



ZONING BOARD of ADJUSTMENT
Town of Hollis
Seven Monument Square
Hollis, New Hampshire 03049
Tel. 465-2209 FAX 465-3701

Minutes of November 21, 2019

The ZBA 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; Jim Belanger, Vice-Chairman; Regular Members – Cindy Robbins-Tsao, Rick MacMillan; Alternate Members – Drew Mason, Kat McGhee, Bill Moseley, Meredith West and Stan Swerchesky.

Belanger moved to dispense with the policies and procedures tonight since the only case is a rehearing.

Seconded by Tsao.

Motion unanimously approved.

Major said the voting members for Case ZBA 2019-010 this evening are Belanger, Tsao, MacMillan, Mason and McGhee.

Major recused himself from Case ZBA 2019-010.
Belanger assumed the Chair.

Belanger lead the Pledge of Allegiance.

Case ZBA 2019-010

The application was tabled at the ZBA's October 24, 2019 meeting. The application of Beth Frankle, property owner, for a Variance to XG, Residential & Agricultural Zone, Paragraph 1, Permitted Uses in the Residential and Agricultural District to permit the operation of "The Care Farm", a program using farm animals to aid in the development of self-confidence, social interaction, and 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.

Frankle said the Town Planning staff reviewed the application to determine whether or not the use described in the application was a farm. Belanger asked if the application was determined to be a farm. Frankle replied yes. Belanger said a farm is permitted in the Residential & Agricultural Zone. Frankle agreed.

Mason made the following motion in view of the recommendation received on November 5, 2019 from the Planning staff and Zoning Official.

Mason moves to dismiss Case ZBA 2019-010 with the determination that a Variance is unnecessary considering that the use has been determined by Planning staff and Zoning Official to be a "farm" and is permitted by right.

Seconded by Tsao.

Motion unanimously approved.

Major assumed the Chair.

Major recommended that the applicant wait until the 30 day appeal period expires before substantially investing in

the proposal as someone could appeal the Zoning Board's determination and request a re-hearing. Frankle asked if the Planning Board (PB) application could move forward. Major replied yes, but that caution should be taken prior to a large capital investment.

Frankle asked why PB approval is required since the proposal was classified as a farm. Belanger replied the proposal is a change in use which requires PB approval.

Other Business

Zoning Change

Belanger said the ZBA had previously discussed changing the requirements to allow a side yard setback encroachment from a variance to a special exception. Belanger said that at his request, the PB staff helped with the verbiage, and the proposed amendment reads as follows:

Amend Section X Zoning Districts, Section G Residential and Agricultural District (R&A), Paragraph 4. Area and Height Regulations, d. Minimum Side Yard Width: 35 feet from house or principle structure to the property line, 15 feet for accessory structures.

- (1) In addition to the provisions of Section VI Board of Adjustment, paragraph B, the Zoning Board of Adjustment may grant relief from the 35 foot side yard setback requirement, by Special Exception, if the Board finds that:
- a. Strict adherence to the side setback would detrimentally impact the property owner's ability for enjoyment of their property or
 - b. Strict adherence to the setback requirement would cause inconsistency in the massing of buildings; or
 - c. Strict adherence to the setbacks would be inconsistent with setbacks of existing adjacent buildings.

However, there was a misunderstanding and PB staff thought Belanger was submitting the proposed zoning change for PB approval. The PB has requested the change be submitted officially by the ZBA.

The ZBA decided to further discuss the proposed zoning change and make changes to the language if needed. Thereafter, the ZBA would submit the proposed zoning change to the PB for approval.

Setaro said since William Condra was unable to attend the meeting this evening, Condra asked Setaro to relay the following to the ZBA. First, Condra asks if the proposed change is for all zones or just the R&A zone. Further, Condra believes if the proposed change is agreed upon, it would be cleaner to add the amendment in a new section under the zones.

Mason said the Board should obtain experience with the change in the R&A zone first and it could ask for the change to apply to other zones in the future.

MacMillan questioned if the ZBA would have to grant the special exception under criteria "a" ("strict adherence to the side setback would detrimentally impact the property owner's ability for enjoyment of their property") if an applicant states a reason why they can't enjoy their property without the special exception. . Major said he prefers the "reasonable use" of the property.

Belanger said a stipulation could be added requiring the agreement of the next door neighbor. Major disagreed stating there is a public interest in setbacks for fire protection and massing of buildings. MacMillan said the neighbor should have the opportunity to say no. Major said the abutters are noticed and, at that time, they would have an opportunity to object or agree. MacMillan said if an abutter does come forward, their opinion does not necessarily have any legal impact. It was Major's opinion that abutter impact is seldom germane to the case.

West said criteria “a” should not be included since the word “enjoys” is too broad, and that even if the current neighbor agrees to the application, a future neighbor may be negatively impacted. Mason agrees there is a problem with criteria “a” and suggested that the ZBA must also find that the proposed encroachment was reasonable under criteria “b” or “c”. The addition would allow the ZBA to take an abutter’s input into consideration to make a final decision.

Major asked if changes could be made. Belanger replied yes since the proposed zoning change has not been submitted to the PB, and that the ZBA could wait until the next ZBA meeting to submit the change. Setaro said the ZBA would have to decide this evening since the deadline to submit zoning changes occurs prior to the next ZBA meeting.

Swerchesky asked why the ZBA is considering changing the ordinance to allow a special exception instead of a variance. Major replied so the applicant does not have to meet the hardship criteria of a variance. West said the change should be applicable to all zones, not just R&A.

McGhee said the criteria should be modified to include the word “reasonable.” Setaro said Condra suggested changing criteria “a” to “The encroachment to the minimum side yard width requirement is reasonable and would not be detrimental to the neighborhood.” The ZBA agreed.

Mason said the applicant must also have to meet either criteria “b” or “c” in additional to criteria “a”. The ZBA members agreed and further discussed the proposed zoning recommendation. The ZBA decided to recommend the following zoning change to the PB for approval and placement on the town ballot.

Add new section

Section X. Zoning Districts, Section G. Residential and Agricultural District (R&A),

5. SPECIAL EXCEPTION IN THE RESIDENTIAL AND AGRICULTURAL DISTRICT MINIMUM SIDE YARD WIDTH:

1. The Zoning Board of Adjustment may grant relief from the 35 foot side yard setback requirement, by Special Exception, if the Board finds that:
 - a. The encroachment to the minimum side yard width requirement is reasonable and would not be detrimental to the neighborhood and either;
 - b. Strict adherence to the setback requirement would cause inconsistency in the massing of buildings or;
 - c. Strict adherence to the setbacks would be inconsistent with setbacks of existing adjacent buildings.

Review of Minutes

Mason moved to approve the minutes of October 24, 2019.

Seconded by Tsao.

Motion unanimously approved with Major abstaining.

The ZBA meeting adjourned at 7:30 pm.

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