



BOARD of ADJUSTMENT
Town of Hollis
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Minutes of April 26, 2018

Meeting was held in the Community Room, Hollis Town Hall, and was called to order by Chairman Major at 7:00pm.

MEMBERS OF ZONING BOARD OF ADJUSTMENT: Brian Major, Chairman; Jim Belanger, Vice Chairman; Regular Members – Rick MacMillan; Alternate Members – Drew Mason, Kat McGhee, Bill Moseley and Meredith West.

Major explained the policies and procedures.

Major appointed Mason and McGhee as a voting members this evening.

Election of Officers

The Zoning Board members briefly discussed the election of officers and decided since two regular members were not present they would defer the election until the next meeting.

MacMillan moves to defer the election of officers until the next Zoning Board of Adjustment meeting.

McGhee seconded.

Motion unanimously approved.

Case ZBA 2018-002

This application was tabled at the March 22, 2018 meeting - The application of Peter Bennett, Trustee of the Pauline Jonis Trust and Michael S. Jonis and Jon Jonis, Trustee of the Julius Jonis Trust, for a Special Exception to Section XII, Nonconforming Uses, Structure and Lots, Paragraph A.3, Nonconforming Uses, Alterations of the Zoning Ordinance to permit the construction of up to 12 residential condominium units on the site, property owner Pauline A. Jonis Trust, located at 11 Federal Hill Road, Map 059, Lot 024, in the Recreational Zone.

Case ZBA 2018-003

This application was tabled at the March 22, 2018 meeting - The application of Peter Bennett, Trustee of the Pauline Jonis Trust and Michael S. Jonis and Jon Jonis, Trustee of the Julius Jonis Trust, for a Variance to Section XF, Recreational Zone, Paragraph 3.a, Minimum Lot Area of the Zoning Ordinance to permit the construction of up to 12 residential condominium units on the site, property owner Pauline A. Jonis Trust, located at 11 Federal Hill Road, Map 059, Lot 024, in the Recreational Zone.

Major noted the applicant may want to consider presenting the presentation for both cases at the same time. Once the presentation is completed the applicant can address the separate criteria for each application.

Brad Westgate, Winer & Bennet, Nashua NH presented Case ZBA 2018-002 and ZBA 2018-003 on behalf of property owners. Westgate agreed in the efforts of streamlining the two cases. Westgate would present the background information, current conditions and the proposal a single time.

Westgate stated the two applications before the ZBA this evening were based on the determinations made by William Condra, Building Inspector/Zoning Administrator in response to a letter from Peter Bennett one of my colleagues and one of the other trustees of the Joins trust asking for a determinations as to what approvals may be necessary to convert or alter the present facility at Wallace Grove to 12 permanent

residential units in the condominium form of ownership with 2 bedrooms units each. In November of last year a meeting was held with Peter Bennett, Randy Haight, William Condra, Donna Setaro, Mark Fougere and Wendy Trimble to discuss the proposal. Westgate stated he will provide a small amount of background and then turn the presentation over to Randy Haight, Meridian Land Services. Randy Haight will walk through the history of the property, the existing conditions, the proposed improvements which are contemplated and the details regarding the proposal.

The Property is located in the Recreational Zone at the intersection of Silver Lake Road and Federal Hill Road and consists of approximately 4.84 acres of land with 815 feet of frontage on Silver Lake. The Property contains twelve (12) seasonal and non-seasonal residential units as well as several outbuildings. Currently, four (4) of the cottages and the main house are rented on a year-round basis and seven (7) of the cottages are seasonal. For the record Mr. Jonis notified us that the seven (7) seasonal buildings have not been rented for the past 3 years. The septic systems for each of the cottages were installed prior to 1953. The system for the main house, which was installed at the time of the construction of the residence in 1965 and was rebuilt in 2008. The use currently present at the property is a permitted use and the proposed use is also a permitted use since, both uses are residential. The proposal being requested is to allow 12 units with a condominium form of ownership.

Randy Haight, Meridian Land Services, approached the ZBA. Haight handed out smaller drawings of the proposal. Haight stated he has completed a precise boundary survey, topographic survey and completed test pits observed by the Town at the location. Shown on the supplied plan are three (3) four unit, 2 bedroom condominium structures. These new structures and septic systems would be built conforming to all the current Town zoning setback requirements and the State. The site currently has a number of structures known of which conform to the zoning setback requirements. The Wallace Grove site was first started 100 years ago. Shortly after the Groves existence the Town of Hollis voted in monies to construct a bathhouse on the site. In 1922, the Town of Hollis discontinued the lease of the bathhouse and the Wallace's constructed the existing pavilion and at that time there were 6 cabins located on the water edge. In 1933 the rest at the cottages were built, a water wheel was constructed and a small roller coaster that ended in the lake. In 1953 The Jonis's purchased the property, renovated a lot of the cottages and built a single family home. Haight stated the submitted plan shows the location of the three (3) new structures which will use the existing entrance. The entrance near unit ten (10) shown on the plan would be eliminated. All of the existing structures would be removed with the exception of unit nine (9) the home would be converted into a clubhouse for the condominium units and the existing garage would be retained for storage of equipment. A new septic system would be installed a minimum of 125 feet from the lake, 100 feet away from the wetlands and 20 feet from the side property line. Major asked if the plan show the location of the new septic system. Haight replied the plan shows the locations of the septic systems/dry wells currently on the property, it does not show the placement of the new system. MacMillan asked do the seven cottages have septic systems. Haight replied six (6) cottages have some sort of drywell and those cottages use the pavilion for bathrooms and bathing. MacMillan asked if the rental cottages had bathrooms or septic systems. Haight replied no. Major asked if the rental units were insulated. Haight replied he was not sure. MacMillan asked if the rental units have foundations. Haight replied they are constructed on posts. MacMillan asked if the six (6) rental units even qualify as a dwelling unit. Haight replied he was not sure. He was hired to show the locations of the structures and septic systems. Cottage #9 shows a septic system 50 feet away from the lake and the leach field for the pavilion which was used by the cottages is close to the lake as well. Coming down across the highway (left side) is a drainage swale which qualifies as a wetland and improvement to the property need to be 100 feet away from that area. The swale is also the property line. The whole site pre-dates the zoning regulations. The State of New Hampshire did not have septic review until 1969. West asked if the seasonal cottage had any cooking facilities. Haight replied yes.

Haight showed the ZBA members a downloaded map which shows the individual lots located around the lake. There are 24 lots on the north end and 7 lots located on the south end of the lake. A review was completed to determine the amount of acreage per lot existing around the lake. The average acreage lot size for the 7 lots on south end is 3/10 of an acre. The remaining 24 lots on the north end average 2/10 of an acre. The development with a total of 12 units or 4 units per structure the average acreage per unit

would be 4/10 of an acre per unit. All of the structures would be outside of the current setbacks. There would be no structures close to the lake with the exception of the club house which would no longer be a dwelling. Mason stated the six seasonal structures are located on the lake where is the seventh (7) seasonal structure located? Haight replied on the right side of the property away from the lake, it is a small cottage. Major asked if the cottages were roughly 10' x 10'. Haight replied they may be 8' x 12' or 8' x 14'. Michael Jonis stated the cottages are basically one large room and some of them have bathrooms.

Belanger asked if the application is approved, will the property be sold or will the property owners build the plan as presented. Haight replied the Jonis's are not proposing to build, they are not developers. However, they need to find out what can be approved for the site even if they do not build it. Haight added in 1986 there was litigation on the north westerly tip of the property. The litigation was between the developers of Winding Valley Road and the Town. As a result, the Town was granted a 30 foot wide easement with direct access to the lake. Belanger asked what effect the construction would have on the residents/rentals of Wallace Grove. Haight replied he does not know, the proposal is not real until the approval is granted. Belanger stated it is hard to believe there is no concrete plan. Haight replied it is just a conceptual plan. Belanger asked would the 2 bedroom condominiums be age restricted. Haight replied no. Belanger asked if the owners discussed such things as; air B&B, rentals or Accessory Dwelling Units. Haight replied no. Belanger noted if approved there probably would be some type of condition concerning with respect to those items. Haight agreed. Belanger noted the increase from 5 unit to 12 units is a large increase however, the plans for the new septic systems is favorable.

Mason asked what the green area was depicted on the supplied map. Haight replied primarily open space. Mason asked what the separation was between the new building and the pavilion. Haight replied the pavilion would be removed. The only unit being retained is unit 9 and the garage the rest of the structures would be removed.

Major asked would the proposed condominiums be 1 story or 2 stories and how large would the structures be. Haight replied two stories however the plan is just a proposal. The builder would choose the particular style of building based on what is selling at the time. The units would be between 1,100 to 1,200 square feet, the depiction presented was taken from a complex completed years ago. Haight has no idea if the structure shown would actually be built. Major asked if the impervious coverage was roughly 25% currently. Haight replied no calculation were completed. MacMillan asked how many parking spaces are contemplated for the site. Haight replied roughly 43 spaces. West asked knowing the developer may change the plan, what is the total impervious coverage area as shown on the presented plan. Haight replied the plan shown is a paved surface however, no calculation were completed. If approved by the ZBA a full set of plans would be required during the Planning Board (PB) review, including drainage calculations to show the rate and amount of water will not be increased. MacMillan asked if any of the 7 seasonal units have occupancy permits. Haight replied no. MacMillan noted if the application is based on a 12 unit comparison than all of the existing units (cottages) would need to have bathrooms to be considered a dwelling unit. Haight agreed.

Major asked if a comparison was done showing the total living square footage that exists to the total living square footage proposed. Haight replied no. Major is concerned that the grandfather claim or vested right claim does not exist if the condominium units are substantially larger than the current units. Westgate approached the ZBA and stated he would like to reply to the ZBA concern dealing with size. However, Westgate would like Haight to touch on three other aspects of the base presentation. Haight stated a completed site plan with drainage calculations runoff amount which can't exceed the current amounts. Major asked would the septic system be placed towards the southern end of the property. Haight replied yes the septic system would also be placed away from the lake as required with a minimum distance of 125 feet away from the high water mark. A state alteration of terrain permit would need to be approved if the disturbance is greater than 100,000 square feet, a subdivision approval would have to be obtain for the 12 units and a shore land permit would also need be approved prior to any construction. The lot consists of 4.9 acres however, due to the constraints of the current multiple setbacks on the lot the lot can't be subdivided into additional lots since a building box would not fit on the property. Major asked for an

explanation of why the lot could not be subdivided. Haight replied in order to subdivide the property we would need to prove that a building box consisting of either a 100' x 200' rectangle or a 160' diameter circle exclusive of setbacks, ledge or steep slopes and wetlands. Major noted a variance would be required to accomplish a subdivision. Haight replied yes. Belanger asked if the PUD regulations were research to see if those regulation could have been meet. Haight replied no. MacMillan asked if the condominiums were built would they be sold individually and the land would be under the association. Haight replied yes. Major asked would the requirements be met if all of the condominiums were located in the building box. Haight replied yes the proposal would met the condominium regulations and Hollis allows condominiums. Major asked how far off are the building boxes if the land was to be subdivided. Haight replied quite a bit due to the constraints of the setbacks.

Westgate stated if the application is granted this evening it would be the first step. The application would need to be presented to the PB with a set of full engineered plans in implement the concept. Randy Haight has put together a concept plan for a 12-2 bedroom units, size not yet fully determined due to the constraints of the site and given the ability for the septic designs which are required. A letter was submitted from Tom Carr, Meridian Land Services, who has demonstrated with the testing completed the lot has the capability to handle septic systems for up to 12-2 bedrooms units as shown. The Jonis's are not developers if the approval is granted this evening they would need to decide how to proceed if all approvals were granted. Ultimately, there would be a 99.9 % likely hood a third party involved with the development.

Westgate stated given the factors seen tonight, the history of the property, given what is proposed and what is existing today. We respectfully submit, the project is a good one, not only for the property, but also for the abutting properties. The proposal constitutes a substantial improvement from what exists today. The razing of the sub-standard structures, constructing new modest housing and substantially upgrading the septic and wells systems on the property. The proposal would modernize the property if granted. We can't justify or contemplate a fully engineered plan set unless the variance and special exception are granted. There would be no foundation or nothing to start with. In addition to the clear upgrades, both environmentally and project use wise it is obviously a major aesthetical improvement to the area.

Westgate stated the special exception has two general criteria and 3 specific criteria for this particular special exception that need to be satisfied. The two general criteria are as follows:

Criteria 1 – The use shall not be detrimental to the character, environment, scenic value, health, safety or general welfare of the Town, because:

The proposed use will remain residential, with significant open space abutting Silver Lake. The razing of the existing structures along the lake front and some of the internal structures on the property. The construction of new residential condominium units with septic systems in compliance with state and federal laws will positively impact the health, safety and general welfare of the Town. The use of the proposed residential units for permanent residences on a site which will be upgraded for compliance with applicable ordinances and setback regulations and to provide significant visual and aesthetic enhancements, will have a positive impact on the character and scenic value of the Town particularly the neighborhood near Silver Lake. Also noted in the Town's Master Plan as a goal is to make properties more environmentally friendly and compatible which reside around the lake. With the new septic systems the goal of the Master Plan would definitely be met.

Criteria 2 – The use shall not materially affect traffic or physical conditions of the Towns roads, because:

Federal Hill Road is a local road and the roads under the Master Plan contemplate driveway access. The historical use of the property has seen large and small amounts of traffic. The proposal is for 12 fulltime units with good site distance. The Property will contain the same number of residential units as are currently in use, and the proposed use will not result in any material change in the level of traffic on Federal Hill Road or Silver Lake Road. Section XII.A.3 of the Zoning Ordinance sets forth additional, specific criteria

for the granting of a special exception. These criteria, and the reasons the criteria are satisfied, are set forth below.

Section XII.A.3.a. – The proposed alteration, expansion or change will not change the nature and purpose of the original use, because:

The Property is presently used for residential purposes which is a permitted use in the Recreational Zone under Article X.F.I of the Zoning Ordinance. The proposed use is also residential. The proposed twelve (12) residential condominium units are consistent with the density of the current use and will not change the nature and purpose of the original use. The density of the proposed use is also consistent with the density of properties located around the lake. The current properties around the lake have a .2 or .3 per acres per residential lot. Also, the proposed use will be relocated away from the lake side.

Section XII.A.3.b. – The proposed alteration, expansion or change would involve no substantially different effect on the neighborhood, because:

Since the Property will continue to be used for residential purposes, there would be no substantially different effect on the neighborhood. The only effects on the neighborhood would be the positive upgrade of the property to create newer more attractive residential units with septic systems compliant with state and local regulations and with a positive visual impact on the neighborhood.

Section XII.A.3.c. – Any increase in heating living space, as proposed by the plans submitted which, in the judgment of the Zoning Board of Adjustment, is reasonably capable of increasing the number of bedrooms for a nonconforming dwelling or lot, may require the septic system to be approved by the New Hampshire Division of Water Supply and Pollution Control and the Town of Hollis in accordance with the provisions of New Hampshire RSA 485-A:38 and the Town of Hollis' septic regulations for the number of bedrooms currently in the home or proposed for the home, because:

The septic capabilities of the site will permit the construction of a sewage disposal system in compliance with New Hampshire law and the regulations of the Town of Hollis, to permit for the twelve (12) residential condominium units. Existing septic systems will be removed and replaced with new systems, compliant with state and local regulations. See the letter of Thomas E. Carr of Meridian Land Services, Inc. dated February 12, 2018, submitted with this application. In it, Mr. Haight indicates that the Property, if developed, will bring the site into compliance with such regulations. McGhee asked if the proposal was, in fact, for 12 dwelling units and a clubhouse with their own septic. Westgate replied yes. Westgate stated the Concept Plan depicts the number of proposed residential units (12), clubhouse or community building and related improvements, final plan design, location and layout of units, structures and other improvements, all of which are subject to final design and approval by the Town of Hollis.

Major asked if the entire special exception is dependent on the determination of the ZBA of the vested use of the property. There would be no argument that the property can't continue the current use. Also, the nonconforming use would need to be determined. Westgate replied Condra came to the conclusion that having a site with 12 units, 7 units seasonal, and 5 units year round and replacing the site with 12 permanent residential uses would require a special exception for the alteration, change of an existing use. Major stated the board would have to find there is a vested right on the property to allow 12 residential dwelling units. Westgate replied not necessarily in a grandfather sense, the residential use in the recreational zone is allowed. The current units existed pre-zoning the current use is not nonconforming it is a permitted use both present and future. The nonconformity is the issue of density and that is why Condra concluded a variance was needed for the density. The special exception is to expand or alter a permitted use. The change is to alter the permitted use to 12 permanent dwelling units in a condominium form of ownership. Major stated was the current condition in fact, 1 house, 4 units rented year round and 7 units rented seasonal which have not been occupied for 3 years. Essentially, the lot has 5 units located on 4.8 acres and the concept is to construct 12 full time units. Westgate replied yes, however, the global use of the site needs to be considered, its residential tenor presently exists. We would be altering or expanding the use, even if we

discarded the 7 seasonal units, the proposal is to construct 12 full time units. That is the purpose of the ordinance to contemplate the expansion of the permitted use. Otherwise there would be no need for the special exception process. The ZBA needs to determine if going from 5 (full time) +7 (seasonal) units to 12 permanent units the expansion meets the standards of the five criteria the special exception demands. Westgate stated in his opinion the proposal meets all of the criteria. MacMillan stated in his opinion the proposal would be different in nature than the original use. Westgate replied the original use was for a combination of recreational and residential activity. When should you define the original use 1918, 1950, when the home was built or current zoning regulations the site has clearly had a decade's long residential aspect to the property? MacMillan stated the definition of dwelling is the unit needs to have a bathroom which five of the units do not. The proposal is asking to convert 12 units into individual dwelling units. Westgate replied the proposal is to raze most of the structures and alter the use to a 12 unit condominium. MacMillan stated his concern is setting a precedence for all other undersize lots. Westgate stated precedence would not be set due to the uniqueness of the property. West stated the application states currently used for 12 residential units and the proposal is to construct up to 12 condominium units she feels that questions on bathrooms are surfacing because of the language within the application. Westgate stated he testified previously that 7 of the units were seasonal and not renting for 3 years.

Belanger stated the variance requested was for Section XF.3a minimum lot area. Why was a variance not requested for something other than a single or two family dwelling since the proposal is not listed under the special exception specifically where the ZBA could grant relief? Westgate replied condominiums are a permitted use in the recreational zone and Condra's letter indicated we needed to apply for a special exception and an area variance. Belanger stated in his opinion the special exception is not satisfied by building more than a 2 family dwelling and in Belanger's opinion a variance would be needed to construct anything above a 2 family dwelling. Westgate replied the special exception should be analyzed whether or not the application meets the criteria not on the density issue. We were told we needed a special exception to alter, expand or change the existing use. MacMillan stated the property could be reasonably used for a permitted use without obtaining any type of variance or a special exception, it would be possible to construct a home. Westgate replied the standard is not if you can do something, the standard is if the application meets the criteria specified in the ordinance. The notion of variance only be allowed if you can't do anything on a property, the Simplex case eliminated that interpretation years ago and created the five point standard which are analyzed today. MacMillan noted in *Crossley. Vs. the Town of Pelham* if the land is reasonable suited for a permeant use no hardship can be found and no variance should be granted. Westgate replied he was unfamiliar with case and asked in what year was the case. MacMillan replied 1990. Westgate replied that case was pre-Simplex.

Westgate stated in regards to the requested special exception, the ZBA needs to determine if in fact, the application meets the relative criteria which are outlined in the application. The ordinance requires the ZBA to analyze those criteria.

Westgate presented the application for a variance which is requesting relief from the two acre per dwelling requirement.

The Variance will not be contrary to the public interest; because: (the proposed use must not conflict with the purpose of the ordinance and that it must not alter the essential character of the neighborhood, threaten public health, safety, or welfare, or otherwise injure "public rights.").

Given the nature of the site and the current use of the Property for residential purposes, it is not contrary to the public interest to upgrade the Property by: (i) permitting the elimination of substandard buildings and non-conforming septic systems currently used for twelve (12) residential units to construct up to twelve (12) condominium units; (ii) installing septic systems that comply with state and local requirements, (iii) constructing new buildings that comply with the required setbacks from Silver Lake and Federal Hill Road; and (iv) visually and aesthetically improving the Property, and thus the neighborhood. The granting of the variance would permit the upgrading of the Property to be more compliant with the Zoning Ordinance.

The proposed use will not conflict with the purpose of the ordinance because the Property will still be used for residential purposes, will include the same number of residential units as presently used, and (as improved) will be more compliant with the Ordinance.

Please describe how the spirit of the ordinance is observed; because:

The general purpose of the ordinance is to promote the health, safety and general welfare of the inhabitants of the town, to secure safety from fire, panic and other dangers, to provide adequate areas between buildings and rights of way, to prevent the overcrowding of land and to avoid undue concentration of population and facilitating the adequate provisions for transportation, water, sewage, parks and other public requirements. The spirit of the ordinance is derived from this purpose. The granting of the variance would be consistent with the spirit of the ordinance and the goals of the Town of Hollis Master Plan. In addition to upgrading, modernization, and making more compliant (on a regularity basis) the Property, the project also preserves and protects a diverse natural resource base (in particular water resources) as reflected in the Ordinance. The granting of the variance permits construction of the same number of residential units as currently exist on the Property in an area that is primarily residential in nature. The fact that the granting of the variance will permit the removal of substandard buildings and septic systems, and the installation of septic systems compliant with state and local regulations and the construction and the general upgrade to the Property, is consistent with the spirit of the Zoning Ordinance and will not alter the essential character of the neighborhood or otherwise interfere with public rights.

Please describe how substantial justice is done; because:

Permitting the proposed use and granting the requested variance does substantial justice, with recognition of the nature of site and the neighborhood. Permitting the upgrade of an existing residential property to create a property that is more compliant with the Zoning Ordinance does not adversely affect the immediate neighborhood or the general public, but is likely to have a positive effect on the immediate area. The granting of the variance would allow for a more efficient use of the Property, more compliant with the Zoning Ordinance and consistent with the general character of the neighborhood.

Please describe how the values of surrounding properties are not diminished; because:

The removal of the existing buildings, the construction of new residential units, the installation of septic systems that are in compliance with state and local law, and the overall upgrading of the appearance of the site will result in a property that is more attractive, of much improved aesthetic value and compatible with other uses in the area. The improvements to and modernization of the Property will have a positive effect on the values of surrounding properties.

Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship; because:

Please describe the special conditions of the property that distinguish it from other properties in the area (explain any details of the property/structure that are different than the surrounding properties such as slopes, wetlands, size etc.)

The Property was originally used as a beach for public swimming, starting in about 1918 when a bathhouse was erected. Since that time, the use of the Property evolved with the construction of seasonal and non-seasonal dwellings. The use of the Property for beach and recreational use by the public was discontinued in 2007. The current use of the Property predates adoption of the Zoning Ordinance. The remaining structures in the area are largely single-family homes. The permitted uses in the Recreational Zone are limited to single and two-family dwellings, farms, farm stands and accessory buildings, and the only reasonable use of the Property is residential. The historical use of the Property, the age and condition of the structures and the existence of aged septic systems make the Property unique, but also render it impractical to continue its current use, without modernization.

Owing to the special conditions identified above, please indicate how 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 of the conditions set forth above, there is no fair and substantial relationship exists between the general public purposes of the Ordinance and the specific application of Section X.F.3.a. (the 2 acres per dwelling requirement). The residential use of the Property predates the Hollis Zoning Ordinance. If Section X.F.3 is applied to the Property and the variance is denied, it will defeat the purpose of the Ordinance since it will preclude upgrades to the site, including new buildings, compliant septic systems and buildings consistent with setback requirements. The granting of the variance generates a result consistent with those purposes of the Ordinance. The strict application of the Ordinance to the Property would deny the proposed use of the Property and be inconsistent with such purposes.

Owing to the special conditions identified above, please indicate how the proposed use is a reasonable one; (explain how the special conditions of the property and the zoning restriction interferes with the reasonable use of the property) the permitted uses under Section X.F.1. of the Recreational Zone, are primarily residential in nature. The Property has historically been used for residential purposes. The applicants seek no increase in the density of residential units. The upgrading of an existing permitted use to create a more attractive site that is more in compliance with the provisions of the Zoning Ordinance and state law is a reasonable use of the Property. The strict application of the Ordinance in this case would interfere with such upgraded use. The application is not for a raw land analysis, it is for a property with historically related uses and past history.

MacMillan asked is the hardship not be able to subdivide into two lots due to lot constraints however, the proposal is to construct 12 condominium units. Westgate replied the hardship is and it is very important to remember what the Simplex is and what the hardship standard is. If he discusses what Simplex is it would be doing an injustice to the entire process. Major stated the ZBA needs to determine the purpose for enacting 2 acre zoning and whether there is a relationship between requiring 2 acre zoning to the parcel and the proposed development. If the application was for a raw parcel of land on Silver Lake there would be no claim for a special exception or variance. Westgate replied there would be no claim for a special exception since we would not be altering an existing use. However, you would always have a claim to submit for a variance. The variance proposed reflects the density of the surrounding area. Major stated the ZBA is aware of the density problems around the lake and if the ZBA grants the variance they may be making the issue worse. Westgate stated the density issue is only one factor with the variance the historically uses of the property need to be considered as well as moving the structures away from the lake, meeting the zoning requirements, upgrading the septic systems, replacing the septic systems which have both environmental concerns and zoning concerns. Currently, there are 12 units which 7 could be debated if they are in fact dwelling units. The 12 units have substandard septic systems which in no way meet the setback requirements. The proposal is to improve the entire parcel. Major asked if there was anything fundamental different about having 12- 2 bedroom condominium units as opposed to the present use with 1 home, 4 rental units and 7 units which seem to be , for all intensive purposes have been abandoned and really not a factor in determining the case. Westgate stated the ZBA is charged to analyze cases based on the zoning ordinances standard before them not on standards which are theorized this evening. The proposal is different however, it is not outside of bonds of the standards and the criteria. If you task each of the 5 criteria there is good rational and make a finding in favor of the application. MacMillan asked would Westgate agree that the ZBA always has the ability to make judgements on the character of the neighborhood and whether are not a proposal is in-keeping with the neighborhood. Westgate replied only if the character of the neighborhood is one of the criteria for the application. MacMillan stated the ZBA is always charged with making judgments on how something would affect the neighborhood, we know the town, the neighborhood and the ZBA does have an opinion if a proposal impacts a neighborhood or if the proposal would be a positive impact on a neighborhood. Westgate stated ZBA members with a general knowledge of the community is a fundamental important factor in how a judgement is made. But the judgements have to be made based on the criteria set forth in the ordinance.

McGhee stated she has no issues with the character of the neighborhood however, the increased to the amount of people and density located on the site may impact the area. The 12 to 12 unit comparison is not

comparable since some unit our not used. Westgate replied the density issue is not just the 12 for 12 comparison it is also the density within the lots surrounding the lake. Major stated as a matter of right the property could have a 4 unit condominium on the property. Westgate replied, Condra would need to make the determination if the units would be allowed and the application would also have to deal with density. MacMillan stated he would feel more in-favor of the application if it was a 4 unit condominium. Belanger asked if Westgate agreed that a variance is required to build more than a two family home. Westgate replied no condominiums are allowed and Condra's letter instructed us on the approvals necessary. Mason stated if the defense of the application is the density around the lake a rough calculation would be a unit every 1/3 acre. Using the rough calculation the property could hold approximately 20 units, if substantial justice is applied. Westgate replied not necessary the proposal is also depended on a number of factors; number of building, parking spaces, septic capabilities, the separation from septic to wells and setback requirements. The number of units can't analyzed in isolation, the proposal needs to be analyzed in its totality including the factors of the upgrades and meeting the setbacks. The proposal meets the infer-structure needs of the site and be consistent to the near by density.

In favor of the application

Bill DeSelle, 10 Federal Hill Road

DeSella stated he owns the property directly across the street and has lived there for 34 years. As a real estate broker DeSelle believes in highest and best use for a property. The concept plan shown he is fully in favor of.

Spoke in opposition

Eric McIntyre, 104 Silver Lake Road

McIntyre stated since Long Hill Rd. was constructed the lake has battled with environmental issues due to the amount runoff coming from the Long Hill development. Others concerns were density and impervious surface coverage and for the families that live at Wallace Grove. McIntyre stated he is totally against the project and has a petition from a Facebook page he created "Friends of Silver Lake". The density talked about was created in 1915 or 1918 prior to zoning. The zoning has changed and McIntyre would rather see the ZBA give an exception for 2 single family homes.

Clark Davis, 16 Federal Hill Road

Davis stated his lot is 1 acre which he needed to seek an approval to build, even thou it was a legal lot of record. Davis submitted a petition to the ZBA. The petition reads as follows for the record:

" abutters opposed to proposed Wallace Grove Condo variance (case ZBA 2018-002 and 003) We, the unsigned, are opposed to the granting of variances requested for the following reasons:

- 1. These special exceptions and variances will bring into being a high density of dwellings uncharacteristic of the long standing existence of low profile single family residences in the area, possibly lowering their market value in the future"*
- 2. Such exceptions/variances will set a precedent for future actions at Silver Lake (and possibly Rocky Pond) in coming years.*
- 3. 12 (or more) condo units will greatly increase the drawdown of water resources in the area, and any septic seepage will further threaten the water quality of the already highly pressured lake. Only 5 houses on the property area are presently occupied year round, the remaining seven are very small summer rental cabins with very limited septic or heating provision."*

The petition was signed by 39 residents by the end of the ZBA meeting. Eric McIntyre from the audience stated he also has a petition signed by 102 residents from his Facebook page “*Friends of Silver Lake*”. Major stated at this time he is unsure if the Facebook pages can be submitted into evidence.

Lawrence Tobiason, 38 Silver Hill Park

Tobiason submitted a 3 page objection of the project to the ZBA. Tobiason stated paragraph “a” for the special exception states “*the proposed alteration, expansion or change will not change the nature and purpose of the proposed use*” and “b” states “*the proposed alteration, expansion or change would involve no substantially different effect on the neighborhood*” Also section a.2 “*discontinued use*” should be considered since the 7 seasonal cabins have not been use for several years. Tobiason stated the primary reasons for objecting to both application are as follows. (see file for complete letter) I

1. Increasing the total heated living space, currently on site 4,651 square feet in total for all structures and proposed approximately 1,200 square feet per unit.
2. Seasonal cabins have not been used for over 2 years and qualifies them as “discontinued”.(Section XII a.2)
3. Some cabins do not meet the standards for a dwelling unit.
4. Added traffic on Federal Hill Road.
5. Potential environmental concerns since Silver Lake is already closed due to bacteria several times a year.
6. Amount of impervious surface coverage.

With the current zoning of 1 dwelling unit per 2 acres, allowing a 12 unit condominium which is 6 times greater than which is allowed by current zoning. Tobiason stated he is totally against the application as submitted but feels an application with less density perhaps half would be more reasonable.

Brian Hu, 34 Long Hill Road

Hu stated his concerns; Lot density, Increased traffic of 40+ cars if approved, Impact to the character of the neighborhood, potential environmental issues which would impact Silver Lake, diminished property values and increase of children entering the school system which would increase taxes.

Joseph Garruba, 28 Winchester Drive.

Garruba stated based on “RSA: 483” which set state wide minimum standards for development along protected shoreline has a 250 foot setback. RSA: 483.b11.v states 250 foot setback would interfere with building 3 the RSA also states that only primary dwellings can be demolished, rebuilt and be located within the 250 foot setback. The existing cottages don’t qualify as a primary structure. Proposed developments within the shoreline protection area requires storm water provisions which are substantially equivalent to those which are required under RSA 541.an alteration of terrane standards are 50, 000 square feet of disturbance not the normal 100,000. It seems the proposed development would not be able to accommodate state law so the town should not grant the applications.

The special exception application should not be granted for the following reason; Non-Compliance with Section IX.O general requirements determination of density for a condominium development. All buildings to be constructed must comply with the building area requirements either a 160 foot circle or 10’ x200’ building box, have no encroachments to wetland setbacks and must be constructed outside of the 250 foot shoreline protection area. Other concerns were; traffic impacts seasonal vs. full time residence seasonal use cottage estimated 70 days a year at 140 trips per day, full time traffic use estimates at 1,460 trips per day based on a single unit having two cars each. The total increase in the amount of trips per year for all units would be a 112% traffic increase per year.

The use would be detrimental to the neighborhood and scenic value because; large 2 story structures would impact the scenic value, changing the current use of 7 seasonal cabins to 12 full time units would be a

dramatic change to the character of neighborhood since the area are primarily small single family homes. The different effects on the neighborhood would be; increase traffic, character of the neighborhood, damage to the scenic view and pollution due to a 112 % increased to septic use. Testified earlier Haight stated, the new septic system would be complaint to all regulations. Garruba stated in his opinion, it seems impossible to fit a septic system anywhere on the lot which would be compliant to all state and town regulations.

The variance application should not be granted for the following reason; Section XII discontinued use, the 7 seasonal cottage were not use for the past 3, the proposal is definitely in conflict with the public increase because of a lower tax base, traffic increases, and more pollution to Silver Lake. The spirit of the ordinance is not observed upheld due to the increased density of the lot. The application is unjust to the immediate neighbors and would be detrimental to the character of the neighborhood and the town. The application would impact property values as well. The intension of the zoning ordinance is to control density and land use. There is no hardship to the property because there are other allowed by ordinance.

Jonathan Garruba, 30 Meadow Drive

Garruba stated although he is not an abutter to the property he feels the application is contrary to the public interests because it would impact the rural charter of Hollis. One main reason he moved to Hollis is its low density and certainly changing from 5 residents to 12 is a dramatic change to the area. Garruba stated in his opinion if the application are granted it would set a precedence for future cases.

Barabra Davis, 16 Federal Hill Road

Davis stated she has lived in Hollis for 45 years and feels the application should not be granted because of the increased traffic not only to the proposed site but the traffic has already increased from the Keys Hill development which using Federal Hill Road. The phasing requirement of the ordinance was replied last year and since then the building has increased dramatically. Currently, there are approximately 150 dump trucks per day using Federal Hill Road and this development would increase the already busy area. Currently, at Wallace Grove there are three families with children who wait for the school bus and she feels the increase traffic is a safety issue. The neighborhood would be impacted greatly if approved and she is totally against the proposal. Davis stated her last concern is the potential impacts to Silver Lake since the lake already tests positive for e-coli several times a year, the water goes into Dunklee pond and then to Nashua water works were people drink the water. The town should concentrate on cleaning the lake not potential making it worst.

Marcia Lazo, 98 Silver Lake Road

Lazo stated she has attended the informational meeting which the applicant set up. During the meeting it was said the structures would be approximately 40' x 70', 2 story and be placed in what is currently an open field, 46 parking place and have outside lights installed. The proposal would change the charter neighborhood dramatically and she is against the proposal.

Applicant Rebuttal

Randy Haight, Meridian Land Services, stated relative to the traffic concerns a complete traffic study would be done to demonstrate that no traffic issue will arise. The drainage concerns are not an issue, a plan needs to be developed showing the systems would comply with the state AOT permitting and town requirements or the project can't be done. As far as the 250 foot shoreline setback with the first 50 feet the most intense review, a plan would need to be developed submitted to the State and receive approval or the project can't be done. The Town would allow a septic system 100 feet away from the lake however, the property is also located in the Aquifer zone which requires the septic to be placed no closer than 125 feet from the lake and have the bed bottom 6 feet above the high water line. None of the current system are 6 feet above with the installation of the new systems it would actually improve the current situation. MacMillan asked what size the well would be. Haight replied the size of the well has not be determined. Major stated there was a

concern about outside lighting and asked what the plan for outside lighting was. Haight replied the PB requires all outside lighting to be “full cut off” and all utilities would be underground. McGhee asked what “full cut off” lighting was. Haight replied the lumens generated must diminish outwards so the lighting would remain on site.

Westgate stated the analysis the ZBA always makes is the facts of the case against the required criteria for the particular application. The information gathered needs to be applied to the 2 general criteria for a special exception and in this case the 3 specific criteria. The first general criteria is granted a special exception, *“The use should not be detrimental to the character, environment, scenic value or general health, safety or general welfare of the Town.”* The application will not be detrimental to the Town environment it will actually enhance the situation around the south end of Silver Lake. The 12 condo units modestly sized in the relatively simple setting does not adversely affect the character of the Town. The Town has condo units and lots of residential unit in the immediate area. The character of the Town is not changing by changing the existing residential use into a different type of residential use. The issue of density is not a comparison of 5 to 12 it is analyzing the density in its totality against the criteria and the evidence presented. Seeking a variance on the raw piece of land with no history is one thing. This case is different, we are seeking a variance to increase the density of an already nonconforming lot in a neighborhood of non-conforming lot sizes. The density in the application is 5 to 12 if the 7 seasonal cottages are discounted. In the contents of what the area is and in the enhancements that our implemented by way of permitted the requested density. The density of the condo community needs to meet the density of a non-condo site but in effect that is why we are seeking relief from the 2 acre requirement because of the history and unique circumstances of the property. The proposal is in-keeping with the neighborhood and its characteristics. The spirit and intent of ordinance are met and the proposal is consistent with the general purposes of the ordinance. Razing the dilapidated buildings, updating and enhancing infrastructure would in no way impact property values.

The hardship criteria is not financial analysis. The hardship is by the Simplex criteria, identifying the special condition to the property and how those special conditions support the idea that if the variance is denied you would impose a hardship on the property. By granting the variance you are maintaining the consistency with the purposes of the ordinance. Denying the variance you would be frustrating those purposes. We submit, if the ZBA denies the variance it would be frustrating the purpose of the ordinance which allows for the modernization, environmental enhancements and a density that is consistent with the surrounding area. MacMillan asked if Westgate would like to address the abutters concerns on the character of the neighborhood if the variance is approved. Westgate replied the criteria is the character of the town not the character of the neighborhood. MacMillan stated they are town’s people and they are expressing themselves in large numbers and the petitions filed as to the proposal and the effects in their town not just the neighborhood. Westgate stated again the character of the neighborhood is not the standard and the ZBA must follow the standards in analyzing an application or the process is null and void. Losing the process and sanctity of the process and sanctity of the ordinance is far worse than what ever happens with this application tonight. Major stated two other submissions were received by abutters and would like them read into the record. Setaro stated the submittal against the application was received from Ann Tucker, abutter to the property. Setaro read in-part her concerns.

1. Hollis Master plan recommends on up-to-date study be done of Silver Lake when a properties comes up for sale and the Town should consider acquiring them to protect the aquifer and surface waters.
2. Approving the application would add more congestion to an already overdeveloped part of Town.
3. Keyes Hill development to include 27 homes with the addition of the Wallace Grove development on Federal Hill would exacerbate the congestion and safety of residence.
4. The proposal in its entirety seems to be excessive for the size of the lot, 12 condos with 24 parking spaces.
5. Under current zoning there are other permitted uses the property could be used for. Such as, single family homes.
6. There would be an increase to Silver Lake closers due to contamination.

See file for complete letter and cyanobacteria closings provided by Amanda McQuaid, State DES.

Belanger stated he would like to research RSA 483 concerning the 250 foot shore land protection act. Belanger believes a variance is required to construct anything more than a 2 family home no matter what determination was made by the office.

Belanger moves to reconvene Case 2018-002 and 003 until the May 24, 2018 meeting for deliberations only.

Seconded by MacMillan.

Mason stated he would have enough information to deliberate the case and if the cases were reconvened to May 24, 2018 some of the information would be forgotten. Belanger noted if his motion is passed he would request a work session to be scheduled May 10, 2018 to discuss and have time to review the cases. Major stated he would prefer to have the meeting on May 3, 2018.

MacMillan withdraws his second to Belanger Motion.

Setaro stated there is another meeting in the room on May 3, 2018 if the ZBA wishes the deliberations of the cases could be done at 7:30pm.

Major moves to reconvene Case 2018-002 and Case 2018-003 until May 3, 2018 at 7:30 for deliberations only. There will be no public input accepted.

Seconded by McMillan.

Motion unanimously approved.

Abutter rebuttal against the application

Joseph Garruba, 28 Winchester Drive.

Garruba stated since the septic needs to be installed 6 feet above the high water mark as Haight stated the large mounds of dirt with pipes sticking out which would be visible. The systems would impact the view and scenic nature of the location. The entire project would damage the character of the town and the neighborhood.

Marcia Lazo, 98 Silver Lake Road

Lazo stated during the informational meeting she asked if the number of condos (12) was in fact the number that would be built. Lazo stated their response was the number could be more depending on the variance. Major stated the ZBA was presented an application for 12 condos if approved would not be granted for more than 12 units.

Lawrence Tobiason, 38 Silver Hill Park

Tobiason asked whether or not the club house was considered a non-conforming structure with the current zoning ordinance. Major replied the applicant testified the club house (single family home) would not be taken down and there would be no requirement to do so. Mason stated the structure is an existing non-conforming structure.

Virgil Wetmore, grandson to Elizabeth Wetmore, Abutter

Wetmore stated the proposal would defiantly change the character of the town not only the neighborhood. Wetmore agrees with all of the concerns the other abutters noted and feels the safety of Silver Lake is in danger if the proposal is approved.

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

The ZBA recessed at 10:00 pm and reconvened at 10:05pm.

Case ZBA 2018-004

This application was tabled at the March 22, 2018 meeting - The application of Back Bay Sign, for a Variance to Section XIV, Sign Ordinance, Paragraph P.5, A storefront should not have more than 2 signs, Paragraph P.7, Maximum 32 square feet allowed of the Zoning Ordinance to permit the installation of an additional 5.8 square foot sign located on the back wall of Harvest Market and modifications to the existing entrance sign, property owned by Phoenix Lane, LLC, located at 2 Market Place, Map 052, Lot 031, in the Agricultural and Business Zone.

Jason Parillo, Back Bay Sign, presented Case ZBA2018-004 on behalf of Bank of America. Parillo stated the application has been modified taking into consideration the views of the ZBA members at the April 26, 2018 meeting. The bank decided to re-locate the sign to the parking lot side of the structure so the sign would not be seen from the street and add the word ATM. The marquee sign would also have the words “ATM” added. (see file for depiction) The addition of the words “ATM” will clarify to the public that there is not an actual full service branch. Major stated in his opinion, if the ZBA approves the application the approval would be subject to HDC approval as well. Parillo agreed. Major asked would there be an increase to the square footage of the main sign (marquee). Parillo replied no, there would only be a 5.8 square foot increase to the signage attached to the structure. Parillo submitted a letter from Bank of America stating the purpose for the additional signage and lease agreement with Harvest Market. (see file) The ZBA members discussed the location of the 5.8 square foot building sign and agreed the location on the north side of the building was better suited for the signs intended purpose. West asked whether or not the ZBA could comment on the signs colors. Belanger replied the design and color are within the HDC prevue. Major asked Parillo if he would like to incorporate the testimony from the March 22, 2018 into the record. Parillo replied yes.

Condra stated the Harvest Market is sub-letting floor space to Bank of America for an ATM. Would a consideration be made for other tenants who wish to sub-let floor space and add additional signage? Major replied the presents of an “ATM” machine could be considered common practice for a supermarket and in Majors opinion he is comfortable with allowing the additional signage. The ZBA members agreed.

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

DELIBERATION AND DECISION

Case ZBA 2018-004

Discussion of the application of Back Bay Sign, for a Variance to Section XIV, Sign Ordinance, Paragraph P.5, A storefront should not have more than 2 signs, Paragraph P.7, Maximum 32 square feet allowed of the Zoning Ordinance to permit the installation of an additional 5.8 square foot sign located on the back wall of Harvest Market and modifications to the existing entrance sign, property owned by Phoenix Lane, LLC, located at 2 Market Place, Map 052, Lot 031, in the Agricultural and Business Zone.

Major moves for the following condition of approval;

- 1. The approval is conditioned upon the applicant obtaining Historic District Commission approval concerning sign, color, placement and aesthetics.*

Seconded by McMillan.

Motion unanimously approved.

Major moves for the following finding of fact;

- 1. The proposed sign is directional in nature and reasonable.*

Seconded by McMillan.

Major moves for the following finding of fact;

2. *The board finds that the installation of an ATM machine is a common practice in a supermarket, and the sign for the ATM is reasonably related to the operation of the premises as a supermarket.*

Seconded by McMillan.

The 1 condition of approval and the 2 findings of fact were unanimously approved.

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	6	0
Belanger	Yes	Yes	Yes	Yes	No	Yes	5	1
MacMillan	Yes	Yes	Yes	Yes	Yes	Yes	6	0
Mason	Yes	Yes	Yes	Yes	Yes	Yes	6	0
McGhee	Yes	Yes	Yes	Yes	Yes	Yes	6	0

THEREFORE THE VARIANCE WAS GRANTED WITH THE FOLLOWING CONDITIONS AND FINDINGS OF FACT;

Condition:

1. **The approval is conditioned upon the applicant obtaining Historic District Commission approval concerning sign, color, placement and aesthetics.**

Findings of Fact:

1. **The proposed sign is directional in nature and reasonable.**
2. **The board finds that the installation of an ATM machine is a common practice in a supermarket, and the sign for the ATM is reasonably related to the operation of the premises as a supermarket.**

Review of Minutes

Belanger moves to approve the minutes of March 22, 2018 as written.

Seconded by McGhee.

Motion unanimously approved with Mason abstaining.

Meeting Adjourned

The ZBA meeting adjourned at 10:30pm.

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