



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

Minutes of June 25, 2020

Meeting was held via zoom and was called to order by Chairman Brian Major at 7:05 pm.

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. The public is encouraged to listen and/or participate via Zoom.

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 –Bill Moseley, Meredith West.

Major explained the policies and procedures.

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

ZBA Case 2020-009: Major, Belanger, Tsao, MacMillan and Mason

ZBA Case 2020-010: Major, Belanger, Tsao, MacMillan and Mason

Case ZBA 2020-006

The application of Residents Funding the indoor range, for an Appeal from an Administrative Decision for the issuance of a Certificate of Occupancy for the indoor range, property owned by Lone Pine Hunters Club, located at 67 Lone Pine Ln., Map 015, Lot 071 in the Residential/Agricultural Zone.

Major said a request was received from Attorney Thomas Hildreth representing Residents Funding the Indoor Range, to table Case 2020-006 to the July 23, 2020 ZBA meeting. Attorney Morgan Hollis representing Lone Pine Hunters Club (LPHC) supported the continuance request.

Belanger moves to table Case2020-006 to the July 23, 2020 ZBA meeting.

MacMillan seconded.

Motion unanimously approved.

Case ZBA 2020-007

The application was tabled until the June 25, 2020 meeting -The application of John Halvatzes, property owner, for a Variance to Section XG, Residential/Agricultural Zone, Paragraph G4, Minimum Frontage on a Public Road, of the Zoning Ordinance 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 said a letter was received from Attorney Morgan Hollis representing John Halvatzes to table Case 2020-007 to the July 23, 2020 ZBA meeting.

MacMillan moves to table Case2020-006 to the July 23, 2020 ZBA meeting.

Belanger seconded.

Motion unanimously approved.

Case ZBA 2020-009

The application of Bennett Chandler Design & Construction, for an Equitable Waiver to Section XG, Residential/Agricultural Zone, Paragraph G4, Minimum Front Yard Depth, of the Zoning Ordinance to allow an existing structure to be situated 42.5' from the front lot line where 50 feet is required, property owner by Michael & Lisa Schwarm, located at 15 Dalkeith Rd., Map 009, Lot 014 in the Residential Agricultural Zone.

The ZBA had determined by a unanimous vote that case 2020-009 has no regional impact.

Tom Carr, Meridian Land Services, presented Case 2020-009 on behalf of the property owner. Bennett Chandler, property owner was also present via zoom to answer any questions. Carr said the application is seeking a dimensional relief by the way of an equitable waiver. Upon surveying the lot for a certified plot plan, it was discovered that the house was situated 42.5' from the front setback where 50' is required.

Carr said the project was assigned to Dan Meeden. Meeden apparently had offset the property lines by 35' on all sides, but neglected to offset the front setback to the right-of-way line by 50'. The plan was reviewed by Carr, Meeden and Chandler and no one noticed that the front setback was 35'. The plan went to the Town for approval where it was reviewed by T. Mercurio and the planning staff prior to submission to the State of NH for final construction approval. Ultimately, the septic design was approved. The approved septic plan was submitted with the building permit application and a building permit was issued. Subsequent foundation inspections were then conducted with no enforcement actions or modification. Once the porches and decks were added to the home Chandler requested a certified plot plan and at that time the error was caught. Therefore, a series of mistakes by multiple persons, companies and departments have brought us to the equitable waiver request. Unfortunately, the mislabeled septic design wasn't discovered until after the as-built survey work was performed in preparation for a certificate of occupancy.

The site is located at the cul-de-sac portion of Dalkeith Road and appears to conform to the building setback dimension so it doesn't constitute a nuisance, diminish the value or interfere with the future uses of the other properties in the area. The cost to remove a nearly completed home far outweighs any benefit to be gained by the public, because the building isn't perceived as being situated within the front setback.

Major asked what the cost would be to correct the issue. Chandler replied the cost would be over 1 million dollars, the house would have to be taken down. Belanger asked when was the house built. Chandler replied September 2019 the home was started. Belanger asked when was the encroachment discovered. Chandler replied May 2020. Belanger asked was the home the permanent home of Chandler's. Chandler replied no, the home is being constructed for Michael and Lisa Schwarm. Belanger asked would the home be the Schwarm's permanent residence. Chandler replied yes. Belanger asked was the home occupied currently. Chandler replied no the home should be completed by the end of July 2020.

Moseley asked Carr will Meridian be putting in place a procedure to prevent the error from reoccurring. Carr said he takes responsibility for the error and Meridian will be more diligent when reviewing plans and checking current setback requirements for individual roads and measuring the setbacks on the plan prior to submission. Carr apologized for the error and said this is the first equitable waiver for a setback violation which occurred on his watch.

Major asked what was in the center of the cul-de-sac. Chandler replied woods. Major asked how wide the right-of-way was for Dalkeith Road. Carr replied 50' and some portions of the cul-de-sac the width is wider. Major asked if the house was more than 50' from the road. Carr replied yes.

Major asked if anyone wanted to speak in favor or against the application.

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

Case ZBA2020-010

The application of Black Dog Builders, for a Special Exception to Section IX, General Provisions, Paragraph K, Accessory Dwelling Unit, of the Zoning Ordinance to construct a 772 square foot Accessory Dwelling Unit, property owned by Rimdress MacDonald, located at 54 Federal Hill Road, Map 061, Lot 001 in the Residential Agricultural Zone.

The ZBA had determined by a unanimous vote, case 2020-010 has no regional impact.

Jason Doran, Project Manager Blackdog Builders, presented case 2020-010 on behalf of the property owner. Doran said the property owners are requesting to convert an existing garage and construct a small addition off the rear of the garage. Once the garage conversion and addition are completed the area would be used for a 772 square foot Accessory Dwelling Unit (ADU) and will be occupied by their elderly father. The unit would have a separate entrance towards the rear and has adequate off street parking. The proposed ADU is less than 30% of the total heated existing floor area. The unit has an internal heated wall as shown on the plan. The septic is adequate to handle the increased volume. The ADU can be re-incorporated into the principal dwelling by removing the kitchen and using the area as a family room for the primary dwelling. Doran felt the ADU met all of the ordinance requirements and hopes the ZBA will approve the application.

Major asked for a detailed description of the septic design. Doran replied a new septic design was completed to accommodate the additional bedroom. The new septic design was submitted to the Town and State and approved on June 18, 2020. Belanger asked how the ADU would be heated. Doran replied electric baseboard and a mini spilt AC/ heating system on a separate zone from the primary dwelling. Belanger said shown in one of the supplied pictures was a car being worked on. Belanger asked was the car a personal vehicle and when would the car be repaired and removed. Doran replied once the construction starts the car would be removed. The car is located in the garage which will be converted into the ADU. Belanger asked was there an application pending to construct a garage addition. Doran replied yes but no approvals would be needed from the ZBA since the addition meets the setback requirements. MacMillan asked was the slider located at the rear of the unit to be considered the separate entrance. Doran replied yes. Mason said the plan shows an additional building towards Federal Hill Rd. What was that structure? Doran replied an existing barn. Rimdress MacDonald, property owner, said the additional barn is used for wood working and occasionally used for computer programming since Rimdress works from home. West asked what the total square footage of the existing home was. Doran replied 2,236 square feet. Condra said the application was reviewed by staff and was acceptable.

No one spoke in favor of the application

Against the application

Major read the letter received on June 23, 2020 from Ivo and Kamila Meznik, 48 Federal Hill Rd.

Today, 6/22/20 we got a mail from our PO Box, which included a letter from "Zoning board of Adjustment, Town of Hollis for hearing on Thursday, June 25, 2020. Including: written information prior to the meeting regarding the following matters, must be received no later than June 18, 2020. The letter was posted on 6/15/20, received by Post office on 6/16. We don't go to the Post office every day, because of Coronavirus epidemic. Is this sufficient time to send a notice in the Coronavirus epidemic?

We are living at 48 Federal Hill Rd, next door to the 54 Federal Hill Rd.

We disagree with the Special Exception to Section IX, General Provisions, Paragraph K, of the Zoning Ordinance to construct a 772 square foot Accessory Dwelling Unit - located at 54 Federal Hill Rd. - Case ZBA 2020-010.

There is already a big barn which is being used as a car repair shop and you can see an oil spillage on the driveway next to the barn. We were never notified about their car business. This is a residential area - not a car repair shop.

After our neighbor cleared his land in April 2020, there was noticeable water run off to our property which could not be seen before. We don't want to get sued again (already 2x) by our neighbors #44 Federal Hill Rd (Ann Tucker and Sandy Heinick) because of water issue. What will happen if there would be flash flooding?

This is not a small building 772 sq. feet? It will create even more water run-off.

Is geo thermal well to be used for a new building? This would mean more water run-off to our property? We never got answer from Town about geo thermal well system "Pump and Dump"? was approved. And this what happened to our trees - see attached. (see file for picture)

Where is the leach field located?

We are concern about our property and water well pollution. We have enough problem with water run-off which was diverted by Town from Federal Hill, Keys Hill/pond to our property and situation is getting worse every year. You can see from attached photo how our driveway has cracked right after Keys Hill Rd and collection pond was build. Past 40 years we didn't have this issue.

Meznik was attempting to discuss his letter and concerns via zoom. The ambient noise at Meznik's location was substantial and made it challenging for the ZBA to hear his testimony. Meznik said the primary concern was the run-off during construction and wanted to find out if the ADU was in the barn or the attached garage. Staff and Board members tried several times to assist Meznik with the ambient noise but were unsuccessful. Due to the circumstances, the ZBA was forced to reply primarily on the written letter submitted as testimony.

Applicant Rebuttal

Doran addressed the run off concern. The abutter's lot next door and the proposal is on the other side of his lot on the up side. There will be precautions put in place for water diversion when the foundation is being constructed. The new foundation is only 227 square feet the rest of the foundation is existing.

It was noticed that there were several people on "zoom" which have not participated. Major asked if there was anyone else who wished to speak for or against the application. No one responded.

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

DELIBERATIONS

Case ZBA 2020-009

The discussion of the application of Bennett Chandler Design & Construction, for an Equitable Waiver to Section XG, Residential/Agricultural Zone, Paragraph G4, Minimum Front Yard Depth, of the Zoning Ordinance to allow an existing structure to be situated 42.5' from the front lot line where 50 feet is required, property owner by Michael & Lisa Schwarm, located at 15 Dalkeith Rd., Map 009, Lot 014 in the Residential Agricultural Zone.

The board had no issues or concerns with the application. The setback encroachment was an unfortunate mistake made by several parties.

No further discussion.

Belanger moves for the following findings-of-fact;

1. *The board finds the encroachment into the setback by the newly constructed home was due to a few errors not noticed by inspectors, builders and surveyors.*
2. *The board finds the cost to correct the error is not reasonable and surpasses the construction of the home.*

MacMillan seconded.

Motion approved unanimously.

Questions/Equitable Waiver

The Equitable Waiver is a provision approved by the legislature to address situations where a good faith error was made in the sitting of a building. The board voted on the four criteria as outlined in RSA 674:33-a. and are listed below;

- a. That the violation was not noticed or discovered by any owner, former owner, owner's agent or representative, or municipal official, until after a structure in violation had been substantially completed, or until after a lot or other division of land in violation had been subdivided by conveyance to a bona fide purchaser for value;
- b. That the violation was not an outcome of ignorance of the law or ordinance, failure to inquire, obfuscation, misrepresentation, or bad faith on the part of any owner, owner's agent or representative, but was instead caused by either a good faith error in measurement or calculation made by an owner or owner's agent, or by an error in ordinance interpretation or applicability made by a municipal official in the process of issuing a permit over which that official had authority;
- c. That the physical or dimensional violation does not constitute a public or private nuisance, nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of any such property; and
- d. That due to the degree of past construction or investment made in ignorance of the facts constituting the violation, the cost of correction so far outweighs any public benefit to be gained, that it would be inequitable to require the violation to be corrected.

Board Member	a	b	c	d	Total-Yes	Total-No
Major	Yes	Yes	Yes	Yes	4	0
Belanger	Yes	Yes	Yes	Yes	4	0
Tsao	Yes	Yes	Yes	Yes	4	0
MacMillan	Yes	Yes	Yes	Yes	4	0

Mason	Yes	Yes	Yes	Yes	4	0
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THEREFORE, THE EQUITABLE WAIVER WAS GRANTED WITH THE FOLLOWING FINDINGS-OF-FACT;

1. The board finds the encroachment into the setback by the newly constructed home was due to a few errors not noticed by inspectors, builders and surveyors.
2. The board finds the cost to correct the error is not reasonable and surpasses the construction of the home.

Case ZBA2020-010

The application of Black Dog Builders, for a Special Exception to Section IX, General Provisions, Paragraph K, Accessory Dwelling Unit, of the Zoning Ordinance to construct a 772 square foot Accessory Dwelling Unit, property owned by Rimdress MacDonald, located at 54 Federal Hill Road, Map 061, Lot 001 in the Residential Agricultural Zone.

Belanger addressed Meznik's concerns. The structure would not be using a geo-thermal heating system and the existing barn was being used for personal use and not a car repair shop. The board had no issues or concerns with the application.

No further discussion.

Questions/Special Exception

Question #1 Is the Exception specified in the Ordinance?

Question #2 Are the specified conditions under which the Exception may be granted present?

Question #3 Should the Exception be granted with the specified conditions and restrictions?

Board Member	Question #1	Question #2	Question #3	Total-Yes	Total-No
Major	Yes	Yes	Yes	3	0
Belanger	Yes	Yes	Yes	3	0
Tsao	Yes	Yes	Yes	3	0
MacMillan	Yes	Yes	Yes	3	0
Mason	Yes	Yes	Yes	3	0

THEREFORE, THE SPECIAL EXCEPTION WAS GRANTED.

Review of Minutes

Belanger moves to approve the minutes of May 28, 2020 as amended.

Tsao seconded.

Motion unanimously approved.

Belanger moves to approve the minutes of June 10, 2020 as amended.

Tsao seconded.

Motion unanimously approved with MacMillan abstaining.

Other Business

The board discussed upcoming ZBA meetings and determined board members have the option to attend in person or "zoom". Applicants and/or presenter of a case could attending in person however, all abutters or residents who wish to participate in future meetings would still use the "zoom" platform. The community room has limited space and will be following State of NH recommendations and social distancing.

Meeting adjourned at 8:30 pm.

Respectfully submitted by:

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