



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

**Minutes of May 28, 2020**

The ZBA meeting was held via Zoom platform and was called to order at 7:00 pm by Chairman Brian Major.

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

*Due to the Coronavirus crisis and in accordance with Governor Sununu's Emergency Order #12 pursuant to Executive Order 2020-04, the Zoning Board of Adjustments is using the Zoom platform to conduct this meeting electronically.*

After approximately 15 minutes of technical issues and setup. Major explained the policies and procedures.

Major said the voting members for the cases this evening were as follows:

Case ZBA 2020-003, ZBA 2020-004, ZBA 2020-005 and ZBA 2020-007: Major, Belanger, Tsao, MacMillan and Mason.

Case ZBA 2020-008: Belanger, Tsao, MacMillan, Mason and Moseley.  
Major, McGhee and West recused themselves from Case ZBA 2020-008

The Zoning Board of Adjustment voted unanimously that Cases ZBA 2020-003, ZBA 2020-004 and ZBA 2020-005 had no regional impact.

MacMillan said prior to hearing Cases 2020-003, 004 and 005, it was MacMillan's opinion that the Zoning Board of Adjustment should determine if the applications should be heard at all. Under Fisher v. Dover, variance applications that were previously denied cannot be reapplied for, and new applications must be substantially different from the denied applications. \_ and . Major agreed.

**Case ZBA 2020-003** The application was tabled on April 23, 2020 and continued to May 28, 2020. The application of Raymond Lorden, property owner, for a Variance to Section XII Nonconforming Uses, Structures and Lots, Paragraph A.3, Nonconforming Uses, Alterations of the Zoning Ordinance to permit the expansion of a nonconforming use of five single family dwelling units on a single lot to 6 single family dwelling units. (1 single or 1 two family dwelling is permitted), located at 11 Federal Hill Rd., Map 059, Lot 024 in the Recreational Zone.

Attorney Morgan Hollis, Gottesman & Hollis, 39 East Pearl Street, Nashua attended via Zoom and presented Cases 2020-003, 004 and 005 on behalf of the property owner, Raymond Lorden. Lorden was available for questions, if required.

Major asked Hollis if, for the purposes of the hearing, he would like to combine the three cases. Hollis agreed saying the arguments for the three cases were not that much different concerning the five variance criteria. Major asked Hollis what makes these applications substantially or materially different than the past application which was denied.

Hollis said the property is a 4.9 acre parcel, known as Wallace's Grove, located on the corner of Silver Lake Rd. and Federal Hill Rd. The property contains five existing single family structures currently rented, 6 former dwelling units (cottages) located directly on the lake, several accessory structures and a large structure formerly known as the pavilion.

The previous application requested approval to construct a 2 family dwelling structure with 2 bedrooms in each unit to be located within the footprint of the pavilion (4 total bedrooms). Town staff determined that a special exception was required to alter a nonconforming structure under the ordinance. The proposed residential use is permitted under the zoning ordinance; and the

application requested a special exception to alter the nonconforming pavilion by removing and replacing it with the proposed duplex within the pavilion's footprint. The ZBA voted to deny the special exception application because the proposal did not meet the criteria for the special exception.

Hollis stated that the present applications were substantially different from the prior ones since they are requesting variances, not special exceptions; and the legal criteria for each are completely different. Secondly, the variance applications are requesting approval to construct a sixth one bedroom, single family home on the lot where five currently exist which is substantially different from requesting a special exception for the four bedroom duplex. Finally, the proposal includes removing the 6 former cottages and the pavilion as conditions of approval. The new single story, single family home will be approximately 816 square feet with 1 bedroom and one bath.

It was Hollis' opinion the nature of the application, variances vs. special exceptions, the matter being requested and the conditions being proposed makes these applications substantially different. Major asked if any board members had any questions comments or concerns concerning the issue of Fisher v. Dover. MacMillan said the application is an expansion of a nonconforming lot from 5 dwelling units to 6; and the ZBA already denied this type of "use". The lot is a nonconforming lot of 4.9 acres, and nothing in the zoning ordinance allows 6 dwelling units on a 4.9 acre lot. The application is not in keeping with spirit of the zoning ordinance. Tearing down the 6 existing cottages, which have not been in use for many years, should not have any bearing on the case whatsoever. MacMillan asked if the town is being rewarded because the applicant proposes to tear down the 6 units and add an additional dwelling unit on a 4.9 acre lot. Hollis replied the discussion should be on the issue of Fisher v. Dover not on the merits of the case. MacMillan asked Hollis why the ZBA should allow an additional dwelling unit on the lot since the ZBA denied a special exception for an additional dwelling unit. Under the Fisher v. Dover doctrine, it would be illegal to do so. Hollis disagreed stating that the special exception criteria are substantially different than the variance criteria. A variance must meet five different criteria: not being contrary to the public interest, must observe the spirit of the ordinance, must not adversely affect the values of surrounding properties, there must be a hardship to the property and substantial justice must be done. The prior application was for special exception, which allows modifications or alterations to a nonconforming use as long as the criteria are met. .

The current application is a variance to vary the ordinance which states you cannot expand a nonconforming use. It was Hollis's opinion that the ZBA has to hear the application and determine if the application meets the five criteria for a variance. . A special exception is for a permitted "use" as long as you met certain conditions. A variance is a request to vary the ordinance for certain reasons. The main reason is there is a certain application of the ordinance that imposes a hardship to the property. The ZBA at the end of the presentation may vote the same way. Hollis believed the application is substantially different due to the impact on the property since the original application was requesting an expansion of four bedrooms instead of the request for a single story one bedroom cottage. The difference should be weighed and the ZBA should hear the application. MacMillan asked Hollis if he would agree the zoning ordinance is an expression of the public interest. Hollis replied the comments have nothing to do with whether or not the application is substantially different or not. (Fisher v. Dover)

Major asked if any members had any issues with Fisher v. Dover. Mason replied the application is different variance vs. a special exception, one small single family unit and not a duplex. Mason said in his opinion there was no Fisher v. Dover issue with the applications. West agreed based on a Supreme Court decision dealing with Fisher v. Dover from 2016 which offered support that the application is substantially different. MacMillan said the expansion of a nonconforming lot whether it be by special exception or variance the application is dealing with the same issue. Moseley agreed with MacMillan the application is still dealing with a nonconforming lot. Tsao agreed with MacMillan and added the smaller lots in the area should not affect the outcome of the case. McGhee said the applications are different and should be heard. Swerchesky agreed with McGhee. Belanger said the applications are substantially different and should be heard. Major agreed.

*Belanger moves the applications are substantially different from the previously denied applications and should be heard.  
McGhee seconded.*

*A roll call vote was taken, and the results were of follows:*

*Major- Yes Belanger – Yes MacMillan – No Tsao- No Mason – Yes*

*The motion passed by a 3 to 2 vote.*

Hollis said in light of the past discussion, he was requesting the Chairman ask each ZBA member voting on this case whether or not they can be impartial while listening to the case and determining whether that evidence matches the required criteria. He stated that in his opinion, one member of the ZBA has made it clear that no matter what evidence is presented, the member would not approve the application. He said that only the ZBA can ask a voting member to step down, not the applicant or the public. Hollis requested the ZBA discuss the matter and ask Mr. MacMillan to recuse himself and to also ask Tsao if she was capable of rendering an unbiased decision after listening to the evidence of the case. Tsao said she could make an unbiased decision.

Major agreed to address the issue. Major also stated that the packets are distributed and reviewed by the members prior to the meeting, but that this does not mean that the cases are prejudged. Hollis responded that it seems very clear to him that MacMillan has prejudged the application, and he requested the Chairman to ask MacMillan to recuse himself from the case unless he can listen to the evidence and make an unbiased decision. MacMillan asked Hollis if there was any other board member whom he was uncomfortable with voting on the case. Major asked if any voting member felt they have any inherent biases which would warrant a recusal from the case. MacMillan said in the interest of not making Hollis uncomfortable, he recuse himself from the case. MacMillan felt that Hollis thinks his participation would taint the proceedings. Major said he supports MacMillan's decision either way. MacMillan said for the record, the only reason he was recusing himself is Hollis asked him to because Hollis thinks he has prejudged the case. Major said he has served with MacMillan for approximately 15 years and has never known MacMillan to prejudge a case. However, if MacMillan wants to recuse himself, it would be his choice. Major said McGhee would be voting instead of MacMillan on the case this evening. MacMillan agreed.

Belanger said he does not like Hollis's request because the public or applicant should not ask any board member to recuse themselves from a case. Hollis may want to consider asking Belanger to recuse himself because he was in favor of the application. Belanger did not recuse himself. The recusal request in Belanger's opinion was inappropriate. Hollis said he respects all of the comments, however, as a lawyer he has a duty, and his request was not personal. Hollis said if the concern were not raised prior to the case, he would not be able to address the issue later in an appeal.

**The adjusted voting members for case 2020-003, 2020-004 and 2020-005 were as follows;  
Major, Belanger, Tsao, Mason and McGhee.**

### **Case 2020-003 public hearing**

Hollis said the property is 4.9 acres and has 5 single family homes, which are currently rented, a former pavilion with bathrooms and a kitchen, and 6 old, small and unoccupied lakefront cottages. There are a total of 12 structures on the parcel, with some occupied others not. The structures are preexisting nonconforming uses and nonconforming structures, which are not allowed under current zoning ordinances. The parcel is zoned recreational and allows for single family residential use. However, more than one dwelling per lot is not allowed. The lot is 4.9 acres which could possibly be subdivided to conform with the 2 acre lot minimum required for the construction of several duplexes with a density of up to 5 units.

Hollis stated that while the lot is large, it probably could not be easily subdivided due to the topography, and because access to Silver Lake Rd. is almost impossible. The lot is a preexisting nonconformity due to the density of the structures and a nonconformity of uses. Wallace Grove has extensive lake frontage. The application is to add one single story cottage with one bedroom and a total living area of 816 square feet. As a condition, if approved, the 6 nonconforming cottages and the pavilion will be immediately taken down. In addition, a new septic which has been designed and approved would be installed. The new septic system would serve the new unit, and 2 of the adjacent single family homes, and those septic systems would be taken offline.

The applications currently before the ZBA were discussed with town staff who determined that 2 variances would be required to alter the pavilion since it was a nonconforming use. The third application was submitted because Hollis felt it was also required.

Hollis asked Setaro to show the exhibits supplied via Zoom screenshare. Exhibit 1 showed a picture of the proposed 1 story single family home with a small porch facing the lake. The home would be constructed within the footprint of the existing pavilion. Exhibit 2 showed the interior floor plan of the new proposed unit which included 1 bedroom, 1 bathroom, a kitchen and a living room. Exhibit 3 showed the current conditions of the parcel including the existing dwellings with a bedroom count and locations, the 6 lakefront cottages and the footprint of the existing pavilion with the new unit location, if approved. The new septic system would be installed in between the new proposed unit and the 2 adjacent studio apartments, and it would serve the three units.

The variance will not be contrary to the public interest because the proposed use is for a single family home. Single family homes are allowed in the district as a permitted use. The use being requested fits within the zoning ordinance. The density being requested is not allowed by the zoning ordinance. The proposal is to add one 1-bedroom single family unit or 1 nonconforming structure, but removing 7 nonconforming structures and installing a new septic system to replace two old ones. Hollis said his argument was that the proposal is in the public interest because of the removal of old structures and cleaning up the site. The proposal will allow the property owner to clean up an area of nonconformity. The way to achieve this is to allow the property owner a reasonable return on his investment in order to fund the removal of structures and site clean-up. There are two criteria in assessing whether the variance is contrary to the public interest. First the proposed use will not substantially alter the essential character of the neighborhood; and secondly, the proposed use will not threaten the public health safety or welfare. The proposed unit would be

new construction with a new septic system, and the property owner is removing 7 old structures. The new septic system would also be used for 2 existing studio apartments, thus replacing two old systems. There is no threat to public health, safety or welfare if the proposal is approved.

The character of the neighborhood is a series of very small, very nonconforming lots. Exhibit 3 was a map of the surrounding lots with their individual lot sizes. Due to their small size, most of the surrounding lots have a higher density than the current proposal with the average of 0.88 per acre... By contrast the proposal results in a density of 0.82 per acre, and thus. the proposal does not alter the essential character of the neighborhood.

Finding that the spirit of the ordinance is observed means there must be evidence showing how the ordinance will be observed. The spirit of any nonconformity ordinance is not only to prohibit the expansion of a nonconforming uses without ZBA approval, but also to encourage the reduction of nonconformities. The proposal is an opportunity to remove several nonconforming structures and make the lot more conforming. While the proposal adds one nonconforming unit, thus increasing the nonconformity regarding permitted density, it also removes 6 small lakefront structures and the pavilion resulting in an overall decrease of nonconformity because there will be a net reduction in the number of structures ..

The third variance criteria is assessing whether granting a variance results in substantial justice, and requires the ZBA to balance of the equity and inequities of an application. The harm to the public if the variance is granted, cannot outweigh the good to the applicant. In Hollis's opinion, there is no harm to the public, and instead is a benefit because it reduces the overall nonconformity by permitting one additional 1 bedroom residence, conditioned upon the removal of the pavilion and 6 waterfront cottages structures would allow reasonable use of the property sufficient to effect the property's overall reduction in nonconformity. The location of the new dwelling unit would have zero impact on the abutters or the public at large.

There would be no adverse effect on surrounding property values. The removal of the pavilion and 6 lakefront cottages and addition of the new septic system will improve the aesthetics of the property, and adding 1 dwelling unit would not substantially change the density compared to the surrounding properties.

The final criteria is the hardship to the property. The hardship to the property is that the property is larger than the surrounding properties and only has one access point on Federal Hill Rd. The lot does not have access to Silver Lake Rd. and would be difficult to obtain a subdivision approval. The parcel has an extensive amount of frontage on Silver Lake despite the parcel having nonconforming density, the lot still has greater acreage per unit than many the surrounding properties. No fair and substantial relationship exists between the general public's purposes of the ordinance and the specific application of the density provision to the property because the property has had a significant history of nonconforming uses and structures, and it is a large lot. Prohibiting all expansion of the nonconforming nature of the property would be unreasonable particularly given the neighborhood. The proposed use with conditions of the removal of 6 nonconforming lakeside structures and the pavilion will decrease the overall nonconformity of the property in keeping with the purpose of the ordinance. Without a variance, the restriction prohibiting expansion prohibits reasonable use of the large, unique property. In closing, it was Hollis's opinion that the application has met all the criteria required so that the ZBA can grant the variance.

Hollis asked if the ZBA would like him to address the 2 criteria for the 2 additional variances since they are different requests. Major replied the ZBA is under the understanding that the testimony would apply to the additional variance requests.

McGhee said things which need to be considered while discussing density is not only the acreage, but also the number of occupants, to prevent overcrowding. McGhee asked how many residents would be living on the site and whether there is enough parking to accommodate the occupants. Hollis replied the total number of bedrooms count would be 11 and there is enough existing parking for the residents. Hollis said if the ZBA thought it was fair to grant the variance with a condition that the total number of bedrooms may not exceed 11, this would eliminate any expansion and/or renovation to add bedrooms. West asked if there would be any increase to impervious surface coverage. Hollis replied no, and that the impervious surface would actually be reduced because of the removal of the 7 structures. West asked if there would be any more asphalt installed on the property. Hollis replied no, and a condition of approval could be imposed if granted. Tsao asked is the new structure smaller than the pavilion. Hollis replied yes. Moseley asked when the lakefront dwellings being removed were last occupied. Hollis replied he was not sure, but that they have not been occupied since Lorden purchased the property.

Mason asked how many structures the new septic design would accommodate. Hollis replied the new approved septic design would accommodate the new structure and 2 of the studio cottages, and the old septic system would be taken offline.

Mason asked if the septic systems for the other dwellings are up to current codes. Hollis replied they are currently working and is unaware of any citations against them. Hollis asked Lorden for conformation of his statement. Lorden agreed. Mason stated the previous application noted 7 seasonal cottages and the existing 5 dwelling has 12 bedrooms. Why would the pervious application

have different counts than the current proposal? Hollis replied the correct count of bedrooms is 11, including the new dwelling, and the number of seasonal cottages being removed is 6. Belanger asked if the past application was for the removal of the pavilion and the construction of a duplex. Hollis replied yes. Mason asked what the 2 other structures noted on the plan were, and whether would they remain on the property. Hollis replied that the two structures are storage buildings and would remain on the site.

Major said the application is basically requesting an increase in density in an area which has a high density problem currently. Major understood the argument that the character of the neighborhood is currently dense in its nature. The purpose of the ordinance on density is to prevent overcrowding and asked how the ZBA can find a hardship when in the principal behind density is two acre zoning. Hollis replied the hardship criteria is measured in two parts. The first, whether there are special conditions on the lot, and here the lot is unusual and has several other things that the others do not. Secondly, you evaluate the special conditions of the lot and decide if there is a fair and substantial relationship to the purpose of the ordinance, as applied to this lot. The purpose of the ordinance is to not have nonconformity. The law recognizes the need to have some relief, and the relief valve is whether there is no fair and substantial relationship. Otherwise, you would not be granting variances for anything because the ordinance would be the law with no exceptions. The parcel is unique because there are already existing nonconforming number of structures and uses, and that most of surrounding lots do not comply with the 2 acre zoning requirement. The ordinance really applies to raw land and should not apply to this parcel since it is unique in so many ways. Major asked if the property is naturally working its way into conformity. Hollis agreed, but said if the application is approved, the lot would become less nonconforming than what exists presently.

### **In favor of the application**

Bill DeSell was instructed to call in by phone since the Zoom connection was not working properly.

### **Comments on the application from abutters**

Beth & Lee Harper, 57 Federal Hill Rd

Harper was not in favor or against the proposal, but favors the removal of the structures if a condition was imposed to do so and that the addition of a new septic is a positive. Adding a 1 bedroom cottage is not an unreasonable request by the property owner since he will be bringing the area up to a different standard. The current application is significantly better than any previous applications.

### **Against the application**

Barbara Davis, 16 Federal Hill Rd.

Davis said she was against the application because it would endanger the health, welfare and safety of the area. There has already been a development approved up on Federal Hill Road which has approximately 54 trucks per day which impacted the neighborhood. This application during construction will be extremely noisy and poses a threat to children while they are waiting for the school bus. The use of the property has been working. Lorden has enough tenants and the only reason for the application is to make a lot of money. Silver Lake also has a pollution problem and has tested positive for E-coli, which closed Wallace's Grove and the State park. Silver Lake also flows into Dunkley Pond which flows into the Pennichuck Water Works which services Nashua's water. The ZBA should consider the environmental issues with Silver Lake and should not approve the application which will make the environmental issues worse. Davis also voiced a concern with the applicant's attorney bullying a ZBA member to recuse himself from the case.

Lawrence Tobiason, 38 Silver Hill Park

Tobiason was participating via Zoom. Major read the letter submitted by Tobiason received 5/22/2020.

Dear Board of Adjustment Chairperson and members:

I am sorry I may not be able to attend the Zoom meeting due to multiple hospital visits including Covid-19.

Overview:

Silver Lake is one of three lakes/ponds in Hollis @ 39 acres. The distinction it has it is the deepest @24' & the smallest. It suffers closures or warnings be NES due to Cyanobacteria for weeks each time. It was closed at least (2) times in 2017, 1 time 2018, & 2 times in 2019. For those who still use their camps seasonally this has been very disappointing when one wants to enjoy the

swimming, water sports and family events as I & my family have been doing since I was 6 years old (1943). Yes, it also now has an abundance of nuisance lake weed.

To the above through you Mr. Chairman I would like to know from the Applicant:

- Has the location and method of disposal for each of the (5) remaining buildings been indicated with the submittals for this hearing?
- If not, will this be available before the ZBA makes their determination? If not, why not?
- Is the water source indicated on current drawings submitted? Can this be done also as bullet above?

To the Case ZBA 2020-003

The applicant is proposing an expansion from 5 existing year around use to 6 where current zoning requirements only allow (2) per acre. It now has all 5-existing nonconforming in that they are not 100' from the lake, scenic road Federal Hill RD. and the stream. As stated in the overview the disposal, wastewater, and water sources are unknown to the writer. Does the Applicant propose to bring the existing 5 houses water sources and sanitary wastes that meet NH existing standards? Aren't these important to this discussion? Why would the ZBA further increase the density around this side of the lake when there are holding tanks and a mix of older waste disposal means that have certainly changed when the use of these seasonal cabins to what is now year around homes? The Applicant certainly knew when he purchased the property that abandoned for 2 years the building has no standing to be converted into a new nonconforming use. It speaks to the argument if I had on my land an existing barn could I convert it into another house? Citing the Pavilion, aka Dance Hall, a seasonable building, as a bona fide reason to assume a year around house could take its place is unreasonable.

To the Case ZBA 2020-004

The current zoning requires (2) acres in order to build an apartment or a single dwell unit on this lot. The current (5) reduces the amount of land per dwelling unit to .98 of an acre & the Applicant's request to drop it even further from the (2) acres required to .81 acres. This by its nature further increases the density on that lot and on that side of the lake which has more than 25 dwellings now while the opposite side of the lake has 10. Why would it be in the Towns or neighborhoods best interest to further erode the lot that is more than 50% or 100% out of compliance when considering (1) lot (1) dwelling with current Zoning. One would think allowing further density puts even more burden on the lake that now, at dates cited above, has man caused cyanobacteria, a health threat for many people & so posted.

To the Case ZBA 2020-005

The current use of Lot 024 is now occupied by (5) dwelling units and a (6th) is requested by the Applicant. The addition of a (6th) dwelling when only (1) is allowed on a single lot in current Zoning. This addition violates the spirit of the ordinance and further makes this addition further from the intent of the density of a single lot where (4) already violate this requirement.

Why would it be in the neighborhood or Town's best interest to allow further erosion of this requirement?

Summary:

I feel that approving any of the above requests is not in the keeping with the intent of the current zoning and asks the neighborhood to accept further noncompliance on this site. Any proposed building a new dwelling on this lot should require the Applicant to remove a current nonconforming structure, in my opinion. The most obvious is the dwelling, #9 on former plan, beside the edge of the beach which is approximately 20 feet+- from the water's edge where 100 feet is required.

The second most egregious dwelling is that backed up to Federal Hill Rd. to the left of the entrance to the property.

In my opinion if the Applicant were to remove a noncompliant building, he might be encouraged to build a new conforming building of the same square footage which would be reasonable also in my opinion.

Are all of the cabins removed by the Applicant in this request? Former outhouse? Wastewater disposal systems?

I did not receive the location and plot plans of these above proposals and wonder if:

- The current pavilion is removed.
- The location of the proposed (6th) dwelling is it located 100' from lake, 100' from Federal Hill Rd and 100' feet from the stream? If not, why not?
- What is the status of the Applicant's filing with NH Dept. Environmental Services. RSA 483-B?

The Applicant was aware when he purchased this property that every dwelling, cabin, the Pavilion & other structures were noncompliant with current code. It should be no shock to the Applicant that no further nonconforming buildings be constructed on this lot. I don't see where the neighborhood still has to be confronted with even more density and why the current cabins have not been removed. No good faith effort on the behalf of the Applicant has been shown during this process.

Further to Summary:

- In all three cases the Spirit of the ordinance is not observed.

- The variances I don't think are in the public interest and further erodes gains sought to lessen the burden on the land and density.
- Given all the above I don't think the proposals for variances are reasonable

One would have thought that the Applicant would want his name associated with this property to be a vast improvement and an asset to the Town and neighborhood and thus his legacy as a professional. It appears just the contrary & it worries me.

Tobiason said the existing building was for seasonal use and the proposed is full time. The other issue with the proposal is that the new structure is within 100' from the lake which makes the building nonconforming. The whole purpose of the ordinance is to lessen density. Whether or not the new application is better than the existing conditions should not be considered since the lot is already nonconforming with 5 dwelling units. Another dwelling unit should not be approved unless it conforms to the current zoning ordinance. Also, the current owner knew what he bought ahead of time and should not be able to expand. The previous application discussions and minutes also pointed out a 5 dwelling unit count would most likely be approved.

### **In favor of the Application**

#### **Bill DeSelle, 10 Federal Hill Rd**

DeSelle said he and his wife are in favor of the application. The Grove has been deteriorating for many years, and if the 6 lakefront cottages were taken down, it would improve the view of Silver Lake. The proposal is a better alternative than the current situation of the property.

### **Comments on the application from abutters**

#### **Brian Stoughton, 43 Federal Hill Rd.**

Stoughton asked if the application was approved how the removal of the 6 cottages would be enforced. Major replied there could be a condition of approval imposed. However, the plan submitted showed the 6 cottages which abut the lake and the pavilion being removed; and if approved, whatever was within the application would be enforced if the ZBA does not impose a formal condition of approval. The Stoughton's concerns were the additional bedroom being added and its effect on the lake. That concern was somewhat alleviated since the proposal included the removal of 7 structures. However, there is a concern of additional run-off during construction. The proposal if approved, should address additional run-off from the site.

### **Against the application**

#### **Beth Harper, 57 Federal Hill Rd.**

Harper said if approved, the new structure should not encroach on the setback requirements of the lake and asked how the removal of the existing structures would be managed to avoid any EPA issues. Major said his understanding of the plan was that the new building would be 100' from the lake and the proposal complies with the shoreland protection regulations.

### **Applicant Rebuttal**

Hollis said Meridian Land Services, the designers of the proposal, stated the project does comply with the Shoreland Protection Act. If the plan did not comply, a building permit would not be issued; and the ultimate determination is made by the town. The property owner is not asking for relief from these requirements, and is basing that decision on Meridian's interpretation being correct. McGhee asked how many feet the new structure is setback from the lake. Hollis replied the structure is over 50' from the lake; however, he is unaware of the exact measurement.

The ZBA members reviewed the plan, discussed the lake setbacks and determined the new structure seems to be positioned 50' feet from the lake, instead of the required 100'. Hollis said Meridian's interpretation was that the structure was within the footprint of the existing structure, and the 100' setback requirement was not required. Hollis said if approved, a condition could be imposed that the new structure must be in accordance to the state and local setback requirements. Major asked whether the application requires Planning Board approval. Hollis replied he believes so. Major said the applicant is not asking for any relief from wetlands or surface water setback requirements. Hollis agreed.

Hollis said in reply to the other concerns from the abutters, the area in question was all gravel so the excavation of the 816 square foot foundation would not have a great deal of truck traffic. The concerns mentioned for the health, safety and welfare had been

addressed earlier. The construction of a new septic system which would serve the new dwelling and two additional units would greatly improve the site. Also, knowing that fertilizers used around the lake adversely affect the lake, and with new construction comes the planting of grass. If the ZBA had concerns of run-off from the site, a condition of approval could be imposed that no fertilizers would be used on the new area or the whole lot.

**Against the application**

Barbara Davis, 16 Federal Hill Rd.

Davis said she has a health condition, and if the project is approved it would impact her health.

**Comments and questions from the ZBA**

Swerchesky said he believes that the state has regulation on fertilizer use. Mason asked if the pavilion was ever used as a residence. Hollis asked Lorden. Lorden could not answer the question.

**Against the application**

Lawrence Tobiason, 38 Silver Hill Park

Tobiason asked what the conditions of the current septic systems were. Meridian replied at previous meeting that they are safe because they have not failed. The other systems may not be compliant and should be checked since this is a new application.

**Questions from the ZBA**

Tsao asked if the septic systems servicing the other dwellings were inspected. Hollis replied no. Belanger said the septic systems should be tested prior to construction.

**No further questions from the board and none via “Zoom” – hearing portion of the case closed.**

The ZBA recessed at 9:10 pm.

Reconvened at 9:15 pm

**Case ZBA 2020-004**

The application was tabled on April 23, 2020 and continued to May 28, 2020 - The application of Raymond Lorden, property owner, for a Variance to Section XF Recreational Zone, Paragraph 3a Minimum Lot Area, of the Zoning Ordinance to allow a lot area of .82 per dwelling unit where .98 per dwelling unit exists and 2 acres per dwelling unit is required, located at 11 Federal Hill Rd., Map 059, Lot 024 in the Recreational Zone.

The testimony from Case 2020-003 reflects this application as well.

**Case ZBA 2020-005**

The application was tabled on April 23, 2020 and continued to May 28, 2020 - The application of Raymond Lorden, property owner, for a Variance to Section IX General Provisions, Paragraph J, Number of Residential Units which may be constructed on a lot, of the Zoning Ordinance to construct a single family home on a lot where 5 dwelling units currently exist, located at 11 Federal Hill Rd., Map 059, Lot 024 in the Recreational Zone.

The testimony from Case 2020-003 reflects this application as well.

**Case ZBA 2020-007**

The application of John Halvatzes, property owner, for a Variance to Section XG, Residential/Agricultural Zone, Paragraph G4, Minimum Frontage on a Public Road, to construct a single family home on a lot with 128.51 feet of frontage (required 200 feet), located on Broad St., Map 026, Lot 048, in the Residential/Agricultural Zone.

Major asked Hollis under Fisher v. Dover what makes this application substantially different then the past applications which were denied and notified Hollis that McMillan would be voting on this case. Hollis replied the applicant previously came before the ZBA for this property requesting 2 variances. The first variance was requesting relief from the minimum lot area since the lot was 1.69 acres where 2 acres are required. The second variance was requesting relief from the frontage requirement because the lot



had 112' where 200' are required. Both cases were denied by the ZBA.

The case was brought before the Superior court and during the mediation process, the applicant was asked to try to purchase land from an abutter to obtain 2 acres and the required frontage. The applicant attempted to purchase land so the 2 acres requirement could be obtained. However, the land to be purchased still does not meet the 200' frontage requirement. The current request is only asking for a variance of from the 200' frontage requirement.

Major asked if any ZBA member feels the application is not substantially different than the previous applications and should not be heard. Mason said the application has superficial similarity to one of the prior applications; however, with the acquisition of the property to enlarge the frontage, the application is substantial different. MacMillan asked if there was a purchase and sales agreement contingent on obtaining ZBA and Planning Board (PB) approvals. Hollis replied yes.

*Major moves the application is substantially different from the previous applications and should be heard.*

*Tsao seconded.*

*A roll call vote was taken, and the results were of follows:*

*Major- Yes Belanger – Yes MacMillan – Yes Tsao- Yes Mason – Yes*

*The motion passed unanimously.*

Hollis presented Case 2020-007 on behalf of John Halvatzes. Hollis explained the variance is requesting relief from the 200' frontage requirement. Hollis showed the ZBA exhibits which included the current lot, aerial views and what the lot would look like after the purchase of the additional land. Once the purchase of the additional land is completed, the parcel would be increased to 2.10 acres. The exhibits also showed an approved septic design and the placement of an agricultural barn.

The only use approved for the current lot is agricultural such as a barn, livestock or farming. The new plan obtained a state driveway permit which would eliminate the potential for a second driveway to access the back of the property. The current lot is a result of prior subdivisions. Hollis also provided a letter from an independent real estate agent which was presented to the ZBA in the prior case. The prior case had less frontage and less acreage, and the letter stated there would be no adverse effect on the surrounding properties. Hollis said the agent was not hired to review the current application since the current application is only asking for relief from the frontage requirement.

Hollis said the application is not contrary to the public interest because the proposed use of a single family residence with a single driveway is a permitted use in the district. The surrounding area consists of all single family homes so, the proposal is not out of character. However, even with obtaining the additional land, the parcel has 128.5' of frontage where 200' is required. There are 3 other lots in the area with less than 200' of frontage. The essential character of the neighborhood is residential, and the proposed variance if granted, would not alter character of the neighborhood. As a condition of approval if granted, the proposed home would be no closer than 100' from the road which is consistent with the neighboring homes.

The driveway permit obtained was limited to agricultural use, but it could be changed to a residential use since the NH Department of Public Works already established that there was sufficient site distance. There would be no threat to the health, safety or welfare in allowing the proposed variance.

The spirit of the frontage ordinance is to make sure there is adequate distance between homes and to achieve adequate distance between driveways. By acquiring the property, one of the potential driveways would be eliminated. In fact, if the variance is approved, there would be only one driveway on the parcel.

Substantial justice is done by determining whether the public is harmed if the variance is granted. If so, does the harm outweigh the gain to the applicant? Hollis said there would be harm if the proposed house was 50' from the road. However, the parcel is narrow and widens towards the back. The home would be placed 100' back and will maintain the current side setback requirements. A septic design has obtained approval. Whatever the harm may be does not outweigh the gain to the applicant.

The proposal will not adversely affect property values. The proposed single family home will have 2 acres, if approved by the ZBA and PB.

Special conditions of the property are that the parcel exists, and is a lot of record in some way. All of the land surrounding the parcel has approved subdivisions. The subject parcel is called a remainder lot, which does not give the right to build on it. The lot is simply a lot, which does not meet the criteria for a buildable lot. After intensive research, Hollis could not find how the lot was created. The property had been taxed at full value for many years and the applicant applied for and received an abatement due to the fact the lot was unbuildable.

Owning to the special conditions of the property, the property cannot be used reasonably in conformance to the ordinance. The parcel does not have the required frontage, so a variance is necessary for reasonable use. While there is a reasonable use being agricultural, Hollis feels an agricultural use is not reasonable since the property has a lot of wetlands in the rear and is a small lot for farming. The applicant has attempted to purchase additional land to conform to the frontage requirement, but additional land is not obtainable. By siting the home 100' back from the road, the proposal is meeting the intent of the ordinance.

Mason said the building box in the proposed plan does not meet the 100' wetlands setback. Hollis replied that Meridian completed the plan and Meridian assured Hollis that the plan meets the zoning requirements. MacMillan asked whether the independent real estate agent was involved with any portion of the real estate transaction. Hollis replied no. MacMillan said the property has been taxed as raw land since 1985. Hollis agreed. MacMillan said during the previous hearing, it was stated there are many parcels in Hollis which are unbuildable. MacMillan's concern is creating buildable lots via a variance and setting a precedence throughout the town. Hollis replied each variance application must be determined individually, and here, the applicant does not have any reasonable use of the property. When a parcel is restricted by an ordinance from which it can obtain relief, the ZBA determines whether or not the proposal is fair. The parcel is unusual in shape and somehow the lot was created and was allowed to be created. MacMillan asked whether the applicant knows that without the correct amount of frontage, the applicant would need 4 acres to create a back lot. Hollis agreed however, the variance sought is for relief from the frontage requirement. MacMillan said the public interest is expressed in the zoning ordinance when an application is requesting a 70' exception from the frontage requirement and the parcel is not a lot of record and is not taxed as a lot of record for 30 years. The application is not in the public interest in MacMillan's opinion.

Swerchesky agreed with Mason that it appears the building area box is not 100' away from the wetlands setback. It also appears that the building box encroaches on the setback requirements of 35' on both sides. The building box area is required to meet any setbacks requirement per the zoning ordinance. Swerchesky asked if a variance request would be required for a building box area which does not conform to the ordinance. The ZBA had a conversation concerning the building box area and determined the submitted plan as presented looks like it does not meet the requirements. Hollis said the building box may change and was not prepared to answer questions concerning the building box. Hollis respected the ZBA's determination.

Major said the variance should not be granted when there may be other issues concerning the proposal which may need additional relief. Hollis asked whether if = the case could be tabled so the engineer could address the open questions. The ZBA agreed.

John Halvatzes, property owner, addressed the ZBA. The town has an approved septic plan showing the 40' x 60' barn which conformed to the setbacks. Hollis told Halvatzes the question concerning the building box needs to be resolved and the case should be tabled.

*MacMillan moves to table case 2020-007 until the June 25, 2020 ZBA meeting.*

*Mason seconded.*

*A roll call vote was taken, and the results were of follows:*

*Major- Yes Belanger – No MacMillan – Yes Tsao- Yes Mason – Yes*

*The motion passed 4 to 1.*

Major, McGee and West recused themselves from Case 2020-008.

Belanger assumed the chair.

#### **Case ZBA 2020-008**

Application of Katherine Kinnane for an Appeal from an Administrative Decision, for the determination made by the building inspector that a complaint located at 262 South Merrimack Rd. concerning a fence was a civil matter and not enforceable by the Town of Hollis. (CODE 2020-007) property owned by Mark & Cindy Tucker, Map 047, Lot 028, in the Residential/Agricultural Zone.

Belanger said there are two issues with the application, the first being whether the ZBA has jurisdiction to hear the case Secondly, if the determination is made the ZBA does have jurisdiction, then the case would proceed to the reason why the applicant thinks the administrative decision was made in error.

Belanger asked Kinnane why she thinks the ZBA should hear the case. Kinnane replied there are two aspects of the complaint. The first concern is signage and the second is the division fence. Mr. Condra, the Hollis Building Inspector, said that fences are not considered structures in the town ordinances, and there was no enforceable action the town could take. Kinnane said that several ordinances state differently, and fences are regulated as they pertain to screening, and that this was why she recommended that the Planning Board attend the meeting. As far as the division fence, the record of agreement for the division fence was not

established prior to the installation. In an email from the Tuckers dated April 10, they admitted they could not get on the other side of the fence to maintain it.

Regarding the sign ordinance and prohibited signs - when the complaint was filed, there was a spray painted "no trespassing" sign located on the division fence, which has since been removed and replaced with another no trespassing sign. The signage is not within the nature of the town's master plan and is not consistent with the proper manner of posting. Kinnane's opinion was the signage was directed towards her personally.

Belanger said the board needs to decide if the ZBA has jurisdiction in this matter or whether it is a civil matter that should be referred to a civil court. Kinnane said there are ordinances regarding signage and ordinances which state that fences are regulated. Belanger asked the members whether or not they think the fence was constructed legally or not according to the ordinances. If the fence was created legally, the case is a civil matter. Kinnane said the determination that a fence was not a structure goes against State and Federal regulations because the fence can be a deeded item and it is an item which is insurable. Belanger understood that the fence was not on the property line. Kinnane said due to the lack of ordinances and the uniqueness of the situation, Condra was unable to determine whether or not the fence was on the property line. Due to the fact, the town has not established how far a fence could be from the property line. MacMillan asked whether the boundary line has been established. Kinnane replied yes that Meridian completed a survey and found that fence was between .02 – .09 feet inside the property and is not over the property line. The concern is that the Tuckers cannot maintain the fence.

MacMillan's opinion was the case is a civil matter and investigation was completed by Condra and the issues comply with the ordinances. Mosely agreed and asked if Condra could voice his opinion. Condra replied because of the definitions within the zoning ordinances stating that fences are exempt. Kinnane said the ordinances may suggest that fences are not structures, and therefore not regulated. Belanger asked for the ZBA's opinion if the ZBA should in fact hear the case. Belanger, Tsao, MacMillan, Mason and Mosely agreed the case was a civil matter and should not be heard.

*MacMillan moves the ZBA has determined the case a civil matter and the ZBA has no jurisdiction to hear the case.*

*Tsao Seconded.*

*A roll call vote was taken, and the results were of follows:*

*Belanger- Yes Tsao- Yes MacMillan – Yes Mason- Yes Moseley – Yes*

*Motion unanimously approved.*

## **DELIBERATIONS AND DECISION**

### **Case ZBA 2020-003**

The application was tabled on April 23, 2020 and continued to May 28, 2020. - The application of Raymond Lorden, property owner, for a Variance to Section XII Nonconforming Uses, Structures and Lots, Paragraph A.3, Nonconforming Uses, Alterations of the Zoning Ordinance to permit the expansion of a nonconforming use of 5 single family dwelling units on a single lot to six single family dwelling units. (1 single or 1 two family dwelling is permitted), located at 11 Federal Hill Rd., Map 059, Lot 024 in the Recreational Zone.

Belanger was in favor of the application because the property is not up to par as far as what the town expects. The hardship on the property is allowing it to remain in its current make up. The application is attempting to make the parcel compatible to neighboring properties. The change is necessary for the property to be feasible as a residential property. There was a lot of comments on polluting the lake. The application is requesting 6 residential units which seems less intense than having 50 lake visitors using the lake and bathrooms. There are items the ZBA could consider which would limit the effects to the lake such as the use of fertilizers, making sure the proposal complies with State and local setback requirements, that the design is limited to what was presented and a condition that the parcel is limited to only residential use and not have the ability to be changed back to a recreational use. West was in favor of the variance. Density is always on issue however, the removal of the six structures along the lake and the reduction of impervious surface coverage will in fact, benefit the lake. The additional 1 bedroom unit would likely not be a family home. The town residents have accepted there is a need for small residential units. Major said the cottage would be rented and not marketed for sale. West agreed, but said a family would likely not be renting the unit. Swerchesky said the proposal is an overall improvement of the parcel and would benefit the preservation of the lake. The proposal is not overcrowding the lot seeing that the neighboring lots are smaller and more crowded. The proposal is not detrimental to the neighborhood and will probably increase the values of the surrounding homes. McGhee said the prior plans submitted for a duplex and for condominiums density was an issue. This proposal is to remove the old structures and only construct a 1 bedroom cottage really does not increase the density that much. If approved with proper conditions and the new structure meets the required State and local setbacks, the proposal is reasonable and would actually make the parcel less nonconforming. Mason said the increase in density from 5 units to 6 is

relatively small. The surrounding lots are small with a higher density. The harm to the public is constructing a single family home within a 100' from the lake. A condition that should be considered is the new structure has to be at least 100' from the lake. The good to the public would be the new septic system and removing the old structures. Mason was in favor of the application. Moseley was in favor, pending the condition of the shoreline setback of 100' be imposed. The application would improve the site. Tsao was in favor of the application as long as the project conforms to State and local regulations. The current application is less intense than the previous application. Major said there is a quid-pro-quo as long as the town benefits from an application. The nonconformity of the lot is slowly going away. At some point the cottages will be removed due to the fact, they would not be viable to maintain at some point. The current application is substantially better than prior application. However, hardship becomes an issue for Major. Currently there are 5 units which is denser than allowed by the ordinance. If the variance is denied the applicant would still have the same virtual use of the property. He asked whether a hardship can be found when the reason for the density requirement of the ordinance was designed prevent overcrowding of buildings, and prevent septic and public safety problems. Applying the ordinance to the parcel there seems to be a fair and substantial relationship between the application and the parcel. Major said someone could remove the lake front cottages and possible subdivide the lot and construct 2 single family homes. How can the hardship be found with this application? Mason said the argument made during testimony was that the special conditions of the property was it is a 4.9 acre lot surrounded by smaller lots. Belanger said the hardship on the property is allowing the parcel to remain in the current make-up. The application is an attempt to make the parcel compatible with neighboring properties. The change is necessary to make it feasible as residential property. The hardship to the parcel could be that the ordinance does not allow any expansion of the nonconforming use. Major said he does not disagree; however, the property has a feasible use with 5 units.

McGhee said would it be reasonable for anyone who acquires the property and wishes to make material improvements without having the ability to do so with the exception of removing the structures on the lake. It seems the property is unique due to the location, condition of the pavilion, size of the lot and the amount of improvements which would be necessary to provide a reasonable use. The current proposal would have a lesser impact than the previous applications. Major agrees the proposal is reasonable. The major concern is granting a variance to a parcel which has 5 rental units on a 4.9 acre parcel. Swerchesky said due to the amount of setback requirements on the lot it would be difficult to construct 2 single family homes. Major said the board has had conversions in the past and realized that a building box area variance would be easier to grant. The purpose of the building box is to prevent odd shaped lots. The lot could be subdivided into 2 lots with a building box variance. West said what makes this lot unique is there are many structures existing. McGhee said another special condition of the lot is there are current residents living on the lot. The proposal is not to displace the current residents it is really asking for the removal of the structure and replace them with a 1 bedroom cottage. Major said the property could be left in its current state. McGhee said if granted at least the parcel would become less nonconforming and have a new septic and the remaining septic systems would be evaluated for compliance. The application could improve the current conditions of Silver Lake and it would also address the concerns from several abutters had about the remaining septic systems. Major said the new septic system would only impact the new structure and 2 of the cottages which will be tied into the new system. There would be 3 existing structures which may have older septic systems. Mason said a condition of approval should be the other existing septic systems on site should be inspected for compliance and replaced if required.

Major said since the ZBA is considering granting the variance there needs to be findings-of-facts and conditions imposed on the application. Belanger said a finding-of-fact to consider is the hardship on the property is allowing it to remain in the current condition and attempt to make it compatible with neighboring properties. The change is necessary for this property to be feasible as a residential property. Major disagrees. Mason asked why the property cannot remain as is. Belanger replied the property is in disrepair and is in need of improvement. Tsao said the trade-off is that 6 structures are being removed and one small cottage put on site in their place. Major asked what is unique about the property since the 6 structures would be coming down in one way or another since they are abandoned. West said the 6 cottages are lakefront, and if they were to fall into the lake that could create substantially harm to the lake and environment. Major said eventually the structures would pose a safety hazard and the property owner would be forced to remove them prior to any major environmental concerns. The property is unique in some ways. It is a large parcel with 5 existing buildings located in an area of town where most if not all, of the neighboring structures are on substandard lots. Mason agreed with Major's finding of fact. The board may also consider a finding that there are a number of lots near by which are smaller in terms of density.

Setaro read Belanger's previous proposed finding of fact. The hardship on this property is allowing it to remain in the current condition and attempt to make it compatible with the neighboring properties. The change is necessary for this property to be feasible as a residential property. Major feels the finding is not specific enough to find a hardship because it does not deal with the unique nature of the parcel. If granted, the case needs to be defensible with findings in case of an appeal.

McGhee said the hardship to the parcel is uniqueness since the present and/or historic uses are not compatible with the current zoning ordinances. The dilapidated structures are not in keeping with the neighborhood. The proposal is a way to make the

property less nonconforming, and it is in the interest of protecting the lake with the new septic system and the evaluation of the existing ones.

The ZBA discussed potential finding-of-fact and started discussing conditions of approval, however, it did not officially vote on any of either.

Potential finding-of-fact discussed;

- The board finds that the proposed addition of a 1 bedroom dwelling unit does not significantly impact the present or historic density of use on the current parcel.
- The board finds that this parcel is a large waterfront lot of 4.9 acres surrounded by several nonconforming waterfront lots.
- The board finds that the parcel contains 6 dilapidated building whose historic use no longer conforms with existing ordinances.
- The historic use of this property is no longer acceptable and major changes are mandatory.

Potential conditions discussed;

- Existing septic systems shall be inspected to insure they meet all state and local regulations.
- The new structure shall conform to state and local setback requirements.
- All structure shall be removed prior to commencing construction of the new unit.

Dawn Desaulniers, the Town's IT employee, told Major the Hollis live stream will shut down at 11:30 pm.

Major said it was obvious the deliberative session will not be completed before live stream goes off the air.

Major asked the board to draft potential findings-of-fact and conditions and circulate them for discussion at a future meeting.

Major asked Setaro what date could a second ZBA meeting be scheduled for continued deliberations. Setaro replied June 10, 2020. The members agreed.

*Belanger moves to continue the deliberative session for ZBA Cases 2020-003, 2020-004 and 2020-005 to Wednesday June 10, 2020 at 7:00 pm.*

*Mason Seconded.*

*Motion unanimously approved.*

Meeting adjourned at 11:30 pm.

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

#### **Other Business**

#### **Review of Minutes**

April 23, 2020

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