



BOARD of ADJUSTMENT
Town of Hollis
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Minutes of August 22, 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; Jim Belanger, Vice Chairman; Regular Members –Susan Durham; Alternate Members –Drew Mason, Kat McGhee, Bill Moseley Meredith West and Stan Swerchesky.

Major explained policies and procedures.

Belanger recused himself from ZBA Case 2019-007.

Major said he would be participating during the discussions on the cases this evening. However, he would not be voting.

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

ZBA Case 2019-006: Belanger, Durham, Mason, McGhee and Mosely.

ZBA Case 2019-007: Durham, Mason, McGhee, Mosely and West.

Case ZBA 2019-006

The application of Mark Barchard, for a Variance to Section XG, Residential & Agricultural District, Section 4.d Minimum Side Yard Width to permit the construction of an 18'x 26' Single Car Garage 25' from the side yard setback (required 35'), property owned by Peter Redes, located at 77 Wheeler Rd., Map 024, Lot 022 in the Residential & Agricultural Zone.

Mark Barchard of HMB Group Construction, presented case ZBA 2019-006 on behalf of the property owner. Barchard said the proposal is to construct an 18' x 26' single car garage 25' from the property line where a 35' side yard setback is required.

Barchard stated the following in support of the application.

The garage could not be placed at the required 35' because the foundation drain line would need to be moved and a portion of the driveway would need to be removed. The proposed location would also be more aesthetically pleasing to the property owner and less visible from the road. Major asked how much it would cost to move the foundation drain. Barchard replied the cost could be thousands of dollars.

The variance will not be contrary to the public interest because the garage will be custom built and designed to match the primary structure and enhance the property's value. The garage will be located at the top end of the driveway, approximately 295' away from the road. Not only will the structure not be visible from the road, it will be a significant distance from any neighboring structures. There will be no threat to public health, safety or welfare in the Hollis community. There is no conflict between the purpose of the ordinance and the proposed variance.

The spirit of the ordinance is observed because the variance will not violate the basic zoning objective which is. to enforce proper distance between neighboring structures. The garage will be located approximately 295' away from the road and approximately 200' feet away from the nearest neighboring structure; therefore leaving a significant distance between the structures. The proposed structure will not alter the essential character of the neighborhood, and nor will it threaten public health, safety, welfare or otherwise injure public rights.

Substantial justice is done since the garage will be 295' feet from the road and 200' feet from the nearest structure. The structure will provide storage from the homeowner's truck and plow. Once completed, the garage will complement the existing home and add value to the home and the surrounding community.

Surrounding property values will not be diminished because the garage will match the existing primary structure,

and it will enhance the property value both aesthetically and functionally. The homeowner felt this garage was a better option for his property value and surrounding property values, as opposed to a temporary canvas tent-like garage that would not match the existing structures and would suffer from wear and tear over the years, potentially diminishing the property value over time.

Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship because complying with the 35' setback would result in the proposed structure falling directly on top of the foundation drain's active outfall pipe, and could potentially damage it, and to move the outfall pipe would require additional excavation work to the property. By granting the variance, the functionality and integrity of the outfall pipe can be preserved and the garage structure will still be located 200' from the nearest neighboring structure, adhering to the primary purpose of the ordinance to preserve distances between structures.

No fair and substantial relationship exists between the general purpose of the ordinance and the specific application of the provision. If the goal of the ordinance is to preserve proper distance between neighboring structures, then the purpose of this ordinance would be met if the variance is approved.

The proposed use of the garage is reasonable because it would provide additional storage for a truck and plow, which are currently left out in open view. As previously mentioned, if we were to adhere to the 35' setback, the structure location would fall directly on top of the outfall pipe which could interfere with the appropriate use of the outfall pipe and potentially damage it. It is felt that approval of the variance will comply with the goal of the ordinance.

Major asked where the outfall pipe was located. Barchard replied that the exact location has not been determined, but that the outfall pipe was located in the general area of the proposed garage. McGhee felt the variance would satisfy the purpose of the ordinance, because of the tree line screening and the nearest structure being 200' feet away. The variance should be granted in McGhee's opinion.

Belanger has no objections concerning the garage. However, Belanger said to prove a hardship, the applicant must prove that there is no other location on the property where the structure could be built in accordance with the 35' setback requirement. Moseley agreed.

Major asked why the garage could not be turned slightly or moved to a different location to comply with the setback requirement. Blanchard replied that the proposed location would allow easier access and, if moved, the structure could be seen from the road. Peter Redes, the property owner, approached the ZBA and said if the garage was moved, it would be in the house's line of sight, and he would lose the open area between the home and the garage. The proposed location would allow easier access and be more aesthetically pleasing.

Swerchesky asked if the lot lines were verified to ensure that the proposed setback was at least 25'. Blanchard replied yes. Mason asked if the garage could be placed on the other side of the driveway. Redes replied no because there is a wet area on that side.

It was the opinion of McGhee that the proposed location is reasonable and there would still be a substantial distance between the structures. Blanchard agreed, and said the cost to move the outfall pipe could be \$15,000 if the pipe was hit during excavation of the foundation. The property owner decided to apply for a variance in order to alleviate any concerns of hitting the outfall pipe. Major asked if the outfall pipe was a flexible pipe. Redes replied that original flex pipe would have been fixable, but that it had been crushed during the driveway installation and replaced with a hard pipe.

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

Case ZBA 2019-007

The application of Mark Glidden, property owner, for a Special Exception to Section XII Nonconforming Uses, Structures and Lots, Section C Nonconforming Structure to permit the construction of a 24' x 32' two-car garage with storage above, located at 43 Flint Pond Dr., Map 057, Lot 058 in the Recreational Zone.

Mark Glidden said he is requesting a special exception to remove the existing front porch and construct a 2 story 2 car garage with a loft space on the second story. The new garage would be approximately 120' from the road and would maintain the existing side yard setbacks. Major asked Glidden if he agreed the lot was undersized and that the existing structure intrudes on the side yard setback. (9' left side and 14' right side) Glidden replied yes.

Moseley asked how much closer the proposed structure would be to the road. Glidden replied approximately eight feet. However, the garage would still be 120' from the road. Major said the original proposal included a set of outside stairs on the left side leading to the second story, and asked whether the plan was changed. Glidden replied yes, the original proposal had included a set of egress stairs and the existing deck has stairs on the left side; but, the prior approved building permit did not show those stairs.

Major asked how high the garage would be. Glidden replied under 30'. Major asked what the square footage of the existing house was. Glidden replied approximately 1,200 square feet. Major asked whether after construction, the loft would add 768 square feet to the home. Glidden replied yes. Major asked what the proposed "use" was for the second floor. Glidden replied storage. Major asked what room the second floor would adjoin in the existing home. Glidden replied the second bedroom. Major asked whether an occupant would have to pass through an existing bedroom to access the new room if the new room was were to be used as an additional bedroom. Glidden replied yes.

Moseley asked if Glidden had plans to convert the second story loft into living area in the future. Glidden replied no. Mason asked if any of the loft area would be heated. Glidden replied no, but that in the future, a wall heater may be added in the garage and piped up to the second floor. Mason asked if the loft area be one large room. Glidden replied yes and used for storage.

Major asked how many feet were between the proposed garage and the neighbor's structure. Glidden replied it was 25' to 30' away. Moseley asked where the septic system was. Glidden replied it was toward the front of the property. Moseley asked if the garage pad would be placed over the septic system line. Glidden replied yes, and the contractor had already determined the pipe would need to be reinforced.

McGhee asked if the existing breezeway would be demolished. Glidden replied no, the breezeway would be incorporated into the garage and new steps will be added to access the entrance. Mason asked if the new stairs would be within the existing footprint. Glidden replied yes.

Moseley said it appeared a generator is onsite and asked where the propane tank was located. Glidden replied that the propane tank was roughly 12' to 15' away from the generator and the existing line would have to be moved. Moseley asked if the propane line would go under the slab for the garage. Glidden replied no, the line would be moved towards the front of the garage.

Spoke in favor of the application

Dwain Harmon, 41 Flint Pond Drive

Harmon, a direct abutter, said he had no issues with the proposal. Major asked Harmon's opinion if most of the lots in the area do not comply with the current setback requirements. Harmon replied yes, most of the lots are postage stamp size and do not comply.

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

ZBA recessed at 7:35 pm

ZBA reconvened at 7:40 pm

DELIBERATIONS

Case ZBA 2019-006

The discussion of the application of Mark Barchard for a Variance to Section XG, Residential & Agricultural District, Section 4.d Minimum Side Yard Width to permit the construction of an 18'x 26' Single Car Garage 25' from the side yard setback (required 35'), property owned by Peter Redes, located at 77 Wheeler Rd., Map 024, Lot 022 in the Residential & Agricultural Zone.

Moseley noted the ZBA had a very similar case where the applicant applied twice for a variance from the setback requirements for a proposed garage, and the ZBA denied the application both times. McGhee said there is no reason to deny this application since it is very different from the previous denial; and that this proposal is reasonable because there are no structures in close proximity and it appears that no structures could be built close to the proposed structure in the future. Swerchesky agreed and said aesthetics should be considered for resale purposes,

and that the structure would not impact the neighbors. The location is preferred by the owner, and Swerchesky has no issues with the proposal based on the circumstance of the neighboring structures. Durham said the garage in the previously denied application abutted an open field where other structures could be built. However, in this application, this proposed garage abuts a large tree line and a driveway. Durham said there is little to no impact to the neighbor, and the ZBA might want to consider moving the outfall pipe as a hardship.

Belanger said the application is reasonable, however, there is no hardship, and for the ZBA to approve a variance, a hardship has to exist. Belanger said the ZBA also needs to find that the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of the property. This property can be reasonable used without the garage.

Major said the garage could be placed in a different location to meet the setback requirements, but that there may be mitigating factors with the application since there would be no intrusion on the neighboring lot because the structure would be 25' away from a driveway and the closest structure 200' away.

The ZBA members discussed the issue of hardship, and most members agreed there was no hardship mainly because the garage could be turned in a way or moved to a different location to meet the required 35' setback.

Major moved for the following finding of fact;

- 1. The board finds the proposed structure could be constructed in a way which would conform to the ordinance.*

Seconded by McGhee.

Motion unanimously approved.

No further discussion.

Questions - Variance

- Question 1. The variance will not be contrary to the public interest.
Question 2. The spirit of the ordinance is observed.
Question 3. Substantial justice is done.
Question 4. The values of surrounding properties are not diminished.
Question 5a (1). No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property.
Question 5a (2). And, the proposed use is a reasonable one.

Board Member	Question #1	Question #2	Question #3	Question #4	Question #5a(1)	Question #5a(2)	Total Yes	Total No
Belanger	Yes	No	Yes	Yes	No	Yes	5	1
Durham	Yes	Yes	Yes	Yes	Yes	Yes	6	0
Mason	Yes	Yes	Yes	Yes	No	Yes	5	1
McGhee	Yes	Yes	Yes	Yes	Yes	Yes	6	0
Moseley	Yes	Yes	Yes	Yes	No	Yes	5	1

THEREFORE, THE VARIANCE WAS DENIED WITH THE FOLLOWING FINDINGS OF FACT:

- 1. The board finds the proposed structure could be constructed in a way which would conform to the ordinance.**

Case ZBA 2019-007

The discussion of the application of Mark Glidden, property owner, for a Special Exception to Section XII Nonconforming Uses, Structures and Lots, Section C Nonconforming Structure to permit the construction of a 24' x 32' two car garage with storage above, located at 43 Flint Pond Dr., Map 057, Lot 058 in the Recreational Zone.

Moseley said as long as the new structure does not exceed the current setbacks, he had no problems with the application. Major said the application is a special exception in the "A" category of nonconforming lots/structures. Major asked if the ZBA members had any concerns seeing that the proposed structure is twice as large as the existing home and whether the proposed structure would have any adverse or substantially different effect on the

neighborhood. West said the proposal is a valid “use” as it would be constructed holding the same nonconforming setback lines. It was West’s opinion that the application meets the requirements for granting the special exception.

Major said the prior testimony was the second floor was going to be used as storage, but in the future, it may be heated. Moseley said the applicant had been asked if he had any intention to use the second floor as living area and the applicant’s reply was no. West asked if the ZBA could impose a condition that the second floor could not be used as living area. Major said he would not object to the second story becoming a reading room or craft room but would not be comfortable if the area was a bedroom. West brought up the septic line and asked should the ZBA consider a condition that the line would need to be reinforced. Major replied the contractor would have to address the issue so that septic system would perform adequately.

Major moved for the following condition;

1. *The proposed room above the garage shall not be used as a bedroom.*

Seconded by Durham.

Motion unanimously approved.

Mason moved for the following condition;

2. *No stairways or decking shall encroach any further into the side setback than the existing structure.*

Seconded by Major.

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
Durham	Yes	Yes	Yes	3	0
Mason	Yes	Yes	Yes	3	0
McGhee	Yes	Yes	Yes	3	0
Moseley	Yes	Yes	Yes	3	0
West	Yes	Yes	Yes	3	0

THEREFORE THE SPECIAL EXCEPTION WAS GRANTED WITH THE FOLLOWING CONDITIONS:

1. **The proposed room above the garage shall not be used as a bedroom.**
2. **No stairways or decking shall encroach any further into the side setback than the existing structure.**

Mason asked the ZBA where in the ordinance does it say that the purpose of the setbacks have to do with separation of lots, and should the language be addressed within the ordinance or is it obvious. Moseley said it would be nice to have the philosophy reflected in the ordinance. Belanger said the intent of the ordinance was to not have structures less than 70’ apart, meaning 35’ on both sides of the lot lines. Major asked Mason to write up the proposed change and the board could review it at a future meeting.

Review of Minutes

Major moved to approve the minutes of May 23, 2019 as amended.

Seconded by Moseley.

Motion unanimously approved with Belanger and Mason abstaining.

Other Business

Major informed the board that he had received a request to have a non-public meeting concerning a potential

upcoming application. A meeting was held between Mark Fougere, William Condra, Donna Setaro and himself to discuss the request. Ultimately, Major had a discussion with a representative of the applicant. Major's opinion was that, without an application before the ZBA, he was not going to encourage an item being put on the agenda, and in no way would a meeting be held in a non-public forum without a ZBA vote. Major asked the members to speak up if they disagree with his decision as the issue may arise in the future. Mason asked what the purpose was for a non-public meeting. Major replied he would rather not say until an application is before the board. Swerchesky asked if there were exceptions to allow a non-public meeting. Major replied yes, however, they are very narrow in Major's view. The ZBA members agreed with Major's decision.

The ZBA meeting adjourned at 8:15 pm.

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