



BOARD of ADJUSTMENT
Town of Hollis
Seven Monument Square
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Minutes of December 27, 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 –Cindy Robbins-Tsao, Rick MacMillan and Susan Durham; Alternate Members –Drew Mason, Kat McGhee, Bill Moseley and Meredith West.

Major explained policies and procedures.

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.

The ZBA discussed whether or not the case should be heard de novo or not.

MacMillan moves to re-hear case 2018-016 de novo.

Tsao seconded.

Motion unanimously approved.

Patricia Panciocco representing several different property owners on a de novo hearing as confirmed by the Zoning Board of Adjustment. Panciocco for the record states the property owners had been granted a permit on September 27, 2018 and it is Panciocco's opinion that approval can't be taken away. Panciocco asked if she would be required to address regional impact or has that been determined. Major stated yes. Panciocco replied National Regional Planning Commission (NRPC) had submitted their opinion. NRPC did not feel the project had any regional impact as stated in their letter submitted to the ZBA.

Major asked if Panciocco would like her previous testimony incorporated into the minutes for this evening. Panciocco replied yes. (see file) Panciocco stated the property includes 6 parcels totaling 21.7 acres. The lots are located within the Residential Agricultural Zone (R&A), Agricultural Business (A&B) zone and all parcel are within the Aquifer Protection Overlay Zone as well. Most of the lots are located on the east side of NH Rte 122 with one lot located on the other side of NH Rte 122 but is directly across from the other parcels.

The variance relief being sought is for the definition of a lot. The ordinance for housing for older persons requires a 20 acre lot. The definition of lot requires the land or combination of land must be contiguous. The variance request is for relief of the contiguity requirement. Panciocco stated she can stand here tonight and tell you with conviction that NH Rte 122 is a public easement. There is no fee deed to the

state nor the town for Rte 122. So, technically the parcels of land extends to the center line of Rte 122. Title work has been completed as far back as 1950 and we are almost positive the easement was created prescriptively. A variance technically is not required however, we are proceeding cautiously in this matter. There was no formal layout of Rte 122 when the settlers came to Hollis to settle the town.

The proposal is for a 30 unit elderly housing development located on the mentioned lots. The plan shown is conceptual plan which was shown to the Planning Board (PB) on two occasions. The plan has not been accepted at this time. The elderly housing development is a permitted use in both the R&A and A&B zones and is only allowed on state roads. Another consideration to take into account is the proposed development is something identified in the town's master plan for being in high demand. The recently survey conducted reflects about 50% of those surveyed are within the age group of people wanting more age restrictive housing.

The proposed property in general is known as the flea market property. Panciocco showed an aerial of the location. Major asked if both properties were part of the flea market. Panciocco replied yes. The flea market is open 22 days a year on average starting in mid-April and runs until the end of October weather permitting and operates between 7am – 2 pm. Panciocco stated Robert Baskerville would be presenting the plan. After it is completed she would address the criteria of the variance.

Baskerville, Bedford Design Consultants, stated he would like to incorporate his previous testimony from the September ZBA meeting. (see file)

Baskerville explained the proposal as a 30 unit senior housing development limited to 2 bedrooms with attached 2 car garages. The lots located on the east side would be combined into one lot. The entire project would be part of a condominium association with regulations. No one under 55 years of age would be allowed and no children with a maximum of 2 people per unit. Preliminary floor plans including elevation were submitted to the Planning Board. (PB) A conceptual plan was submitted along and a site walk was completed with the PB.

The plans submitted show 24 units and the east side which meets the PB regulations on density and open space. The west side would have 6 units which is governed by wells. The east has two wells and the west side has 1 well which does work well with the proposed plan. We did take the advice we heard and looked at moving the 6 units on the west side and incorporate them to the east side.

That answer lies with Pennichuck Water, 30 units will not work because there is only two wells on the east side. We had met with Pennichuck Water then proceeded to hand out a letter received from Pennichuck Water to the ZBA. The letter stated Pennichuck has a large 12" water line coming out of Summerfield extending out to Rte. 122.

Pennichuck stated the line is large enough to provide water to the entire development. However, a limited franchise would have to be acquired. That franchise would only include our development, there are already two limited franchises in Hollis in other areas. The Fire Chief, Richard Towne is completely in favor of the franchise. Pennichuck would own the water lines the town would have no responsibilities. DOT would have to approve the project since the lines would be in the State right-of-way. Pennichuck would not consider the proposal if the town is opposed to the project. If the project is approved by the ZBA this evening the PB has requested us to seek approval of the water line from the Board of Selectmen. As long as a letter either stating the BOS supports or are neutral regarding the water line Pennichuck would start the process. If the BOS is against the water line, Pennichuck would not proceed. If the water line is supported the 6 units on the west side would be moved to the east side. The layout may be adjusted and we may have a few duplexes to lower the price point of some units. If the 30 units are in fact moved to the east side we have agreed to remove all of the current structures, pavement on both the east and west side and all of the material would be removed from the site.

The proposal for the west side is to leave one of the gravel entrances which would allow the residents to have a small area towards the back of the lot for a garden area. All structures on the west side would be

removed loam and meadow mix seed would be planted, cut three times a year and the area would look like a traditional NH farm field.

The concept has been slightly modified since the last ZBA meeting to include woodland, wetlands and flood plains have been mapped, topography completed and the test pits on the east side have been completed. The entrance to the development would be at the current sign location. DOT has contacted on the driveway locations and are pleased that on the east side we would be closing off some of the curb cuts and on the west side they preferred the location with the slightly better sight distance if the units would be staying on that side.

Traffic estimates were completed using the ITE generation manual, 9th edition. Currently there are 6 single family house lots, 3 single family homes are existing currently. The estimates for traffic are as follows;

Average Vehicle Trips per dwelling unit

	<u>Single-Family Detached House</u>	<u>Senior Adult Housing – Detached</u>
Weekday	9.52	3.68
AM Peak	.77	.29
PM Peak	1.02	.34
Saturday	9.91	2.73
Peak Hour	.93	.23
Sunday	8.62	2.32
Peak Hour	.80	.21

Average Vehicle Trips Existing (Single- Family Lots) vs. Proposed

	<u>6 Single Family Detached House</u>	<u>30 Senior Housing-Detached</u>	<u>Increase</u>
Weekday	57	110	43
AM Peak	5	9	4
PM Peak	6	10	4
Saturday	59	82	23
Peak Hour	6	7	1
Sunday	52	70	18
Peak Hour	5	6	1

The biggest increase is weekday total traffic, up 43 trips. Which is the equivalent of 4.5 Single Family Homes (43/9.52). The smallest Increase is Saturday Peak Hour, up 1 trip. Which is the equivalent of 1.25 Single Family Housed (1/.21). Typically when you have a senior over 55 development you do not have people working the same shift, no children to bring places. The residents would normally avoid peak hours to travel. Travel issues if any would be addressed by the PB and the PB would require an official traffic study as well.

Belanger asked Baskerville to describe the septic systems. Baskerville replied test pits have been completed on the east side which contained medium to coarse grain sands. Perk test show the water goes into the land faster than we could pour the water. Belanger asked would each unit have their own septic. Baskerville replied each unit would have their own septic tank but would have a common leach field where possible. The tanks would also be pumped by the association in insure they are done at the appropriate time.

Major asked how far each unit was from each other. Baskerville replied approximately 30'. The PB also asked if we could move the units back further away from Rte. 122 for more rural character. Major asked how far the units would be from Rte.122. Baskerville replied approximately 100' with an intensive landscaping towards Rte. 122. The proposed entrance would have a medium in the middle, one side to

enter the other to exit.

The property is located in the Aquifer Protection Zone (APOZ) which the town does not have a map showing this area. It specifies you to look at county data, historical data on how much water can get absorbed into the APOZ. The PB and all of us agree the property is within the APOZ as shown on the NRPC map. Being that so much of the property is gravel and impervious, Baskerville's opinion was that the proposal is reducing the impervious surfaces. The gravel roadways and pavement will be removed. Belanger asked if the roads and driveways would be the only areas paved. Baskerville replied yes which would be plowed by the association. All landscaping, grass cutting with the exception of a small common area per unit for a small garden will be maintained by the association.

Major asked what the sight lines were for the driveways and how do they compare to state standards for a 30 mph road. Baskerville replied 400' in both directions on the east side. Mason asked if there were any state regulations in regards to Ames Road and the entrance on the west side. Baskerville replied not that he is aware of but conventions and rules of thumb would apply. If Ames Road came in at a 90 degree angle the state prefers the entrance be directly across because if people were taking a left hand turn they would not interfere with the other side taking a left hand turn. If Ames Road comes in at a sharp angle the state did not want the entrance directly across. The state requested the entrance be placed as far away from Ames Road as possible. The proposed location may be moved down slightly. However, if approval is granted for the water franchise with Pennichuck, the development will be all on one side that entrance would not be needed. Mason asked if the Pennichuck franchise is approved at what location would the water enter the site. Baskerville replied the water line would come down the east side of Rte. 122 and enter the property at an angle near the entrance, and 2 hydrants would be installed one in the front and one at the rear of the property. Mason asked if the state does not actually own the road, as Panciocco attests to would the water line be in the state right-of-way. Baskerville replied yes the state has control of the right-of-way including water and other utilities. Belanger asked would there be underground utilities. Baskerville replied yes. Belanger asked during the last meeting concerning the general store and gas station which was located on the opposite side were the tanks removed. Baskerville replied yes. Panciocco stated the project was brought to the board first in 2016. The previous application did not include the parcel across the street. At that time the zoning ordinance required a 30 acres parcel. The previous variance request was to allow the development on 18 acres and reduce the age requirement to 55 years of age. The ZBA denied both variance requests.

The following November the ZBA sent a request to the PB to amend the ordinance. The ordinance was changed in 2017 which including a reduction of the acreage requirement to 20 acres and the age requirement was reduced to 55.

The substantial change to the ordinance which is a material change to the law is enough of a factor to allow the application to be re-submitted. This application is not subject to Fisher v. Dover due to substantial change to the ordinance. In fact, Baskerville had an invite to re-submit an application. In December 2016 and January 2017 there were several discussions concerning the high demand for housing for older persons. The 2017 zoning amendment and the master plan are encouraging these types of developments. We feel we meet Fisher v. Dover but are still striving to meet the 20 acre requirement and felt strongly the lots are contiguous. The variance requested this evening is to the contiguity requirement of the ordinance. Baskerville has given the ZBA an overview on how the parcel would be used. The board needs to remember the application is seeking a variance from an adjective and the definition of lot. The housing development is permitted in all three zoning district which apply to the properties. The density has been proven. The points of law is why would the ordinance require the lots be contiguous.

The application is not contrary to the public interest because described in the April 9, 2018 draft of the master plan concerning current and future land use. The area presently is commercial uses, limited to the flea market and a few small businesses and the flea market is only open 22 days per year. Would the proposal change the character of the area and would it be contrary to the public health, safety and welfare. The area is primarily residential, there would be no change to the area since housing for older person is primarily residential. The only change would be positive it would prevent the flea market from operating,

increase the tax base and the proposal would benefit the town. The question before the ZBA is whether the board believes the assemblage of lots must be contiguous and not be bisected by a public easement, which these lots are. If the ZBA decides the lots do not need to be contiguous does the ZBA feel the development would change the character of the neighborhood? There is a confirmed need for this type of development in Hollis.

Not contrary to the spirit of the ordinance. The purpose of the land requirement is to make sure that the development has adequate land for the houses and provide all the necessary services. Baskerville has proven the development can meet the requirements of the ordinance with the land we have easily. The two acres on the other side is extra land where it would be used to provide extra land for the residents.

The surrounding property values will not be diminished. The board found during the September ZBA meeting the development would not diminish property values. The proposal will eliminate the flea market, increase the tax base and bring up the area with a new development of residential housing which is a need in the town.

Substantial justice is done because it is a win win for the public and also a win win for the applicant. The proposal will benefit the public because the town is in need of the development. It is a benefit to the applicant because the use is reasonable and is permitted in all 3 zoning districts.

The hardship to the property is that the 20 acres parcel is bisected by a public easement. The lot is odd in shape and the easement is a hardship. If we did not have the easement we could not develop the property for housing for older persons since the ordinance requires elderly housing be on the state road. The strict application of the contiguity requirement to the property has no bearing on whether the applicant would have enough land to accommodate the needed services. The small portion on the other side of the road which is not needed is on the other side of the easement. The use is reasonable and is expressly permitted within the zoning districts.

West asked in anticipation of some upcoming questions on affordability. What would the price point be per unit? Panciocco replied she was unsure however, new senior housing in other communities are not inexpensive. If some of the unit become duplexes those unit may be more affordable than a free standing unit.

Spoke in favor of the application

Peter Baker, 40 Buttonwood Drive

Baker stated he is in favor of the application subject to a few conditions. Baker likes the idea of water being brought to the site and the septic being spread about. Baker has a concern about the types of soils on the property if the test pits are rapidly draining it would go into the aquifer faster. These concerns may be PB issues however, Baker wanted to give his opinions. Housing for older people is needed in the town and the ZBA and PB have put a lot of time into the ordinance and hope the ordinance would be re-visited in the future and the appropriate changes be made to make the process easier.

Spoke in opposition of the application

Brett Allard, Attorney for 451 Silver Lake Rd., LLC the immediate abutter. Fisher v. Dover the applicant must show that the proposed uses are different or that there was a material difference in the merits of the application not just that there is a change in circumstances. It was Allard's opinion the applicants are seeking the same lot area variance requested prior and the proposed use is identical. Both applications are substantially similar and the test for Fisher v. Dover has not been satisfied by the applicant. Major asked why doesn't the change in the town ordinance completely satisfy Fisher v. Dover? Allard replied the purpose of a variance is that the applicant is looking for relief of the zoning ordinance and when you require the same relief from the ordinance the fact that something change does not affect the merits of the

application which is the standard of Fisher v. Dover. Major stated the application is relief from the word contiguity. If the ZBA gets beyond the contiguity argument the applicants have the 20 acres required. Allard replied his client's position is if you require the same variance for the same lot size. No matter if the ordinance changed from 30 to 20 acres the applicant still needs the same variance. The ordinance change does not affect the merits of the application.

During the previous meeting a lot of discussion was concerning contiguity or if the lots contiguous or not. If the lots are what is the effect, if the lots are not what is the effect. In Allard's opinion the ZBA does not have to figure out if the lots are contiguous. Despite what the applicants say the variance is not for the definition of contiguity. What the applicants are asking for is a variance from the lot size requirement. The lot is substandard they have 18 acres they need 20. If you remove the second lot and just consider the main parcel, it needs a variance from the acreage requirement. If you include the second lot the proposal still needs a variance since they are 2 substandard lots. The proposed lots are not 1 lot they are not contiguous. Major stated he has checked the HOSPD ordinance which does not require the lots to be contiguous. Wouldn't this be a functional equivalent of a 20 acre lot. Allard disagrees because they are separate lots no one would look at two separate lots which are divided by a state highway as one lot. The variance requested is a dimensional variance due to the lot size. The proposal is no more compliant with the ordinance if you remove the small lot. In fact, the proposal would be more compliant with the ordinance if you remove the small lot. Either way the proposal is for an area variance, they do not comply with the lot size and they are two separate lots.

Public interest criteria of the courts have held the ZBA can and should consider traffic impact while determining an application. Cases such as Shaw v. Manchester and Vona v. Town of Bedford in this case the ZBA denied the variance on the public interest criteria because the ZBA found that the public rights would be affected because of increased traffic and traffic patterns. The Supreme Court said in the case of Nester v. Town of Meredith *"we have previously held that the ZBA can consider their own knowledge concerning such factors as traffic conditions resulting in their familiarity with the area involved."* In the context of saying is the proposal contrary to the public interest it is appropriate that the ZBA considers traffic impacts. In 2016 the applicants agreed that there were site distance issues with the entrance to the main parcel being so close to the enter section of Ames Road. In the previous application there was only one entrance to the development. In 2016 the ZBA found the proposal was contrary to the public interest. This application proposes the same entrance and another which is more dangerous entrance closer to the intersection of Ames Road, around a sharp corner on a state highway. In Allard's opinion it would be counter intuitive for the ZBA to find in 2018 with two intersections one which was there in 2016 and one is new which is more dangerous is not contrary to the public interest, when the single entrance was back in 2016. As far as the test pits within the aquifer, designating where they will go are PB issues but the ZBA can look over all at the project and how it would impact the area. The test pits did drain fast which is not good when the project is within the aquifer protection zone and also within the 100 year flood plan as far as Witches Brook.

The proposal is not consistent with the ordinance. The intent is to provide for such housing by the provision of a waiver from the otherwise applicable density requirements while complying with all applicable state and federal laws with respect to such housing, and at the same time, ensuring compliance with local planning standards, land use policies, good building design, and the requirements for the health, safety, and general welfare of all the inhabitants of the Town. There has been no request for the density requirements at this time. The proposal is requesting a waiver from the lot area. The spirit of the ordinance does not contemplate waivers for lot size requirements or contiguity as they phrase it.

Substantial justice is not done if you have a 20 acre parcel which is contiguous it would minimize traffic, safety congestion and importantly minimizes piecemeal developments. All the issues discussed arise from these properties are two separate lots, on two sides of the road.

The applicants have not submitted any evidence showing how surrounding properties would not be diminished. The applicant stated that because the improvements on the subject property would raise the

value of the subject property, it would in turn raise the property values in the general area. The statement is not necessarily true. It does not show that the surrounding properties would not be diminished. An extreme example; would be if there was a vacant lot and a super Walmart was constructed valued at \$1,000,000.00 that does not mean the property values next store would increase.

The applicants have argued that there is no fair and substantial relationship existing between the purpose of the ordinance provision and the specific application to the subject property because the two acres across the street are not required other than to comply with the 20 acre requirement. The subject property would require a variance either way with the inclusion of the two acre lot or without.

There is a self-created hardship. The proposal of approximately 18 acres with a non-contiguous 2 acre parcel does not comply with the zoning ordinance any more than the applicants proposing the project to be placed on 18 acre parcel alone. The applicants have in-fact come back with a second application, added a second small lot across the street and said now we have a hardship because they added the second small lot across the street. Hardship is determined by the unique features of the property such as the topography, slopes and many other things.

The applicants have also argued that there are few places in Hollis with a contiguous 20 acre undeveloped tract along major roads. Allard had looked at the NRPC, GIS maps and have found 5 properties with 20 contiguous acres on Rte. 122. There is nothing unique about the proposed parcel. The ZBA had already made its determination on Regional Impact and the required notices were sent out so a discussion on this matter in Allard's opinion is completed. Major asked if Allard agreed the ZBA satisfied the requirement. Allard replied yes.

West asked for Allard's opinion concerning the prescriptive easement, and the lots potentially being considered contiguous. Allard disagrees that the lots would be contiguous because of the form of ownership arising from the road that runs between them. If you are looking whether or not a parcel is appropriate for development and if you had two developments next to each other in one case Rte. 122 is fee ownership deeded to the state and it arose prescriptively through decades of traveled use. To treat one differently than the other solely on the type of ownership would ignore the reason for requiring contiguous lots for development.

Eliza LeCours, 4 Pine Hill Road

LeCours concerns were the traffic impact that a 36 unit development will create compared to 6 housing being built. As far as the Hollis survey conducted for the master plan noted during the previous testimony and number 1 concern was to protect the rural character of Hollis.

Joe Garruba, 28 Winchester Drive

Garruba stated he totally objects to the proposal and handed out material to the ZBA for their review. Garruba stated the following reasons; (see file for complete submission)

- Damage to Witches Brook due to the 250 foot buffer line not being shown on submitted plan.
- Proposal not compliant with the requirements for impervious area.
- Proposal of 31 units will significantly increase traffic at the site. 2014 NRPC data show over 4820 trips per day. The development could add 620 more trips, an increase of 12%.
- Decrease in property values, since more single family homes would be on the market once seniors move into the development and sell their single family homes.
- Addition of 31 residences in the Aquifer Protection Overlay Zone would jeopardize the water quality that the community relies on.
- Undue burden on our schools, since the most of the units would be sold to current Hollis residences looking to downsize from their current Single Family Homes.

- Spirit of the ordinance is not observed. When zoning was changed in 2017 to reduce the acreage requirement to 20 acres. This change was done with the understanding that there are a limited number of properties which met the standard. A conglomeration of 6 different lots is clearly not what the voters had in mind.
- The applicant has not shown he is suffering any injustice by having to abide by the town's ordinance.
- The proposal clearly results in overcrowding of land since the property contains only 16 buildable acres.

In conclusion in Garruba's opinion the application does not meet the required 5 criteria for granting a variance and the ZBA should deny the application.

John Garruba, 30 Meadow Drive

Garruba concerns were as follows;

- Safety of the proposed driveways.
- Development does not have the 40% open space requirement since, the land around each unit does not count in the calculations as stated in Section XXI of the regulations.
- Contrary to the public interest because of density.
- Rural Character of Hollis would be impacted.

Leo Cormier, 451 Silver Lake Road

Cormier handed out material to the ZBA for their review. Cormier stated his concerns; (see file for full submission)

- De-icing (salt or sodium chloride) materials polluting aquifer protection area (APOZ) threaten public health, safety and welfare of the neighboring water supply and wells. NH Department of Transportation (DOT) applies approx. 250-300 pounds of salt per lane-mile. The proposed site plan is 1980 feet or 3.7 tenth of a mile which would adequate 1,360 pound of salt being put down during a 12" storm if applied every 3". Because of the soils if and when the detention basins fail the discharge would go directly into Witches Brook and the APOZ.
- Septic system discharge approximately 9000 gallons per day for the community. Taken from the most recent Planning Board minutes. Baskerville stated "*the design is not completed, but will probably go to the low areas. Due to the soils, he may have to add something to slow down the drainage. You will only see standing water for a short time, even after a heavy storm.*" Poor soils would impact the APOZ as well.
- Potential use of hazardous pesticides/fertilizers being used on the grass and landscaping again harming the APOZ and neighboring wells.
- APOZ areas were instituted to protect, preserve and maintain ground water supplies and to limit development of structures and land uses which contribute to the pollution of ground water by sewage and hazardous substances stated within the Hollis zoning ordinance. This proposal goes against the intent of the APOZ.
- Taken from the September 27, 2018 ZBA meeting. "... *the reason for 20 acre zoning is to insure an elderly housing development is constructed of sufficient size, to make sure we do not have scattershot elderly housing developments*" This proposal does not meet the 20 acre requirement and should not be granted. The parcels are separated by Rte 122 and or not continuance lots as required regardless of the applicant's argument.

MaryLou Ward, 165 Witches Spring Road

Ward explained she feels the traffic analysis submitted is incorrect. Ward had recently retired and she travels on the roads more than she did when she was working.

Shirley Burt, 446 Silver Lake Road

Burt stated during the September 27, 2018 ZBA meeting Belanger stated he had contacted the applicants, notifying them that the senior housing ordinance had changed and suggested to them that they submit another application. In Burt's opinion contacting the applicants is a conflict of interest and Belanger should recuse himself from voting this evening. Belanger replied he would not recuse himself from the proceedings.

Stanley Swerchesky, 35 Plain Road

Swerchesky stated his concern about the buffer requirements for Witches Brook. The brook waters are specifically managed to protect wild trout population. Any buffer requirements and other potential ecological issues need to be addressed so that the wild trout population is not disrupted.

Vickey Ciofrone, 126 Witches Spring Road

Ciofrone was concerned about the additional traffic on Witches Spring Road. There already is an approved development of 52 senior housing units on Silver Lake Road which has already increased traffic on Witches Spring Road. Witches Spring Road is used as a cut through. The proposed development of 30 units would impact traffic even more than it already has been.

Applicant Rebuttal

Baskerville responded to issues raised concerning the buffer zones. The property borders Witches Spring brook, the shoreline protection act states the buffers are taken from the high water mark of the brook. The 250' setback are for gas station and underground tanks. Baskerville referred to the plan and the brook must be 200' - 300' away. The town setback is taken from the edge of wetlands which is 100'. The state setbacks would be inside the town setback and are not shown on the plan. There are certain areas and structures which are within the 100' buffer these structures would be removed. Major asked if the current two septic systems would also be removed. Baskerville replied yes.

Tsao asked does Witches Brook come close to the first house towards Ames Road. Baskerville replied yes. However, the house would be coming down. MacMillan asked in Baskerville's opinion what would be the impact to the APOZ concerning the sewage generated from the septic systems. Baskerville replied the sewage generated is quite large but the systems would be designed using an enviro tube wrapped with a wicking system. If the perk rate is faster than 2 minutes per inch material would be added to the bottom of the trench to slow the flow. This would allow for more treatment. MacMillan asked if Baskerville thought material would need to be added to slow the flow. Baskerville replied yes, the State would inspect and approve the systems to insure they are designed properly.

MacMillan asked how the concern about salt usage be handled. Baskerville replied salt would be used and the State uses a lot of salt on Rte. 122. The PB would take that matter into consideration. The State and UNH has completed a study called "green snowpro". They teach contractors when to apply salt, how much to apply so that the salt usage is lowered. The contractor that would be plowing the snow would have to take the course and become certified. The State also changed their storm water regulations for all paved areas; storm water calculation are required. The State would look into all containments including salt. These plans need State and town approval as well. Belanger noted the town has some roads on which salt can't be used. Would the applicant agree not to use salt? Baskerville replied we could use sand on the road but seeing the community is over 55 salt would be used for sidewalks. The ZBA could recommend no salt to the PB since this is a PB issue.

McGhee asked what was the frontage for the individual lots was. Baskerville replied they are not individual lots there is no frontage or lot lines. No calculations were completed but using Cormier's number of 1,900 feet of road, each would have approximately 63' of road per house. The proposed

houses normally would be 1,800 square feet and maybe a few larger ones. The width of the house would be approximately 50' including the garage if a duplex is constructed the width would be smaller. All of the houses need to be put into a building box as a requirement of the PB.

Baskerville recapped some of the points of the development. A State driveway permit would have to be obtained for site distance concerns. No one under 55 years of age would be living in any unit. MacMillan asked if the age restriction of 55 would be a development legal covenant. Baskerville replied yes. West asked whether the open space regulations are met. Baskerville replied the PB has reviewed the plan and the open space was not in dispute. The unsafe access was brought up as a concern and whatever access is deemed unsafe it would be removed and re-located.

Spoke in opposition of the application

Leo Cormier, 451 Silver Lake Road

Cormier asked Baskerville since the development is for senior housing if the percentage of residents using chemo therapy is higher. What impact would chemo therapy have on the septic systems?

Joe Garruba, 28 Winchester Drive

Garruba stated Baskerville noted the 250' buffer was specifically used for gas stations and other industrial uses. There is no reference lines from Witches Brook noted on the submitted plan so an informed determination can be made for the potential impacts to Witches Brook. Garruba handed information regarding the shore land protection act.

John Garruba, 30 Meadow Drive

Garruba believes the area around the units can't be used to calculate the open space. There are no definitions for open space under the housing for elderly ordinance. Open as defined under HOSP, Section XXI.a.1.j defines specifically setbacks from building and yards. Most of the space around each unit would be excluded in Garruba's opinion. Also, all of the open space needs to be contiguous, with two separate lots that space is not contiguous. The applicants request for a variance is incomplete, it does not address all sections of the ordinance. McGhee stated the testimony was the open space requirement has been met. Garruba disagrees based on his own calculations also the ordinance states the maximum number of housing for older persons dwelling units approved in a calendar year, when added to all previously approved units, shall not exceed 25% of the total dwelling units existing in the Town for the previous year. Does this development met this requirement?

Brett Allard, attorney for 451 Silver Lake Road, LLC

Allard agrees 90% of the concerns are PB issues. The ZBA needs to find a hardship in this case, there has been no testimony on what makes this property unique and the fact that the only hardship to the property is that there is a road that runs between two properties. Without finding a hardship, the ZBA should not grant the variance.

Applicant Rebuttal

Patricia Panciocco, attorney for the applicant

Panciocco stated the variance is requesting relief from an adjective within the zoning ordinance and how it is being applied in the definition of lot. Strict application to the contiguity requirement and what benefit does that bring to the public. The contiguous requirement is so we can accommodated the necessary services. The entire development could be placed on the east side of Rte. 122. We are striving to meet the 20 acre requirement and to do so the additional lot on the other side of the road was added.

Traffic concerns are mostly a PB issue unless the use is not permitted. The proposed use in all zones is applicable if permitted. The changes to the zoning ordinance makes the application materially different than the previous application. Grant v. Somersworth was decided in 2011. An applicant was denied to renovate a single-family home to a multi-family home. The ZBA denied the case. The applicant went back to the ZBA in 2010 with the same request. The ZBA stated Fisher v. Dover bars the case. The applicant took the case to the Superior Court which found the law governing variance requests had changed so much, the case was remanded back to the ZBA, just as it has in this case.

Panciocco agrees if a Walmart moved in next door, it may impact property values. But, a residential community to serve a defined population residentially in a residential area is not going to diminish property values. Most concerns mentioned talk about growth, traffic and overcrowding. These are growth issues and are PB issues. A zoning variance granting or denial is de-facto growth control. The relief requesting is based upon the merits and why is the contiguous requirement important in the proposed development.

Baskerville responded to the question concerning chemo therapy and its impact on septic systems. Baskerville stated chemo therapy and antibiotics do pass through septic systems. The State is aware of the issue and Department of Environmental Services (DES) is currently looking into the issue. At this point, the State does not have any formal regulations. The plans submitted this evening are not formal since approval for the variance must be granted by the ZBA first. The formal plans will show all setback, buffers and will verify the open space requirements. Once the formal plans are submitted to the PB the abutters will have an opportunity to voice there concerns as well.

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

Case ZBA 2018-025

The application of John Halvatzes, Jr., for a Variance to Section XG, Zoning District, Paragraph 4.a, Minimum Lot Area of the Zoning Ordinance to permit the construction of a Single Family Home on a 1.69 acre lot (required 2 acres) located on Broad Street (Map 014, Lot 048) in the Residential/Agricultural Zone.

Morgan Hollis, Attorney with Gottesman and Hollis, Nashua, stated that he is representing John Halvatzes Jr., trustee of the John Halvatzes Jr. Rev. Trust who owns the subject property (Map 26 Lot 48) on Broad Street. The property is shown on the town tax maps as being 1.95 acres but an actual survey finds it to be 1.69 acres. The property was inherited from Mr. Halvatzes mother, who inherited it from her parents. The deed creating the property dates back to 1965. There is no record in the Registry of a subdivision plan and no record of the planning board discussing this. The planning board did not have regulations at that time. There is no reference to a subdivision plan in the deed. At the time it was created, the lot met the minimum lot acreage, which was 1.5 acres; however, the frontage requirement in 1965 was 200' and this lot has 112'. The lot was taxed as a developable lot until 1986 at which time it was assessed at \$62,100. Mrs. Halvatzes complained to the town about the valuation being too high and received a letter from the town administrator stating that the lot could not be assessed as buildable because it did not meet the zoning requirements. In 1986 the assessment was dropped from \$62,100 to \$13,800. The letter Mr. Hollis referenced was dated Oct. 27, 1986 by Charles Clifford. The property has sat vacant until Mr. Halvatzes began to look into options as to what could be done with it. There was discussion with neighbors, but no offers to purchase were received. Mr. Halvatzes then met with the town as to the steps needed to apply for a variance and had Meridian Land Services prepare a plan, which shows that the plan can support both a well and a septic system and would accommodate a 3-bedroom house. The town rendered an opinion that while the lot met the area at the time the deed was created, it did not meet the frontage. It must now meet both the frontage and acreage requirement so two variances are required. It is not a grandfathered lot. Mr. Hollis stated that there are two separate variances but he will present them separately.

Hollis first addressed the area variance. The first criteria is that it is not contrary to the public interest.

The property is good sized and there are three lots across the street and two on the same side of the street that are smaller than the subject lot. Mr. Hollis distributed aerial maps illustrating the layout of the area. All the lots have houses except the subject lot. The next map shows all the lots that are under two acres. He also supplied a map from NRPC showing all the surrounding lots with their acreage. This is the only lot in the area that is not built on. The next plan shows all the under-sized lots and abutting properties. All the maps support the argument that this is a good-sized lot that is similar to properties adjacent to and across the street. This is not creating a new lot. Lot size and shape are consistent with those in the neighborhood, and granting the variance would not change the character of the neighborhood. The proposed use is a single family house, which is also in character with the neighborhood. The plan by Meridian demonstrates that the lot can support a septic and well, and all building setbacks can be met. It will not affect the health, safety or welfare of the public in any way.

Hollis stated that the general purpose of the ordinance is to protect property values, not overcrowd, and not alter the character of the neighborhood. There is adequate lot size to accommodate a three-bedroom single family house without having any impact on neighbors and without altering the character of the neighborhood. Health, safety and welfare will not be affected in any way. In evaluating substantial justice, the board must weigh private property values vs. public property values. If the variance is granted there will be no harm done to the public. The impact to the applicant if the variance is denied is that there are not any other uses for the property, with the exception of possibly a small farming operation which would involve clear cutting a large portion of the lot, and create an impact to the neighbors. Substantial justice will be done if the variance is granted.

With respect to the effect on the value of surrounding properties, the proposed use is a single family house, which is a permitted use. The lot is similar in size to others in the neighborhood, and this will be a home in the proper setbacks. M. Hollis asked realtor Randy Turmel, broker with Keller Williams to give his opinion as to whether or not putting a house on this lot would affect values of adjacent properties. In a letter dated Dec. 26, Mr. Turmel states that “the variances requested will not diminish the values of any of the abutting properties or any properties in the immediate area”.

Hollis stated that there are two options to the hardship criteria and he believes this application meets both. The lot is unique; it is the last lot not to be developed; it is an inherited property created by deed in 1965 and the town did not object. There must be an explanation, but I cannot find it. The town taxed it for a while. If the applicant cannot get relief, the lot has no value. The lot behind this one has a narrow width, which could be a driveway. It is not possible to buy land from abutting properties because these lots need to retain their frontage to meet the zoning requirements. We are boxed in. We might be able to acquire some additional land in the rear if the owner is willing to sell, to meet the acreage requirement, but we would still have the frontage issue.

Hollis stated that the next question is if there is a fair and substantial relationship to enforcing this ordinance and the intent of the ordinance. The intent of the ordinance is to allow for adequate for septic and water, adequate lot size to avoid being on top of neighbors, and a nice rural atmosphere. To require this property to have two acres does not constitute a fair and substantial relationship to the purpose of the ordinance. Without relief, there is no reasonable use of the lot.

Hollis stated we are going from 200 feet to 112.01 feet. This is a significant reduction. The purpose is to have adequate room to site a home which is not on top of neighbors. For the lot on one side of this lot, the driveway is on the far opposite side; on the other side, the driveway is in the middle of the lot. There is plenty of room to put a driveway.

MacMillan stated there is a right-of-way for another driveway to the rear lot. Hollis stated that the rear lot could be developed.

Hollis stated that the next question is if this single-family home will alter the character of the neighborhood, and the answer is no. We are not creating a new lot. It is not narrower than some of the

lots across the street, and there are other houses on the same side of the street without 200 feet of frontage. There is no threat to health, safety and welfare. Addressing number three, he said there is no harm in putting a single-family home on this lot without adequate frontage because it is a pre-existing use. It's a clear, straight road, and the Board could stipulate that the driveway could not be near the existing right-of-way, which is fine. To disallow this variance would be a confiscatory application of the ordinance because there is no other reasonable use for the lot. Per the letter of Randy Turmel, there would be no adverse effect on property values with the addition of this single-family home. Regarding hardship, it is a pre-existing lot of record which is not usable without relief. We are not able to acquire additional frontage.

Mason asked at what point regional impact concerns are addressed.

Belanger motions that there is are no regional impact issues with Case 2018-025 or 2018-026.

Robbins-Tsao seconds the motion.

Motion unanimously approved.

Major asked if this lot was created along with others at the time. Hollis said that it was a separate, deeded lot and was created under unusual circumstances. There is no plan of record. It came out of a larger parcel owned by the grandfather of Mr. Halvatzes, who deeded pieces to family members. This lot was subdivided off of a 6.28-acre lot. The former owner deeded off portions of the larger conforming lot.

Major stated that from 1965 until 1986, it was taxed as a buildable lot. Since 1986, it has been taxed as a non-buildable lot, lowering the taxes. Major stated there are five parcels on less than two acres, making it reasonable to impose a size restriction on the size of the home to be built.

Hollis stated that there is a three-bedroom limit because of the septic, and they would agree not to cut trees within setbacks unless they must to save the house. They would also agree, if necessary, to limit the size of the house to 2,500 square feet. He stated that the deed was issued in 1965; in 1956 the minimum lot size was three-quarters of an acre; in 1965 it was 1.5 acres; and in 1970 it was set at two acres. Per the Town Attorney, there is no grandfathering of an illegal lot.

MacMillan said this is a 43% reduction in the frontage requirement, and that is the main issue.

Spoke in favor of the application

None.

Spoke in opposition to the application

Scott Annand, 320 Broad Street

Annand stated that he and his wife own the house adjacent on the west side. They were assured it was a non-buildable lot and were shocked when someone started clearing it. The contention that this is typical for the area is erroneous. Our lot is 2.3 acres, which is typical of the area. This lot does not have enough frontage. It is a nice, wooded lot, and cramming a house on there is not in character with the area. It doesn't benefit the general public or me or the value of my land. The taxes are low and have been low for 30 years because it is not buildable. I don't see hardship. I ask the ZBA to uphold the zoning laws as written and deny the variance.

Laura Scholefield, 327 Broad Street

Scholefield stated that she and her husband own the house is directly across the street from the lot under discussion. She and her husband were never approached about the lot being for sale, contrary to what was said. Her lot is 1.86 acres, but it has the required frontage. The Certified Market Analysis (CMA) was

done quickly as a drive-by. She is a real estate agent and believes a CMA could not have been done that quickly. The house should not be built; it will impact the value of their property, which is a five-bedroom home with 3,100 square feet.

Applicant Rebuttal

Hollis stated that they have proven that the lot could support a single-family home. The purpose of the ordinance is to not allow undersized lots. However, the lot was created and taxed. Not allowing this variance is confiscatory. He verified that a letter was sent to Dana Scholefield regarding the availability of the lot.

No further questions from the Board and none from the floor. Hearing portion of the case closed.

Case ZBA 2018-026

The application of John Halvatzes, Jr., for a Variance to Section XG, Zoning District, Paragraph 4.b, Minimum Frontage on a public road of the Zoning Ordinance to permit the construction of a Single Family Home with 112.01 feet of frontage (required 200 feet) located on Broad Street (Map 014, Lot 048) in the Residential/Agricultural Zone.

Testimony for case 2018-026 included in the testimony of the previous case above (Case2018-025)

No further questions from the Board and none from the floor. Hearing portion of the case closed.

The ZBA recessed at 10:15pm

Reconvened at 10:25 pm

DELIBERATION AND DECISION

Case ZBA 2018-016

Discussion 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.

West felt if there is a prescriptive easement where the owners own up to the center line, then the lots are contiguous. Major stated the ZBA should reconsider the application since some points brought up had merits in his opinion. Belanger noted most of the testimony presented tonight, as it concerns, are PB issues.

Belanger requested the board consider 2 findings of fact; First, the board finds that Fisher v. Dover does not apply to this cause due the zoning changes. Second, the two lots are contiguous because the state road is not deeded property. MacMillan added the NRPC was sent notification and they found no reginal impact for this proposal.

The ZBA members agreed that Fisher v. Dover does not apply to this case because of the change in the ordinance and the plan change.

Belanger stated the prescriptive road issue has come up in the past on Ranger Rd, the town does not own the road the property owner own to the center line. West noted if the road is in-fact an easement the lots are contiguous.

Mason asked whether or not we know for certain the road is a prescriptive easement. The Board's

concern is that with the exception of the prior testimony, there was no proof presented on the easement. Major asked when a highway is laid out does the state own it? Belanger stated that is the issue the road was already there.

Belanger moves for a finding of fact;

- 1. The Board finds that Fisher v. Dover does not apply to this case because of the changes to the zoning ordinance and the change in the application is substantial.*

Durham Seconded.

Motion unanimously approved.

McGhee stated she feels the application did not substantially change. West agreed that there is no proof that the properties own to the center line, only the testimony that research was completed. At some point someone is going to have to ask for the opinion that says it is contiguous. McGhee stated if the variance is granted could it be done contingent of the existence of a prescriptive easement. Major stated the ZBA could come up with findings both ways either the property is contiguous due to the easement or the ZBA just finds the lots are contiguous. West noted if the lots in-fact are contiguous a variance would not be required. Durham's opinion of contiguous is lots which are touching in some way but if there is the prescriptive easement her opinion has changed.

Major asked other than the hardship issue does the ZBA feel there is any other problems with the site. The ZBA felt that most of the other concerns such as traffic and density are PB issues. The ZBA did agreed the hardship issue was going to be an obstacle and if approved findings of fact would have to be completed. Mason said the reasoning for the 2016 application being contrary to the public interest was basically due to the lot size and not the driveway locations. The ZBA members agreed.

Belanger moves for a finding of fact;

- 1. That the two lots are contiguous due to the fact that the road that separates them is not deeded property, but is a prescriptive easement.*

MacMillan seconded.

Motion unanimously approved.

Mason moves for a finding of fact;

- 2. The board finds even if the two parcels were separated by a deeded road it does not prevent the lots from being used contiguously for the purpose of creating a senior housing community.*

MacMillan seconded.

Motion passed 3 to 2 with Tsao and Durham voting no.

Major moves for a finding of fact;

- 3. With the exception of the issue of contiguity the variance meets all other requirements of the ordinance.*

Belanger seconded.

Motion unanimously approved.

West moves for a finding of fact;

- 4. Based on the testimony and further based on the letter received from Nashua Regional Planning Commission, the board finds the application has no regional impact.*

MacMillan seconded.

Motion unanimously approved.

MacMillan moves for a finding of fact;

- 5. The board recognizes that an important consideration in granting the variance is that the two parcels are directly across from each other.*

Mason seconded.

Motion passed 4 to 1 with Durham voting no.

Mason moved for a finding of fact;

6. *Granting the variance supports the expressed desire of the voters in Hollis for more senior housing options in town.*

Belanger seconded.

Motion unanimously approved.

The ZBA started to discuss the hardship criteria and determined another meeting was necessary, since the meeting has gone past 11:00 pm.

McGhee moves to table further deliberations of Case2018-016, 2018-025 and 2018-026 to a date time certain of January 3, 2019 at 7:45pm

Tsao seconded.

Motion unanimously approved.

The ZBA meeting adjourned at 11:15 pm.