



BOARD of ADJUSTMENT
Town of Hollis
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Minutes of May 23, 2019

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; Regular Members –Cindy Robbins-Tsao, Rick MacMillan and Susan Durham; Alternate Members –Drew Mason, Kat McGhee, Bill Moseley Meredith West and Stan Swerchesky.

Major explained policies and procedures.

Major said Tsao and Mason recused themselves from ZBA Case 2019-005

Major said the voting members for the cases this evening are as follows;

ZBA Case 2019-004: Major, Tsao, MacMillan, Durham and Mason

ZBA Case 2019-005: Major, MacMillan, Durham, McGhee and Mosely.

Case ZBA 2019-004

The application of Raymond Lorden, property owner, for a Special Exception to Section XII Nonconforming Uses, Structures and Lots, Section A.3, Nonconforming Uses, Alterations of the Zoning Ordinance to permit the demolition of an existing structure (pavilion) and construct one 2 family dwelling, located at 11 Federal Hill Rd., Map 059, Lot 024 in the Recreational Zone.

Morgan Hollis, Gottesman & Hollis, presented ZBA case 2019-004 on behalf Raymond Lorden, property owner. Hollis said Lorden and Randy Haight, Meridian Land Services, are here this evening and could answer any question the ZBA may have. Haight will also be presenting the new septic design for the project.

Hollis said the property in question is formerly known as Wallace Grove. Lorden purchased the property last fall. The property is 4.9 acres with frontage on Silver Lake Road, Federal Hill Road and a substantial amount of frontage on the lake. The property currently has five (5) year round dwelling units and seven (7) seasonal cottages. One of the seasonal cottages has a bathroom, kitchen and two bedrooms. The remaining six (6) cottages are seasonal without bathrooms. Also, on the property are several sheds and two (2) garages. The six (6) cottages shared the bathrooms within the pavilion, which were located nearby.

The pavilion has had a number of uses over the years, most of which have been of some type of public nature, but it was never used as a dwelling of any type. It also had a shared public, kitchen, eating area, bathhouse and bathrooms. The bathhouse and bathrooms were located towards the rear of the building. The pavilion was the center for the seasonal cottages. People who rented the cottages with no bathrooms used the pavilion's bathrooms, kitchen and eating area. . The pavilion also had a dance floor and performance stage which were used for public events. Hollis stated he was told the pavilion was used for a flea market and other commercial uses as well.

Hollis said he had toured the property and the structures are intact. There have been some arguments made in the past to whether or not the seasonal cottages have any rights as residential units. No debate will be given on the matter.

Hollis said the proposal this evening is to change the existing non-conforming use of the pavilion to a two family structure. The pavilion will be removed and the new structure will be constructed in the same footprint. (see plan submitted) The proposal also includes the removal of 4 of the seasonal cottages directly on the lake. Hollis presented a plan to the ZBA for review. (see file) Hollis said the structures marked 1, 2, 3, and 5 on the plan will be removed. The structure marked four (4) would remain, but would be used for storage, not for occupancy. . Structure 6 will remain as a seasonal cottage which has a bathroom, full kitchen, living area and 2 bedrooms. The proposed changes will include an updated septic system, which will also be for 2 existing residential structures on the property. The updated septic system, will be an improvement for the lot as well as Silver Lake. The new use and structure will not be detrimental to the health, safety or welfare of the Town.

The change of the pavilion into a two family residence will reduce the amount of traffic generated from the same footprint. As stated, but not confirmed, the pavilion has been used most recently for a flea market which can draw significant traffic flow. The residential use will have less traffic impact and less impact on the physical condition of the Town's roads than the prior commercial uses.

Hollis said the submitted depiction of the new two family residence represents what may be placed on the site. However, the applicant has spent little time to design the exterior because he is waiting for the outcome of the meeting. The structure will be no larger than the existing footprint, and in fact, it would be smaller. Major asked if the structure would be single story. Hollis replied yes. MacMillan asked if the plan was to remove some of the existing residential units. Hollis replied the 5 year round dwellings will remain. Hollis said his clients would agree to a stipulation that Building 4 would not be used for overnight occupancy or as a residential unit, the unit would only be used as a storage building or sitting area. Building 6 would left as is, subject to a future determination whatever that may be.

MacMillan asked if Building 4 was used for occupancy within the last two years. Hollis replied he was unaware, but reviewed minutes from a past case and the owner stated the unit was not used for several years. Hollis stated the reason Building 4 was going to stay was that that unit was in better shape than the others and since the new two family residence would have no storage, they wanted to utilize the building 4, as such. Major said during the previous case the testimony stated the 5 seasonal units have not been used for many years. Major asked how significant was the footprint of the pavilion, and was it Hollis's argument that the presence of the footprint of the pavilion was relevant to the application. Hollis replied yes since the use is non-conforming and the proposal is to alter the existing use, as stated in the Hollis zoning ordinance.

MacMillan asked when the pavilion was last used for public use. Hollis could not answer the question. MacMillan asked if the pavilion was used presently. Hollis replied no, however that does not mean it is an abandoned use. Major asked if the pavilion was not on the property wouldn't the application be for a variance. Hollis replied yes.

Mason asked Hollis to identify the year round residences. Hollis replied there are 3 year round residential units on the left hand side of the driveway. The other 2 residential units are in the easterly direction from the pavilion. Mason asked if unit 3, the bathhouse and a garage were located off of Federal Hill Road. Hollis replied yes. Major asked if approved would there be 7 year round units on the property. Hildreth replied yes. Major said the subject lot is 4.9 acres and the density of the surrounding lots are 1/8 of an acre or less. Major asked Hollis if that statement was correct. Hollis agreed and added if the application was for a variance more precise data would have been presented. Major said while determining the case, a decision needs to be made if the pavilion's footprint has a vested right. Hollis said clearly there is a vested right to a building, but to the use that might be a different story. The last use of the pavilion, as the previous testimony stated, was for public purposes and the structure was not abandoned. Major said their intention was to re-open the pavilion as a recreational facility. Hollis agreed however, the case being made this evening is concerning on the existing conditions of the entire property. Our argument is there are non-conforming structures and non-conforming uses present on the property. The request is to alter the non-conforming use under the special exception criteria. Under the special exception criteria, the ZBA needs to determine whether or not the proposed alteration, expansion or change, change the nature and purpose of the original use. The ZBA needs to consider what the nature of the original use was. There are seasonal cottages which are not used, and some year round houses in use. The entire lot needs to be considered as a whole. Our proposal does not alter or change the nature and purpose of the original use. There has always been a residential use of the property, there is still residential use. The only thing we are proposing is to remove the seasonal use.

MacMillan asked if the pavilion was ever taxed as a residential 2 family unit. Hollis replied no. MacMillan stated an analogy; if a residence came in with a 4 acre lot with an existing barn and made an application to tear down the barn and construct a duplex in its place, would that be considered an expanding use. Hollis replied if a duplex was permitted in the zone and the lot had the adequate acreage the change would be a permitted use. Hollis stated if there was 1 house on a 1 acre lot, where Hollis has a 2 acre minimum, the owner could apply for a special exception for the duplex under a non-conforming lot, and the ZBA would need to determine if the proposal meets the criteria. Hollis said the Hollis zoning ordinance (HZO) states if a lot was conforming and you wanted to make the lot non-conforming a variance would be required. On the other hand if the lot is already non-conforming, a special exception would be required to expand the non-conforming use or lot. MacMillan said the proposed lot is 4.9 acres with 5 existing units and the proposal is to add 2 more units, Hollis agreed however, the proposal includes the removal of 4 non-conforming structures and replacing them with another non-conforming structure. MacMillan said the removal of the structures has no bearing on the application since it was already established the units were abandoned.

Major said the application is basically asking to allow 7 year round units where five exist currently. The determination which needs to be made is does the expansion of 2 additional units have a substantially different effect on the neighborhood. The property has been used for 5 year round dwelling units and previous testimony stated the rest of the units were not being used for quite some time. Hollis agreed and said the application is for a modification of what was on the property in the past. The ZBA needs to consider the past uses, not just in the last few years. The pavilion structure needs to be considered as well, which has some rights to some kind of use. Major said seeing that 4 structures would be removed, was Hollis saying the density would be lowered. Hollis replied yes and the whole site will be modified, the use will have no public use, no seasonal use and most of the structures directly on the lake will be removed with the exception of 1 seasonal cottage. The question before the ZBA is does the modification of the non-conforming use meet the criteria for a special exception. The ZBA needs to agree that the proposed use will not change the nature or purpose of the original use of the whole property and would the proposed use involve a substantially different effect on the neighborhood.

There are other criteria for a special exception within the HZO. However, they do not apply to this type of special exception as the use shall not be detrimental to the character, environment, scenic value, health, safety or general welfare of the Town and does not materially affect traffic or physical condition of the roads. Hollis said those criteria do not apply, it was Hollis's opinion the application meets those criteria as well. A year round use is far better than a seasonal use. The new septic for the units would be considerable better than the septic systems currently on site especially for the lake.

Major asked how large would the new units be. Hollis replied roughly 950 square feet per unit. Major asked if the ZBA imposed a condition that all of the units along the lake be removed. Would that be a reasonable condition since the density of the lot might be an issue. Hollis replied his client would agree to not use Building 4 however, the condition pertaining to Building 6 would be considered unreasonable.

Mason asked does the ZBA need to determine if the application has regional impact. The ZBA voted 5-0 that the application had no regional impact.

Moseley asked was the original intention for the pavilion to supply sanitary facilities, showers and recreational use for the seasonal cottages which will be removed. Hollis replied yes and also it held dances and gatherings for Wallace Grove. Mason asked when Wallace's Grove closed. Did the facility close around 2001. Hollis replied he was unable to answer the questions accurately, but thinks it closed within the last 10 years.

West asked have structures 1-3 and 5 been used regularly. Hollis replied no, as the previous owner stated within their previous application. MacMillan asked if Hollis knew how many times the lake was closed last during because of E.coli. Major said he thinks the bacteria issue is with the other side of the lake. Hollis said one of the best parts of the application is with the structures being removed including the pavilion, a new septic system would be installed for the new structure. Major said a decision on the part of the ZBA needs to be whether or changing the use from seasonal to full time (duplex) would have a different effect on the neighborhood. Hollis said removing the seasonal cottage would reduce traffic and in his opinion would have a lesser effect on the area.

West asked if any other septic systems on the property being removed. Hollis replied the cottages being removed do not have septic systems, except unit 6. Major asked would Planning Board (PB) approval be required. Hollis replied yes. Mason said one of the criteria which needs to be met for the special exception is that the change will not alter the nature and purpose of the original use. What was the original use? Hollis replied the ZBA needs to view the entire site as an entity. Not just the use of the pavilion. The historical use of the entire site has been year round homes, seasonal cottages, commercial use and commercial bathing.

MacMillan said the pavilion has never been used as a residential unit and in his opinion the proposed change does change the nature and purpose of the original use. Hollis agreed however, the totality of the entire lot would not change, it would remain residential and residential is a permitted use the recreational zone. The proposal is less non-conforming than the current use and past uses of the property. A new 2 family unit is not out of character with the current uses of the lot, wouldn't affect the neighborhood and the issue of whether the proposal is an expansion of use or not, actually does not need to be considered under the HZO. Mason asked what the current use of structure 6. Hollis replied seasonal use. Mason asked what the most recent use of the pavilion. Hollis replied a flea market and other commercial uses. Mason asked when the pavilion was used last. MacMillan replied over 2 years. Randy Haight, Meridian Land Services, explained the proposed septic system for the new duplex and said the new system will also be used for two of the year round cottages. Major asked are the units for the duplex smaller than

the pavilion. Haight replied yes and that a shoreland permit was approved and the septic is awaiting town and state approval which will be completed once a determination is made this evening. Major asked if the septic system meets the setback from the water. Haight replied yes and that no trees or fauna will be removed with the area.

McGhee asked would the remaining three structures be tied into the new septic system. Haight replied no those structure have their own septic systems. Mason said seeing that Hollis wants the ZBA to consider the entire use of the lot, do the other septic systems meet the state requirements. Haight replied one of the septic systems was approved by the state when the structure was built and the remaining were installed prior to the state regulations. The state started to review septic system in 1967. The septic systems installed prior to 1967 were not designed to meet the state criteria. However, there are no current problem with the systems. Mason said if the ZBA is to consider the lot as a whole entity, shouldn't the septic systems be considered in the same way. Hollis replied the ZBA may consider upgraded septic systems as a condition of approval, but the ordinance is written for the number of bedrooms currently in the home or proposed for the home and not the entire lot use. Tsao asked if there would be any trees, bushes or shrubs removed to install the septic. Haight replied no.

McGhee said during a previous hearing on the property the ZBA had concerns about the density of the lot. The previous application was for 12 units and this application is to increase the number of units from 5 to 7 on a 4.9 acre lot which does not meet the HZO. The proposal does not seem to be unreasonable, but there is still a density issue. Hollis said the proposal of a duplex is less intense than what could happen on the lot. There is no adverse effect on the neighborhood by adding 2 more units on an already non-conforming lot. The proposal is also going from a non-permitted use to a permitted use.

MacMillan said the lot is non-conforming and the HZO states "*A non-conforming lot which has been developed with a structure may be continued for the same use.*" MacMillan asked Hollis what his argument would be. Hollis replied his interpretation is the HZO does say structure, however there are a lot of structures on the lot and the HZO "further states may be continued for the same use". The proposed use is residential, the lot is primary single family residential use with some commercial use. MacMillan said was the property's original use a year round residential use. Hollis said the residential use was and always was a component of the property.

West said since the proposed structure is not two separate structures and there was no duplex or duplex use ever on the property, would Hollis consider the duplex use similar? Hollis replied yes since a duplex use is permitted by the HZO. A duplex is more efficient than two separate structures and the structure fits within the footprint of the pavilion.

Major asked if it would be a matter of right, to just convert the pavilion into 2 separate units. Hollis replied no the conversion would not be allowed by HZO.

No one spoke in favor of the application

Spoke in opposition of the application

Lawrence Tobiason, 38 Silver Hill Park Road

Tobiason submitted a letter in opposition to the application. The original use was not a dwelling but a dance hall pavilion. The petitioner has asked the State of NH Department of Environmental Services (NHDES) to issue a shoreline permit in accordance with RSA 483-B. The State has issued the permit with conditions, and #13 states "This permit shall not preclude NHDES from taking any enforcement or revocation action if NHDES later determines that any structure as "existing" on the plan submitted were not previously permitted or grandfathered. Major explained the existing use pre-dates zoning. Tobiason said the former camps to his knowledge have been neither permitted or grandfathered since they are non-conforming and abandoned for 2 or more years. Why would the board of adjustment add to the existing non-conforming buildings with yet another such dwelling when clearly the plan including existing setbacks: 100' from the lake 100' from the scenic road Federal Hill and 100' from the stream? It seems logical that one would make any new building conform where all other buildings on this site do not. One would question the motivations of the petitioner. The current owner bought this property knowing that the existing zoning allows only (2) dwellings within the 4.85 acres. It would appear that by setting a dwelling within the 100 foot set back from the lake, it would likely be possible to split the property up into 2 lots. Tobiason in conclusion said the ZBA should not approve the petition, but encourage the petitioner to follow the current HZO regulation such as setback requirements for any future applications for this property. (see file for complete letter)

Applicant rebuttal

Hollis said the application which was submitted is fair, reasonable and is in keeping with the surrounding area. The property is gaining a new septic system for the 2 units and a new septic for 2 of the existing structures. The removal of old structures that may last for years, which no one would be required to take down unless they become a safety hazard. The ZBA has an opportunity to define the use of the property and as long as the application meets the criteria set forth under the special exception. The proposed structure would 65' from the lake and is further away than the existing structures. The property could not be split into two lots because of setbacks, access points and building box issues. If the new building was constructed outside of the footprint of the pavilion, it was Hollis' opinion a variance would be required. The condition of the shoreline permit has been agreed upon. If NHDES decided structures needed to be removed, the applicant will remove the structures. However, the conditions are under the NHDES jurisdiction. The shoreland permit has not been fully accepted due to the fact ZBA approval is required prior to the issuance of the shoreland permit.

MacMillan asked if the two of the smaller residential dwelling units were taken down and the applicant was allowed to build 2 new units. Would that type of proposal be considered? Hollis replied no, not at this time. West asked how many existing year round bedrooms exist on the property. Ray Lorden approached the ZBA and responded 5 units with 12 bedrooms total.

Spoke to comment on water conditions of Silver Lake

Robert Doody, 24 Silver Hill Park Road

Doody said the Lake has been closed a lot but primarily due to the algae blooms caused by fertilizers. The lake has been closed only a few time due to e coli.

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

The ZBA voted 5-0 that the application had no regional impact.

Case ZBA 2019-005

The application of Hollis Congregational Church, property owners, for a Special Exception to Section XII Nonconforming Uses, Structures and Lots, Section B.4 and Section C of the Zoning Ordinance to permit the construction of a entrance bump-out on the front, new enclosed stairway on the east side and permit the increase in the percentage of impermeable surface lot coverage, located at 3 Monument Sq., Map 052, Lot 053 in the Town Center Zone.

Attorney Thomas Hildreth, from McLane and Middleton, presented the case on behalf of the Congregational Church. Hildreth explained the rendering submitted may not be exactly what would be done. The Church's planned renovations stem from a multiyear planning process, dating back to 2013, when its previous settled pastor, Rev. Larry Smith, retired. The congregation began to take stock of itself in order to prepare a Church Profile (brochure) for use in attracting pastoral candidates. Rev. Tanya Rasmussen accepted the Church's call to become the next settled pastor in the summer of 2015. Utilizing and further developing the profile materials, the Church launched a strategic planning initiative in early 2016 to identify its strengths, weaknesses, opportunities, and challenges. The resulting Strategic Plan and updated Mission Statement were adopted by the congregation at the Church's annual meeting in February, 2017.

The Strategic Plan identifies four key areas for focus, which the Church has taken to calling the "four pillars": Welcome, Worship, Learning, and Service. The Church believes that by focusing on these four areas, it can better address the needs of the congregation, grow its membership, expand its mission and action in the wider community, and ensure the Church's survival and relevance into the future.

The BOV Team has surveyed virtually every constituency which uses the church to develop a plan for renovations: its members and friends, boards and committees, 12-step groups, the Scouts, the Hollis Women's Club, the Town Band, etc. Early in 2018, the Church engaged Manchester architect Dennis Mires. You may be familiar with some of Dennis's local projects – the Nashua YMCA and Parish of the Resurrection on Broad Street in Nashua (across the driveway to Nashua High School North.) Dennis also worked on renovations of the Amherst (NH) Congregational Church, and the one studied most closely for this project, the First Congregational Church of Hampton, NH.

With much lay input and Dennis's professional guidance, a plan emerged which the Church has been sharing and refining for several months. In June 2018, the congregation voted to proceed with a capital campaign to fund the project. The capital campaign formally concluded its Church-based phase on April 14, 2019, to coincide with the conclusion of the Church's 275th year. (Rev. Daniel Emerson was installed as the Church's first settled pastor on April 20, 1743.) The Funding Our Vision – Joy of Generosity Campaign has raised more than \$1.5 Million toward the \$2 Million goal.

The plan that has emerged is both ambitious and modest. (See plan submitted) It is ambitious in that it is forecast to cost a little more than \$2MM and will touch nearly every room in the Church. It is modest in that very little new space is created.

In no particular order, the proposal calls for:

- bumping out the handicapped entrance on the south side to create a welcoming new foyer/entry/library/gathering space;
- moving the interior rear wall of the sanctuary to the north edge of the building, bringing additional light into the sanctuary and enlarging the interior space to support a larger choir, performance space, and alternative styles of worship;
- creating enclosed, fire-rated stairways on the east and west sides of the building;
- refurbishing classrooms and equipping them with modern AV systems;
- adding a youth room;
- creating a walk-out patio on the east lawn adjacent to Hardy Hall (the basement level kitchen and fellowship space) to comply with safety codes;
- replacing the overhead electrical service that crosses the cemetery and enters the north side of the Church with underground service from the existing pole across the street from the Harris home;
- updating the kitchen to better support food-based ministries; and
- Adding a second curb cut and drop-off driveway from Monument Square.

On June 12, 2018, members of the BOV Team and Dennis Mires met with various town planning and zoning staffers at a meeting at Town Hall hosted by the Town Planner. The plans were reviewed and a permitting path laid out. The project will require:

- Zoning Board approval, on account of the non-conforming nature of the building and lot;
- Planning Board approval, for changes to the site plan of a non-residential use;
- Historic District Commission approval, given the Church's location within the historic district;
- Heritage Commission review of the work affecting a small portion of the stone wall separating the church cemetery from the church lawn; and
- NHDOT approval of proposed driveway realignment and additional curb cut.

For zoning purposes, the Church maintains a conforming use in a nonconforming building on a nonconforming lot.

The Church sits on an approximately 0.76 acre parcel of land in the Town Center zone. Churches are a use permitted by special exception in the TC zone. This Church long pre-dates zoning in Hollis and is a grandfathered use.

The Church lot is nonconforming as to size. The HZO requires 2 acres; the Church has .76. The Church lot does meet the minimum road frontage requirement with approximately 220' on Monument Square and approximately 240' on Broad Street, where 200' are required.

The Church structure is nonconforming with respect to three setbacks and impervious coverage:

- front yard: 50' required; present structure has approximately 35'. The proposed entrance bump-out on the Monument Square facing side will not be closer to Monument Square than the existing building;
- side yards: 35' required; present structure does not meet requirement on the west side, but does meet it on the east side. The proposed enclosed, fire-rated, east side stairway will continue to comply with the side yard setback on the east side. No additions are proposed on the west side; rather the plan calls for the removal of the existing closet-sized structure from the west side of the building which currently shelters an emergency exit from the basement;

- rear yard: 35' required; present building does not meet this requirement. The east side stairway will not be closer to the rear property line than the existing building;
- impervious coverage: 25% maximum permitted under HZO Section IX, E, 4; existing conditions are 33%; proposed will be 47%.

Durham asked if the excavated area on the east side be level with Hardy Hall. Hildreth replied yes adding the new excavated east area would also provide a rapid escape from the basement as required by life safety codes and the basement area could be used for town events with easy access. Hildreth said other items of improvement to the lot would be replacing the above ground service wires with underground service, creating a second curb cut for a drop off area and straightening out the existing driveway between the church and library. Moseley asked if the supplied rendering of the driveway was arcuate since the location was directly across the street from the “v”. Hildreth replied the driveway would be moved further away from the location shown. DOT has the plan; however, they would not approve the plan until the proposal received ZBA approval.

Hildreth said there has been a rumor heard that the Memorial Park area was going to be impacted with the church proposal. The only change to memorial park would be the removal of the utility pole. In fact, the proposed changes may make it more welcoming for people to enjoy Memorial Park.

Major asked would it be responsible for the ZBA to impose a condition that the application would be subject to HDC approval. Hildreth replied agreed and noted that the proposal was brought to the HDC as a conceptual discussion previously. The HDC had commented on the new roof line and the size of the walkout patio area. The designer has changed the roof line and the size of the walkout patio area was reduced to address the preliminary concerns of the HDC.

Hildreth explained the special exceptions required as being; HZO Section XII, Paragraph B, 1, provides that new construction shall be permitted on a nonconforming lot in accordance with the special exception criteria applicable to nonconforming uses found in HZO Section XII, A, 3. Similarly, Section XII, C, governing nonconforming structures permits new construction that does not further aggravate a setback nonconformity provided that it meets the same substantive standard found in HZO Section XII, A, 3. Each of the three required special exceptions point back to the same substantive standards and, indeed, those standards are met here with the Church's proposal. The standards for the special exception are;

1. ***No change in nature and purpose of original use.*** The proposed construction will not change the nature and purpose of the current use of the Church property. In fact, as is described in more detail above, the changes are expressly intended to permit the Church to live out more fully the nature and purpose of its mission as a church.
2. ***No substantially different effect on neighborhood.*** The proposed construction will involve no substantially different effect on the neighborhood. The construction has been designed to take into consideration the architectural features of the existing building and its prominent place in the Historic District on Monument Square. The new entry portico of the addition matches the existing narthex portico in style and character but will not conflict with or dominate it. Much effort has been expended to ensure the existing main entrance to the Meeting House will remain the focus of the Church. The east lawn of the Church has, for decades, been the site of the annual Strawberry and Apple Festivals co-sponsored by the Town Band and Women's Club. The level surface of the patio and the direct access to the kitchen will serve to enhance those existing community events and to enable others. It should be noted that the project has no impact on that part of the Church lawn sometimes referred to as Memorial Park – (where several war memorials and benches are located) – except for the removal of the utility pole and overhead lines that run through that part of the Church's property. The removal of the utility elements should enhance the appearance of the park. And the walkout basement/patio area should lead more people to wander over to Memorial Park to use and enjoy its shade and history.
3. ***No detriment to character, environment, scenic value, or general welfare of the town.*** Similarly, as required by HZO Section VI, B, the use shall not be detrimental to the character, environment, scenic value, or general welfare of the town. The property has been used as church for more than 275 years. The church use is intricately woven into the fabric of the town. Indeed, Monument Square would not be the revered, iconic, focal point of the historic town center were it not for the presence of the Church. So not only is the use of the property as a church not detrimental to the character of the town; the use of the

property as a Church in fact establishes and defines the character of the town center. The modest new construction represented by the Church's proposal is intended to help the Church fulfill its place and mission for the next 275 years.

4. ***No material effect on traffic or road conditions.*** Finally, the use will not materially affect traffic or the physical condition of town roads. Just as the use is long-established and long-standing, so too are the traffic impacts and patterns relating to the use of the Church. While the church certainly hopes that its efforts to make its facility more welcoming will attract new members, the Church expects that the constraints of its catchment area, number of pews, available parking, etc., will naturally serve to ensure that any growth it might enjoy in membership will not be anywhere near a level as would have any material effect on traffic or town roads.

Hildreth said the improvements being asked for are actually more conforming than the existing conditions. McGhee asked how large the patio area is. Hildreth replied roughly the size of Hardy Hall. Major asked why wasn't a variance applied for impervious surface coverage since, the lot exceeds the 25% limit. Hildreth replied the lot is an existing nonconforming lot. Major asked if the patio was eliminated what would the calculations for impervious surface coverage be. Hildreth replied removal of the patio would reduce the coverage area. However, the existing conditions are over the allowable amount. Major asked if the entire patio area was required to meet the fire egress and could some of the area be grass. Hildreth replied the grade would have to start along the side of the building coming outwards and having the area a type of surface you could remove snow, ice and have wheelchair access would be preferable. The church has a task force which is looking into different ways to design and construct the patio area on performance, longevity, ease of maintenance and cost. Major said the decision made this evening would be subject to HDC and Planning Board approvals. Hildreth agreed.

Swerchesky asked Hildreth to explain the egress on the west side of the church in terms of the existing conditions and what is being proposed. Hildreth replied the "doghouse" will be removed along the entrance door and there will be egress windows installed in the front. The only entrance on the west side staying would be the existing portico located towards the back close to the cemetery wall. Swerchesky asked how many egress windows would be installed in the front. Hildreth replied two on the south side and 2 windows and a door on the east side.

Moseley said the plans look like there would be building near the cemetery and asked was due diligent done to insure no burials were outside the confines of the cemetery. Hildreth stated recently the Cemetery Trustees and Board of Selectmen took action under a State law governing excavation within 25' of a cemetery, to permit the work that will occur in close proximity to the church cemetery. (RSA:289) In addition to the approvals, GSSI located in Nashua donated their ground penetrating radar services on found nothing in the areas which would be distributed.

Dennis Myers, Architect for the project showed the ZBA members a survey plan which depicts the new turn around area and the new driveway location. The original driveway would be moved roughly 18 to 20 feet further away from the center circle. Moseley asked if DOT approval was granted for the extra curb cut and relocation of the existing driveway. Myers replied DOT is still reviewing the plan and there should be an answer within 1 month.

Spoke in Favor of the application

Marilyn Wehrle, 115 Richardson Road

Wehrle said she owns the abutting property to Town Hall which was the home of the first minster of the church in 1776. Wehrle was completely in favor of the application.

Spoke neither for nor against the application

Herman Stickney, 4 Broad Street

Stickney said he had submitted an application which was denied under RSA:289, to install a garage within the 25' setback to the cemetery. The proposed application is disappointing since my application was denied. The proposal is twice the size and has more of an impact. Stickney said Hildreth did a good presentation and Stickney would probably vote yes if he could. Stickney asked how did the church find a way not to follow RSA:289? Hildreth testified the Selectman and Cemetery Trustees approved the project. Major replied state statue allows for construction, excavation or building within 25' of the cemetery if the construction is necessary for an essential

service.

Stickney said the church in the past has desecrated roughly $\frac{3}{4}$ of cemetery borders. They had cantilevered the building for new construction in the 1980's. Where the church built the building over the top of existing gravestones. Major said he had no knowledge of the approvals for that construction. Stickney said the church installed a new wall and dug down 2' or so for roughly 150 feet as well and thankfully no bones were found. Stickney said he commends the job the church is doing and maybe if he submitted another application for his garage the church might speak in favor of the project.

Hildreth said in regards to the past construction of the overhang, that project was completed in 1963 or 1964. The project was approved at the town meeting.

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

ZBA recessed at 9:00pm

ZBA reconvened at 9:05 pm

DELIBERATIONS

Case ZBA 2019-004

The application of Raymond Lorden, property owner, for a Special Exception to Section XII Nonconforming Uses, Structures and Lots, Section A.3, Nonconforming Uses, Alterations of the Zoning Ordinance to permit the demolition of an existing structure (pavilion) and construct one 2 family dwelling, located at 11 Federal Hill Rd., Map 059, Lot 024 in the Recreational Zone.

Major said the argument presented this evening deals with placing a structure on the existing footprint of the pavilion. In fact, the new structure is smaller than the existing building. The new duplex will be a single structure with each unit being 950 square feet.

MacMillan said the application fails the special exception requirements. The proposal is asking for an expanded use for a use that did not exist prior. There was never a 2 family unit within the pavilion. The lot is 4.9 acres with 5 existing residential units and the proposal is to add 2 more residential units. There is no difference with this application than the analogy of a 5 acre lot with a two existing houses a barn and tear down the barn and construct a duplex within the same footprint in MacMillan's opinion. Mason said procedurally yes, substantively probably not. MacMillan said the ZBA may not vary or waive any of the requirements set forth in the ordinance. The HZO allows for expanded use of an existing use. The original use was a pavilion not a 2 family home. If the application does not meet that criteria the ZBA is obligated not to approve. Mason said the argument made by Hollis was the use applies to the entire lot not just the structure. MacMillan said the application is requesting the expansion of use for the existing pavilion be not the entire lot.

Major said as a matter of right could the applicant remodel the pavilion as a residential unit. West said any residential change made to the pavilion would violate the 2 acre minimum requirement. MacMillan said the applicant could restore the pavilion as a pavilion as a matter of right. Major said the applicant has an unusual lot with a lot of structures. The application is actually reducing the density by removing some of the existing structures. A condition of approval could be imposed that all of the structures on the lake edge be removed. MacMillan said the structures being removed have not been used for years and eventually they would be taken down or they would fall down. Swerchesky said the property has had 3 uses historically. If the property is used for residential purposes only that type of use would benefit the Town. At least the use of the property would be determined from this point forward. However, if approved the property should be restricted to 5 units which would control any further density issues.

Major asked if MacMillan's mind would change if the proposal was for a single family home instead of a duplex within the pavilion footprint. MacMillan replied only if they took down one of the other units. West said the difference from the previous case is the number of units. The same argument is being used, Hollis wants us to look at the structure for the pavilion and the lot for the use. If you look at the lot for the use she agrees with Tobiason if the other structures were removed that would make the lot better. MacMillan said if he had a property like this and could convince the ZBA to allow more rentals unit on an undersized lot, he would do so for financial gain. MacMillan understands what the applicant is trying to accomplish. However, the proposal does not meet the requirements for granting a special exception. Durham said the new septic system will improve the lot and the lake

but the lot should be restricted to 5 units. Major said the removal of most of the waterfront structures and the new septic he would not consider that to be an adverse effect to the neighborhood. Major asked is the proposal changing the use substantially. McGhee replied no. MacMillan replied yes the use is changing from a pavilion to a duplex.

West said why is the new structure confined to the pavilion. The applicant could move the structure to a more conforming area. MacMillan said the pavilion has not been used for a number of years so the pavilion is a discontinued or abandoned use as well. McGhee said the density from 12 bedrooms to 16 bedrooms is a larger density. Moseley said there be a 33 % expansion in the use. McGhee asked could any use presented on this property be approved. Major replied if a proposal came in four 2 single family homes that proposal could be potential be approved. MacMillan said the ZBA must uphold the HZO and the expansion from 5 to 7 units should not be allowed since the proposal is not an expansion of the original use of the pavilion.

MacMillan moved for the following finding of fact;

1. *The board finds that the proposed expansion of the existing residential use of the property from five (5) units with 12 bedrooms to seven (7) units with 16 bedrooms fundamentally changes the residential density of the lot and is not in harmony with the general purpose and intent of the zoning ordinance.*

Seconded by Tsao.

Motion unanimously approved.

No further discussion.

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 with the specified conditions and restrictions?

Board Member	Question #1	Question #2	Question #3	Total-Yes	Total-No
Major	Yes	No	No	1	2
Tsao	Yes	No	No	1	2
MacMillan	Yes	No	No	1	2
Durham	Yes	No	No	1	2
Mason	Yes	No	No	1	2

THEREFORE, THE SPECIAL EXCEPTION WAS DENIED WITH THE FOLLOWING FINDINGS OF FACT:

1. **The board finds that the proposed expansion of the existing residential use of the property from five (5) units with 12 bedrooms to seven (7) units with 16 bedrooms fundamentally changes the residential density of the lot and is not in harmony with the general purpose and intent of the zoning ordinance.**

Case ZBA 2019-005

The application of Hollis Congregational Church, property owners, for a Special Exception to Section XII Nonconforming Uses, Structures and Lots, Section B.4 and Section C of the Zoning Ordinance to permit the construction of a entrance bump-out on the front, new enclosed stairway on the east side and permit the increase in the percentage of impermeable surface lot coverage, located at 3 Monument Sq., Map 052, Lot 053 in the Town Center Zone.

Major said one point of the application that should be discussed is the impervious surface coverage of the lot. The purpose of limiting the impervious coverage is to aid in ground water recharge and density. The current lot is 0.76 acres with a large church with little to no ground water recharge. McGhee said although the cemetery is not on church property there is substantial area for ground water recharge. Major said the Historic District Commission (HDC) may have concerns on the application which may in fact bring the application back before the ZBA. West said the proposal is to increase the impervious coverage by 14% of a .76 acre lot is minimal because it would improve the current use of the property. The ZBA members agreed.

Major moved for the following conditions;

1. *The application is subject to Historic District Commission approval.*
2. *The application is subject to DOT approval for the revised entry road and altered curb cut.*

Seconded by McGhee.

Motion unanimously approved.

No further discussion.

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 with the specified conditions and restrictions?

Board Member	Question #1	Question #2	Question #3	Total-Yes	Total-No
Major	Yes	Yes	Yes	3	0
MacMillan	Yes	Yes	Yes	3	0
Durham	Yes	Yes	Yes	3	0
McGhee	Yes	Yes	Yes	3	0
Moseley	Yes	Yes	Yes	3	0

THEREFORE THE SPECIAL EXCEPTION WAS GRANTED WITH THE FOLLOWING CONDITIONS:

1. **The application is subject to Historic District Commission approval.**
2. **The application is subject to DOT approval for the revised entry road and altered curb cut.**

Review of Minutes

McGhee moved to approve the minutes of April 25, 2019 as amended.

Seconded by Mason.

Motion unanimously approved with Major and Tsao abstaining.

The ZBA meeting adjourned at 10:05 pm.

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