



ZONING BOARD of ADJUSTMENT

Town of Hollis

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Minutes of October 24, 2019

Meeting was held in the Community Room, Hollis Town Hall, and was called to order by Chairman Brian Major at 7:02 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 the voting members for both cases this evening are as follows;

Case ZBA2019-010 Tsao, Durham, MacMillan, Mason and McGhee.

Case ZBA2019-011 Major, Tsao, Durham, MacMillan and Mason.

Major recused himself from Case ZBA 2019-010.

Tsao assumed the Chair.

Determination of Regional Impact

Mason moves that the ZBA find that Case ZBA 2019-010 has no regional impact.

Tsao seconded.

Motion unanimously approved.

Case ZBA 2019-010

The application of Beth Frankle, property owner, for a Variance to XG, Residential & Agricultural Zone, Paragraph(s) 1, Permitted Uses in the Residential and Agricultural District of to permit the operation of "The Care Farm" a program using farm animals to aid in the development of self-confidence, social interaction, independence, as well as to introduce and practice a variety of healthy coping skills for individuals, located at 287 South Merrimack Rd, Map 047, Lot 44 in the Residential & Agricultural Zone.

Beth Frankel, property owner, said the variance being requested was to open a home business called The Care Farm, a therapeutic farm for typical and special needs individuals. Frankel said she has run the same type of business in Westford, MA where she rents a farm and has been practicing for 4 years.

The program runs in the spring and fall and activities include gardening, nature walks, and interaction with and care of farm animals. The programming is designed to aid in improving self-confidence, social interaction, and independence, as well as introducing and practicing healthy coping skills. The youth groups would have a maximum of 6 individuals, and the adult groups a maximum of 10. The adult groups usually come on-site in 2 vans. Most activities would occur inside the barn or behind it with limited activities, such as gardening, occurring elsewhere on the property.

McGhee asked how many parking spaces there would be and where. Frankel replied roughly 10 spaces located near the barn. Tsao asked what the anticipated vehicle trips per day would be. Frankel replied there would be up to 4 groups per day with approximately 15 vehicles.

Frankel said the variance will not be contrary to the public interest because the home-based business will provide services to citizens of Hollis and surrounding towns by offering programming, known as Care Farming, to both typical and special needs youth and adults through the use of farming practices. Programming of this nature is limited in the area, and will fulfill a significant need. The applicants have already repaired the previously vacant barn including adding 4 interior stalls, a tack room, hayloft and exterior wooden fencing. They have also purchased several farm animals in keeping with the desired agricultural feel of the neighborhood and the Hollis community. The applicant also plan to plant gardens and install fenced pastures for the farm animals to graze, further adding to the agricultural nature of the community.

The spirit of the ordinance is observed because the property is unique in that it currently abuts two active businesses. One of those businesses, Horse and Hound, is similar in scope and nature to the proposed business with regard to hours of operation and number of daily visits by customers, vendors, and commercial deliveries. Other residential abutters are distantly located and buffered by vacant land, wooded areas, and wetland areas. Visitors to the farm will spend time within the barn and on the land surrounding the barn participating in agricultural and nature-based activities, all of which will enhance the essential character of the neighborhood and improve public health and welfare. The proposed use will involve agricultural use for gardens and animal pastures.

Substantial justice is done because the proposed Care Farming programming will not result in any harm to the general public. Clients will visit the farm for 1 to 2 hours. All visits will be previously scheduled, and there will be no overnight visits. Group sizes are limited to no more than 10 individuals, and could be a single visitor. There is ample off-street parking space between South Merrimack Road and the wooden fence in front of the barn, as well as to the left of the driveway beyond the barn and wooden fencing.

Surrounding property values are not diminished because the business will provide a second life to an empty, deteriorating barn that was becoming overgrown with vegetation. In addition to repairing and improving the barn the property will be further improved by fencing the pastures and adding small vegetable, flower, and herb gardens. By improving the barn and surrounding land, the property will have greater use and curb appeal, thereby increasing its value. This, in turn, will support and may even increase the value of the surrounding properties. The small group size and maximum number of tour groups per day will keep traffic and parking to a minimum, and have little, if any, impact on traffic patterns on South Merrimack Road.

Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship because the property consists of 15.12 acres of primarily flat open fields, woods, and wetlands. Other than the addition of gardens and animal pastures, the land will remain as is. This property is special because it is very close to the highly commercialized Route 101A, but still offers farmland, woodlands, and wetlands in a private, isolated setting, thus allowing farm visitors to benefit emotionally, mentally, and physically from the farm atmosphere and surrounding natural world. The property also abuts two active businesses (both approved by the Board of Adjustment for a variance) and is distantly located from other residential properties and buffered by vacant land, trees, and wetlands. In addition, South Merrimack Road is heavily traveled, and there is an active train track within 1/2 mile of the property. Thus, there are very few residences in this area due to these conditions. However, these conditions are conducive to our proposed business, as the property is conveniently located and easily accessed by clients.

No fair and substantial relationship exists between the general public purposes of the ordinance and the specific application of that provision to the property because it is located at the northern side of Hollis abutting Amherst, NH, approximately 1/2 mile from the commercial zone of Route 101A. South Merrimack Road is already highly traveled as it is used as a short cut to Route 101A. The proposed 10 to 15 daily car visits to the property should have no

impact on the traffic on South Merrimack Road. Farm animals will be contained within fencing, or on leashes/lead ropes. Much of the programming will take place inside the barn. Outside programming will be conducted behind the barn, and out of the view of passers-by. One of the purposes of Care Farming is to offer participants and the animals a calm, peaceful, and healthy environment. As such, activities at the proposed business will not involve excessive noise or conditions that would negatively impact the surrounding neighborhood.

The proposed use is a reasonable one because the zoning restrictions of a maximum of 12 car visits a day may be unrealistic for the proposed business to sustain itself. By offering 1 to 4 daily groups with a maximum of 10 individuals in each group, it is possible that there would be up to 15 car visits per day. Adult participants are typically transported as a group in vans, thereby minimizing the number of car visits. As South Merrimack is an already highly traveled road, traffic from our proposed programming should not notably increase it. Frankel said the business currently has no employees, but may have up to 2 employees in the future. Operating hours would be 9am to 6pm Monday-Saturday. Deliveries would be limited, roughly 1 to 2 per week for animal food and hay. A small sign would be attached the corner of the barn. Tsao asked if there would be outside lighting. Frankel replied motion detecting spotlights are currently on the back of the barn for security. Tsao asked if any additional fencing added. Frankel replied that electric tape fencing would be installed towards the back portion of the property.

MacMillan said the proposal would be a great fit for the town and a wonderful business. The application in MacMillan opinion seems like a Special Exception rather than a Variance. The one criterion the application does not meet is "hardship" because there are many permitted uses the property could be used for. McGhee asked if the Variance was applied for because of the type of business since farms and stables are allowed in the zone. said the criteria for a Special Exception (home-based business) would still need to be met. Mason said the Variance sought is for the number vehicle trips and parking for the business. West said, in her opinion, the proposed business is a farm with an agritourism operation which includes inviting people to come and enjoy the farm like atmosphere, events, activities and education about farming operations. MacMillan asked if agritourism was a permitted use. West said if the business was classified as a farm, the agritourism aspect would be allowed under state RSA 21:34-a and no variance would be required.

MacMillan asked Condra why a variance was applied for. Condra said a variance was determined to necessary because the application was for a home-based business which did not comply with the criteria of the ordinance due to the vehicle trips and number of individuals coming to the property. MacMillan asked if Condra agreed there was an agritourism aspect concerning the application. The property has a barn, land and animals; it is a farm. MacMillan asked if the application was for an agritourism business would Condra have a different perspective. Condra replied yes, the applicant would have probably been sent to the Planning Board.

MacMillan asked the applicant if she would like to table the application until the application could be reevaluated by herself and zoning staff. Frankle replied yes.

Mason moved to table Case ZBA2019-010 until the November 21, 2019 ZBA meeting.

Tsao seconded.

Motion unanimously approved.

Major assumed the Chair.

Case ZBA 2019-011

The application of Meredith Borgioli, property owner, for a Variance to Section XG, Residential & Agricultural Zone, Section 4d, Minimum Side Yard Width to permit the construction of an addition (breezeway/garage) where 30.075 square feet will be located 30'10" from the side yard setback (required 35'), located at 63 Jewett Ln, Map 009, Lot 017 in the Residential & Agricultural Zone.

Determination of Regional Impact

Mason moves that the ZBA find that Case ZBA 2019-011 has no regional impact.

MacMillan seconded.

Motion unanimously approved.

Meredith Borgioli said the application is for a variance to construct an addition to her home which will include 8' x 16' breezeway and a 24' x 24' garage. The garage's back corner, consisting of a 30.075 square foot triangle, would intrude on the 35' side setback requirement. The proposed structure will not alter the essential character of the neighborhood, and in fact, it will bring the existing structure more in line with the surrounding properties, aesthetically, functionally and in value. There will be no threat to public health, safety or welfare in the community.

The spirit of the ordinance is observed because the variance will not violate the basic zoning objection to enforce proper distance between neighboring structures. The garage will be over 50' from the road and at least 116' away from neighboring structures.

Substantial justice is done because the structure will provide protected storage for vehicles that are currently exposed to the elements and to the view of neighbors. The structure cannot be moved towards the road and out of the 35' setback because it will encroach upon the 50' front setback.

The values of surrounding properties will not be diminished because the addition will match the existing primary structure and enhance the property's value while taking away the existing eyesore of the carport in disrepair.

The unnecessary hardship of the lot is that it is undersized by current standards so there are limited options as to where the addition can be placed. The area already has a carport that needs to be demolished so the most cost-effective method would be to use the area for the garage. The garage could not be placed on the other side of the home because the well could potentially be damaged by construction. If the purpose of the ordinance is to protect distance between neighbors and not cause harm, the application will maintain a distance of 116' between the nearest structure and increase the overall neighborhood value. MacMillan asked if the mudroom was eliminated wouldn't the garage conform to the setback requirement. Borgioli replied yes. MacMillan asked if not having a mudroom was a basis for a hardship in Borgioli's opinion. Borgioli replied yes, her family and herself would consider not having the mudroom a hardship since the house is very small. MacMillan said the proposal is to expand the use of a non-conforming lot which, in most cases, is not allowed especially when the addition could be modified to conform with the setback requirements. Borgioli replied the addition would provide a good entrance for guests. Major said there are a lot of homes with a staggered back garage attached directly to the house. Borgioli said the submitted design is more appealing. Major said on the other hand, the application states the intrusion is only 30 square feet located at the back corner of the garage the rest of the structure complies with the 35' setback, and in past cases de minimis intrusions have been considered.

Major asked Borgioli if she had any knowledge of her 1 acre lot size since the neighborhood is primarily 2 acres lots. Borgioli replied the lot was one of the original lots. Major asked when was the house constructed. Borgioli replied 1968. MacMillan asked were any other lots in the neighborhood under 2 acres. Borgioli replied no. Moseley asked if Borgioli thought about removing the mud room and attaching the garage directly to the home. Borgioli replied she prefers her design and did not want an entryway through the garage.

Major said the special conditions of the lot may be the lot is undersized, and if the addition was placed on the other side it would not fit with the utility of the home since the entry from the breezeway would go into a bedroom and because the well is located on that side of the property.

Letter submitted in favor of the application

Major read a letter submitted in favor of the application from Michael Kanterovich, 59 Jewett Lane

“Members of the Zoning Board of Adjustment: I would like to go on record, not only as not in opposition, but in favor of the Hollis Zoning Board of Adjustment approving the application of Meredith Borgioli’s request for a side yard setback variance (Case ZBA2019-011)...”

MacMillan asked if Borgioli would consider a breezeway and a 1 car garage. Borgioli replied no she has 2 cars and would like to protect both vehicles.

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

DELIBERATIONS

Case ZBA 2019-011

The discussion of the application of Meredith Borgioli, property owner, for a Variance to Section XG, Residential & Agricultural Zone, Section 4d, Minimum Side Yard Width to permit the construction of an addition (breezeway/garage) where 30.075 square feet will be located 30’10” from the side yard setback (required 35’), located at 63 Jewett Ln, Map 009, Lot 017 in the Residential & Agricultural Zone.

Moseley asked if there was a history on how the ZBA has determined de minimis intrusions in the past. Mason said previously the Hollis Veterinary Clinic was granted a variance for a minimal addition. The ZBA members agreed. Major said the variance requested is for 30 square feet located at the back corner of the garage. MacMillan asked what the hardship would be. Mason questioned if the condition of the carport and the protection of her vehicles have any relevance. Major’s opinion was no because the carport could be replaced without a variance.

MacMillan is in favor of constructing the garage where the carport is located, but opposed to adding an additional room on an undersized lot. MacMillan said if the expansion of use for a non-conforming lot is for an 8’x16’ breezeway and a garage, that expansion is considerable and has not been allowed in the past. West agreed.

Major’s opinion was the non-conforming aspect of the lot should not be considered. The application is requesting a variance from the side setback requirement which under certain circumstances have been granted. Tsao agreed. MacMillan presented ZBA handbook pg. II-19 and asked for Major’s interpretation. Major read that a landowner cannot “bootstrap” his way toward a variance by claiming that the non-conforming status of the lot somehow constitutes a “hardship”.

The members discussed the variance further and concluded the proposal does not change the nature and purpose of the existing non-conforming use being residential, especially, because the intrusion is only 30 square feet of the back corner of the garage where the rest of the garage complies with the side setback.

Major moves for the following findings of fact:

- 1. The Board finds the applicant’s proposal to intrude thirty (30) square feet into the side yard setback is de minimis.*
- 2. The Board finds the applicant has demonstrated a hardship due to the unique siting of the existing house on a 1.03 acre lot.*

MacMillan seconded.

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
Major	Yes	Yes	Yes	Yes	Yes	Yes	5	0
Tsao	Yes	Yes	Yes	Yes	Yes	Yes	5	0
MacMillan	Yes	Yes	Yes	Yes	Yes	Yes	5	0
Durham	Yes	Yes	Yes	Yes	Yes	Yes	5	0
Mason	Yes	Yes	Yes	Yes	Yes	Yes	5	0

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

- 1. The Board finds the applicant's proposal to intrude thirty (30) square feet into the side yard setback is de minimis.**
- 2. The Board finds the applicant has demonstrated a hardship due to the unique siting of the existing house on a 1.03 acre lot.**

Other Business

Discussion on court case decision about Case ZBA 2018-006 and ZBA2018-007

Major said the amount of detail that Judge Jacalyn Colburn put into the decision was incredible. Mason agreed, and noted that every point from the plaintiff was addressed and dismissed. Major said every time a decision by the court is made, the ZBA should review and discuss. The ZBA could learn something from every case and where the ZBA could have done a better job in determining a case. In Major's opinion, one thing the ZBA could have done better in this case was making findings dealing with hardship. The decision said "*the Court notes that the ZBA did not make specific factual findings about why the unnecessary hardship definition was met, for example, it did not identify the special conditions of the property.*" *The court thus examines the certified record of the ZBA proceedings to determine whether there is evidence upon which the finding of unnecessary hardship could have been reasonably based.*" This issue should be avoided in the future.

Major asked if the board would agree to send a letter to the Town's Attorney to review the decision and recommend ways to more effectively created findings of fact.

MacMillan moves to send a letter to the Town's Attorney requesting instructions on more effectively writing findings of fact concerning hardship.

McGhee seconded.

Motion unanimously approved

Major said he would draft a letter and circulate prior to it to the Town's Attorney.

Review of Minutes

Mason moved to approve the minutes of September 26, 2019.

Seconded by MacMillan.

Motion unanimously approved with Major and Tsao abstaining.

The ZBA meeting adjourned at 8:30 pm.

Donna Lee Setaro, Building and Land Use Coordinator
Hollis Zoning Board of Adjustment