mason	No	No	No	0	3
McGhee	No	No	No	0	3

THEREFORE THE SPECIAL EXCEPTION WAS DENIED WITH THE FOLLOWING FINDINGS OF FACT;

1. The applicant's application for a Special Exception under XII:A,3 does not meet sub section a and b.
2. The proposed change in use of the property, from the existing one house and four small, residential units and 7 cabins described as for "seasonal use" to one of twelve year-round condominium units represents a change in the nature and purpose of the original use.
3. The density requirements of the ordinance presently provides 2 acres per dwelling unit in the recreational zone; the ordinance further allows the construction of condominiums within the district, provided that they comply with the density requirements of the ordinance.
4. The area surrounding Silver Lake contains predominately single-family homes situated on lots which are very undersized, and these lots and homes are pre-existing, non-conforming lots under XII.B of the ordinance; the applicant's lot is a pre-existing, non con-forming lot under the ordinance as well.
5. The proposed use of the premises, as a 12 unit condominium, would change the nature and purpose of the original use, due to the current use of at least 7 of the units, the limited size of four year-round rental units; the proposed alterations of these units into 12 two bedroom, two story condominium units would fundamentally alter the nature and use of the property.
6. The proposed alteration and expansion of the building present non-conforming lot would entail a substantially different effect on the neighborhood, by increasing the density of building on the lot, and by alteration of the site to accommodate the proposed condominium building.

Case ZBA 2018-003

The application of Peter Bennett, Trustee of the Pauline Jonis Trust and Michael S. Jonis and Jon Jonis, Trustee of the Julius Jonis Trust, for a Variance to Section XF, Recreational Zone, Paragraph 3.a, Minimum Lot Area of the Zoning Ordinance to permit the construction of up to 12 residential condominium units on the site, property owner Pauline A. Jonis Trust, located at 11 Federal Hill Road, Map 059, Lot 024, in the Recreational Zone.

Belanger stated a 4 family dwelling unit is not allowed by the ordinance. The proposal is not in-keeping with the neighborhood, the property could be used for a permitted use and property values may be diminished. MacMillan agreed there are permitted uses the property could be used for. There is no hardship to the property. McGhee stated she has concerns about density. Mason stated the area around the lake already has a high density. MacMillan stated the town instituted zoning to regulate density so high density areas would not happen anymore. McGhee stated allowing 12- 2 bedroom units would be a higher density than what currently exists. MacMillan stated the proposed lot is not any different than the surrounding lots. All of the lots are burdened in regards to size. Mason stated he would prefer to see 5 or 6 detached condominium units instead of 3-2 story 4 unit structures. Major stated the applicant could certainly construct a 2 family home that would meet the setbacks. West stated if the proposal was smaller in scale it may be less of an impact on the lake, neighborhood and town. MacMillan stated OEP stated that if there is any permitted uses for the property there is no hardship and added that was only one attorney's opinion. Mason asked if there was any other multi-family 2 story complexes in Hollis with the exception of the senior housing behind Harvest Market. McGhee replied no the other complexes are

single family free standing. Major asked what the ZBA would consider to be the vested right to the property. The ZBA members may consider 5 dwelling units however, the total square footage would have to be considered.

Major moves for the following finding of fact;

1. *The applicant's parcel consist of a 4.9 acre lot situated in the recreational zone which presently contains one single-family home and 4 year-round cabins. The cabins were all constructed prior to the enactment of the zoning ordinance, and the existing use is a permitted, non-conforming use on a non-conforming lot.*
2. *The general area of the parcel, on Silver Lake, consists of a high density of single-family homes, which are situated on very small, non-conforming lots.*
3. *The proposed use of the property would be contrary to the public interest because it would alter the character of the neighborhood to a significant degree, and would increase the use and density of the use on the applicants parcel.*
4. *The proposed use of the property would violate the spirit and intent of the ordinance by increasing the intensity of use on a non-conforming lot and by increasing a non-conforming density of residential units on the property.*
5. *The property consists of a 4.9 acre lot which is presently capable of being used for a single-family dwelling or two-family dwelling; there are no special conditions of the property which distinguish it from other properties in the area.*
6. *The application of the density requirements of the ordinance to the parcel fairly and substantially relates to the general purpose of the ordinance which are to limit the density of dwelling units; the proposed use of the property as a 12 unit condominium would violate the purpose of the ordinance.*
7. *There are uses of the property which are allowed under the ordinance, and the application of the ordinance to this parcel would not interfere with the applicants' reasonable use of the property.*

Belanger moved to adopt the 7 findings of fact.

Seconded by MacMillan.

Motion 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
Major	No	No	No	Yes	No	No	1	5
Belanger	Yes	No	No	No	No	No	1	5
MacMillan	No	No	No	Yes	No	No	1	5
Mason	No	No	No	Yes	No	No	1	5
McGhee	No	No	No	Yes	No	No	1	5

THEREFORE THE VARIANCE WAS DENIED WITH THE FOLLOWING FINDINGS OF

FACT;

Findings of Fact:

1. The applicant's parcel consist of a 4.9 acre lot situated in the recreational zone which presently contains one single-family home and 4 year-round cabins. The cabins were all constructed prior to the enactment of the zoning ordinance, and the existing use is a permitted, non-conforming use on a non-conforming lot.
2. The general area of the parcel, on Silver Lake, consists of a high density of single-family homes, which are situated on very small, non-conforming lots.
3. The proposed use of the property would be contrary to the public interest because it would alter the character of the neighborhood to a significant degree, and would increase the use and density of the use on the applicants parcel.
4. The proposed use of the property would violate the spirit and intent of the ordinance by increasing the intensity of use on a non-conforming lot and by increasing a non-conforming density of residential units on the property.
5. The property consists of a 4.9 acre lot which is presently capable of being used for a single-family dwelling or two-family dwelling; there are no special conditions of the property which distinguish it from other properties in the area.
6. The application of the density requirements of the ordinance to the parcel fairly and substantially relates to the general purpose of the ordinance which are to limit the density of dwelling units; the proposed use of the property as a 12 unit condominium would violate the purpose of the ordinance.
7. There are uses of the property which are allowed under the ordinance, and the application of the ordinance to this parcel would not interfere with the applicants' reasonable use of the property.

Review of Minutes

Belanger moves to approve the minutes of March 22, 2018 as written.

Seconded by McGhee.

Motion unanimously approved with Mason abstaining.

Meeting Adjourned

The ZBA meeting adjourned at 8:35 pm.

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