ZONING BOARD of ADJUSTMENT
Town of Hollis
Seven Monument Square
Hollis, New Hampshire 03049
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Minutes of July 23, 2020

Meeting was held via Zoom and was called to order by Chairman Brian Major at 7:10 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 –Rick MacMillan and Drew Mason; Alternate Members –Bill Moseley, Meredith West and Stan Swerchesky.

Major explained the policies and procedures.

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

ZBA Case 2020-006: Major, MacMillan, Mason, Moseley and West.
ZBA Case 2020-011: Major, Belanger, MacMillan, Mason and Moseley.
ZBA Case 2020-012: Major, Belanger, MacMillan, Mason and Moseley.

Belanger recused himself from Case 2020-006.

Case ZBA 2020-006
The application was tabled on June 25, 2020 to July 23, 2020, tonight's meeting. The application of Residents Funding the Indoor Range ("RFTIR" or "applicant"), for an Appeal from an Administrative Decision for the issuance of a Certificate of Occupancy for the indoor shooting range, property owned by Lone Pine Hunters Club, located at 67 Lone Pine Ln., Map 015, Lot 071 in the Residential/Agricultural Zone.

Attorney Tom Hildreth represented RFTIR. He stated the case was a process case appealing the certificate of occupancy ("C/O" or "certificate') mistakenly issued by the Code Enforcement Officer/Building Inspector for the indoor shooting range located at the Lone Pine Hunters Club ("LPHC"). Hildreth stated that issuing the C/O was an administrative decision which must be appealed to the ZBA under RSA 674:33.

Major said there are two procedural issues which the ZBA needs to decide. First, whether the applicant's appeal was timely, and second, whether the ZBA has jurisdiction to hear the case. Major asked Hildreth's opinion on these issues. Hildreth replied that his positions are stated in the application. The ZBA needs to determine whether the appeal was timely. The operative standard is appeals must be filed within 30 days from the issuance of the certificate of occupancy or the date on which the applicant learned or should have learned a certificate of occupancy was issued. Hildreth stated the ZBA must listen to the relevant facts and then make a decision on whether the appeal is timely based on the presentation.

Major said Attorney Hollis, LPHC's attorney, submitted his argument essentially asking for a motion to dismiss due to the untimeliness of the appeal. Major asked the board for their opinions on the timeliness of the appeal. Moseley said the timeliness must be decided prior to hearing the case based on the presentations from Hildreth and Hollis. McMillian agreed. Major asked Mason if the case should be treated as a motion to dismiss or if it could be heard. Mason replied the timeliness should be decided prior to hearing the entire case. Major asked West for her opinions on the appeal's timeliness and treating it as a motion to dismiss. West replied that Hildreth's letter is based on the "reasonable standard" of when the applicant knew or should have known about the issuance of the certificate of occupancy, and that Hildreth should be allowed to show why 6 months after the issuance is reasonable.

MacMillan asked why 6 months would be a reasonable timeframe. Hildreth replied the facts within the presentation would

show why 6 months is reasonable. Major asked whether Hollis's reference to a "motion for dismissal" in his letter should be addressed and whether the ZBA should hear from Hollis as well. Hildreth said he objected to the characterization as a motion for dismissal and reserved his client's related rights. He noted that the letter was submitted two to three hours prior to this meeting when the matter was scheduled one month ago and continued to today. Major said Hildreth had a fair point. Major asked the members if they would like to hear the case or not. Major's opinion was to hear the case. Moseley asked Major if it was his intention to hear the case then vote whether the appeal was timely. The members ultimately decided to hear the case.

Hildreth began to distribute additional materials concerning the construction of an addition to the Thayer Engineering School at Dartmouth College ("Dartmouth Project"). Moseley asked how the ZBA would get these materials to the voting members who are on Zoom and not present in person. After discussion with the board, Major stated the additional materials could not be accepted, and the materials were returned to Hildreth. Hildreth then showed a picture of the Dartmouth Project which was visible to the voting members on Zoom. Shortly after start of the Dartmouth Project, it was found that ten feet of the foundation was excavated in the wrong area. When the error was discovered, Dartmouth College asked the Code Enforcement Officer if the error was an administrative field change that the Officer could approve. The Officer answered No and stated the change was substantial and would require planning board approval. Based on this determination, an amended site plan was submitted and approved.

Hildreth stated that the NH Practice Series: Land Use Planning & and Zoning ("NH Zoning Series"), written by Peter Laughlin, (the preeminent attorney on NH land use law), contains the above-stated standard from the Dartmouth Project on decisions related to building permits, and thus this standard applies to the LPHC structure. Pursuant to the NH Zoning Series, the standard requires abutters seeking to challenge any decision regarding a building permit must first file an administrative appeal to the ZBA. In the NH Zoning Series, Laughlin notes the relationship between a building permit and a C/O. The building permit ensures the project will comply as approved including any approvals granted by the ZBA or Planning Board ("PB"), if required; and the C/O ensures the project's compliance as constructed.

RSA 676:13 states the building inspector shall not issue any C/O which does not comply with all zoning ordinances or PB regulations. The references in both the State Statute and local ordinances includes the case specific conditions applicable to the given "use". The C/O has to comply with all ordinances, regulations and conditions of approval prior to issuance.

The history of the LPHC project was as follows:

- December 14, 2000: ZBA approved a special exception for LPHC to operate a sporting club, a use that was not permitted. Condition imposed was the noise level in the use of the land will not be detrimental to the character of the neighborhood, as determined by PB during site review.
- 2010: PB approved a site plan for LPHC for outdoor shooting range.
- 2010: Residents Defending Their Homes ("RDTH"), a predecessor to RFTIR appealed the PB's decision.
- 2010-2013: The RDTH appeal resulted in a mediated settlement agreement requiring indoor shooting only at a specified maximum noise level.
- December 22, 2013: The parties executed the mediated settlement agreement.
- 2014: LPHC submitted an amended site plan for an underground shooting range incorporating the agreed upon noise level as a condition of approval, and the amended plan was approved
- 2018: LPHC applied for and received a building permit, presumably for the amended site plan.
- September 3, 2019: Certificate of Occupancy was issued for the shooting range.
- February 18, 2020: RFTIR learned of the issuance of the C/O inadvertently via a social media post on March 17, 2020.
- RFTIR submitted an appeal of the issuance of the C/O on March 17, 2020, within 30 days of February 18, 2020.

Hildreth stated the case has a long history with large gaps of time between key events. Hildreth explained LPHC is a volunteer run, not-for-profit organization whose members and officials change from time to time. It may be that the people who oversaw the construction in 2018 may not have not known about the required maximum noise levels, although they were aware or should have been aware of the importance of sound containment. Major asked if the sound containment requirements were imposed by the PB or during the court mandated mediation. Hildreth replied the PB adopted the maximum noise levels and construction requirements agreed upon during the mediation process. LPHC and RDTH both signed the mediated agreement.

During mediation, the parties agreed the facility would be built completely underground and covered with dirt in order to contain the noise and achieve the agreed-upon standards. During negotiation of the mediation agreement, LPHC engaged a

sound engineer named Eric Falheimer to advise them during the negotiations and review the proposed agreement. In a letter dated November 22, 2013, Falheimer discussed the stringency of the proposed sound standards and stated that LPHC would have a hard time meeting these standards. Falheimer's letter also stated that he *had "completed additional acoustical evaluation of the proposed new gun range with the design assumption that the entire range will be located underground*", and further that the range was being modeled with 10 inch thick walls and the roof buried under 6 inches of topsoil. Hildreth said that if Falheimer's assumptions were correct and the facility was built to specifications, the facility should be able to meet the sound standards.

The parties signed the settlement agreement on December 22, 2013 - after LPHC received Falheimer's letter. Hildreth said RDTH was unaware LPHC had engaged Falheimer during the mediation process. Major asked if the settlement agreement was submitted to Superior Court. Hildreth replied No, it was submitted to the NH Supreme Court's appointed mediator. Major said the ZBA needs to take this settlement agreement into consideration.

The amended site plan showed the building's underground location and the 6 inches of topsoil, and the PB approved the amended plan with these design components. Major asked if those design components were included in the settlement agreement. Hildreth replied yes. Hildreth stated that the building as constructed did not comply with the amended plan, and the noncompliance was obvious and easily observable. in compliance with the , and therefore, the C/O should not have been issued.

Major asked why the case was not brought back to Superior Court to enforce the settlement agreement. MacMillan agreed the case should be in Superior Court. Hildreth replied the case could go back to the Superior Court; but noted that parties objecting to the issuance of a C/O must appeal the issuance to the ZBA.

West asked Hildreth if he thought LPHC should not have applied for a C/O if it knew or should have known the structure was not built as approved. Hildreth replied since RFTIR was paying for part of the project with the agreement and it was aware of the construction at the site. Hildreth said RFTIR last dispersed a payment for the construction in late November 2018, and in the Spring of 2019, LPHC invited RFTIR to the range to witness a sound level testing to determine whether the range complied with the agreed-upon sound standards. The sound standard testing showed that the sound levels failed miserably and that measured sound levels were 10 times higher than the agreed-upon levels.

MacMillan asked if there were experts on site during the test. Hildreth replied yes, and that all parties were frustrated that the sound standards were not met. The maximum peak sound level is 35 decibels, measured on the perimeter located no more than 50 feet from the outside envelope of the indoor range facility, at heights between 5 feet and 20 feet above the top of the indoor range. The maximum peak sound level and measurement standards were agreed to during mediation in 2013 and was reviewed and approved by LPHC's expert prior to LPHC signing the 2013 agreement. They were also approved by LPHC membership and the PB. Finally, the standards are recorded as covenants and restrictions in the LPHC's property deed in favor of the more than 30 families who contributed monies towards the construction of the range. LPHC had not challenged the standards until earlier this year.

MacMillan asked if the testing was completed prior to the issuance of the C/O. Hildreth replied yes, and Bruce McClure, Ken Grey of RFTIR, and the full board of LPHC met several times thereafter to discuss options to rectify the noncomplying noise level, but were unable to reach resolution. In RFTIR's opinion, the building is not complete and the remaining $30,000 being held in escrow will not be released until the modifications are completed so that the structure meets the agreed upon maximum peak sound level. The discussions regarding the noncomplying sound level continued both before and after the C/O was issued. Major asked why the docket cannot be re-opened to enforce the settlement agreement. Hildreth replied that, as noted in Hollis's letter, the settlement agreement provides for the mediation of disputes regarding the agreement, but it does not include disputes about the issuance of a C/O. If the ZBA denies this appeal, there are covenants which can be enforced that will prevent LPHC from operating the range.

Hildreth said the ZBA needs to determine if the C/O was issued in error or not. Hollis' position is that Condra, the Town of Hollis Building Inspector only needs to confirm that the building complies with the current building codes. MacMillan asked whether the agreement requires that Condra run a sound test. Hildreth answered No, but that issuance of a C/O requires that the structure is built in compliance to the conditions of approval and the building codes. Major said Condra has no authority to enforce a court agreement, and the appeal of an administrative decision is the incorrect avenue. Hildreth disagreed saying that RSA 674:33.II provides "*in exercising its powers under [an administrative appeal], the zoning board of adjustment…shall have all the powers of the administrative official from whom the appeal is taken."* LPHC has built a structure that does not comply with the granted approvals regardless of the 35 decibel sound level requirement as there is no soil on the roof or on the sides of the building. MacMillan said Condra enforces the zoning ordinance and asked if the structure was violating the

ordinance. Hildreth replied the use is not permitted, but the ZBA allowed the use subject to the PB's requirements. A condition of the PB's approval of the amended site plan requires compliance with the 35 decibel maximum sound level. The structure does not comply with this condition, thus violating the PB's approval. MacMillan said if the project violates the site plan, the remedy for the violation would be the court system.

Hildreth said the topic of all conversations between RFTIR and LPHC after the failed sound test were about coming up with a plan to make the building comply with the approvals. LPHC wanted financial help and expertise. These conversations happened before and after the C/O was issued, and at no time did LPHC say they received a C/O. MacMillan asked whether experts should have been hired to evaluate the ongoing construction to ensure it was constructed per the agreement since money was given to LPHC by RFTIR. Hildreth replied it was not RFTIR's responsibility to design the structure. However, RFTIR recommended to LPHC they should have an engineer consultant for the project. LPHC had an engineer in 2013 and RFTIR told them that they should have had one during the construction.

Moseley asked whether the entire project cost roughly $1,000,000 to construct, and if RFTIR contributed $260,000 of the total cost. Hildreth agreed. Hildreth said regardless of RFTIR's contribution, the structure was not built in compliance with the plans, and the C/O should not have been issued. RFTIR made suggestions on how to improve the structure during the discussions, which were not going well, but the parties were unable to reach an agreement. Hildreth said the interactions between the parties went silent at the end of 2019 and beginning of 2020. MacMillan asked if both parties had an engineer and did the engineer ever check the compliance of the structure. Hildreth replied yes however, the engineer for RFTIR was advising RFTIR on the operative sound standard that has not changed since the fall of 2013. RFTIR's engineer was not involved with the construction. Swerchesky said in Hildreth's letter it states there were design shortfalls in the construction and the as-built roof is too weak to be covered with 6" of topsoil, and asked if there was an explanation for the shortfall. Hildreth replied that recently Hollis told him an engineer is looking into the as-built roof again to determine whether the roof can hold the weight. MacMillan said he cannot believe with the amount of money being spent by both parties on the construction that there were not engineers on both sides overviewing the project.

Hildreth said the reason the sound levels are so stringent is the neighbors do not want to hear any gunfire, and the sound level is why the case went to litigation three times, and the parties finally entered into a settlement agreement. In a letter from Hollis dated January 31, 2020 Hollis stated the standards are too stringent and are unenforceable, and his clients want the noise standards looked at again. They also asked permission to conduct shooting in the range, as it is built to determine if any of the neighbors could hear any noise and if so, the issues will be addressed. The standards that were reviewed and agreed to are the operating standards that LPHC must follow.

Major asked if the appeal is for revocation of the C/O. Hildreth replied yes because the range was not built as approved. West asked on what date was Hollis's letter received questioning the standards. Hildreth replied January 31, 2020. West said the letter was received months after the C/O was issued. Hildreth replied yes and in Hollis's letter it states LPHC is not using the building and Hildreth took that to say the building was not completed yet. The letter did not state that a C/O was issued, and RFTIR did not know or have any reason to think a C/O was issued. RFTIR learned about the issuance of the C/O by accident when a member saw a Facebook post on February 18, 2020, stating LPHC was about to open. Based on this post RFTIR asked the building department where the project stood on inspections; and it was only on February 18, 2020 that RFTIR learned the C/O was issued in September 2019. MacMillan said in thirty years in the business, he has never heard of the issuance of a C/O being taken away after 6 months.

Hildreth said in the *Tausanovich v. Town of Lyme, 143 N.H. 144 (1998)* case Hollis referenced in his objection letter, the operative trigger for an appeal is when a person knew or should have known that the action had been taken, and whether it is reasonable by a question of fact. The facts which need to be judged are how the parties acted in the wake of the issuance of the C/O. The case is not as simple as a restaurant stocking up and receiving customers, and then losing its C/O after an error is discovered. . Here, LPHC substantially spent the allotted funds for the construction which ended in 2018, and failed the sound test in 2019 after which nothing else was completed. MacMillan asked if there is $30,000 left in RFTIR's escrow. Hildreth said yes, and that RFTIR and LPHC were in conversations and both were aware the building was not constructed as approved. However, a C/O is issued without RFTIR's knowledge and without LPHC telling RFTIR about the C/O.

Major said the agreement made between RDTH and LPHC was developed with the court mediator. Hildreth replied the stipulations of the PB approval were the building was to be underground and covered with 6" of topsoil, but unfortunately that was not what was built. The issuance of a C/O was a mistake, and the appeal was submitted as timely as if could have been. The most distressing part is that LPHC knew there was an issue with the building and still requested a C/O even though conversions occurred prior to and after the issuance of the C/O on how to correct the issue.

Bruce McClure, 23 Hannah Dr.

McClure, a member of RFTIR, said he has been working with LPHC from the beginning, and he asked LPHC who was its engineer. Once LPHC began advertising that it was getting ready to open and accept new members, McClure called Paul Prunier of LPHC, and discussed the issues with the building. McClure also contacted an engineering firm to advise LPHC on how to solve the noise problem, and he even volunteered to pay for the firm's services. While discussions were going on, McClure found out the C/O had been issued and received a copy from Town Hall. MacMillan said the issue with the application is the timeliness of the submission. Moseley said RFTIR made a large investment and does not understand why there were no engineering standards imposed. Furthermore, RFTIR might have wanted to send a letter to the town requesting that they notify RFTIR when a C/O was issued because of its large investment. McClure said he contacted LPHC and told them that the engineering for the sound issue was not going to work, and they needed a sound engineer. At one time LPHC had an engineer, but unfortunately, the member who hired them passed away and in McClure's opinion, the engineering aspect of the project was lost due to conflict within the organization. In MacMillan's opinion there should have been oversight from both parties on the project.

Hildreth said in a perfect world maybe things would have been different. RFTIR has a remedy to correct the issue regarding its contributions because they have a note. The funds were given as a loan which would be forgiven only when the agreed upon standards are met. The court mediation took four days and were hard fought and drawn out. McMillan said the building inspector is only responsible for the building codes, not the agreed-upon specifications of the work. Hildreth replied the building inspector is responsible for the conditions of approval attached to the PB approval. The approved plan says the building should have 6 inches of dirt on the roof, and the building does not have the dirt.

Major asked what Hildreth thought the building inspector did incorrectly. Hildreth replied the C/O was issued when the building was not completed with the conditions imposed by the PB. Swerchesky asked if the agreement was made part of the PB approval. Hildreth replied the entire agreement was not incorporated but the standards were. RFTIR was in conversations concerning the structure and the non-compliance of the roof. The building is not completed as approved and the building inspector should not have issued a C/O. The notations on the approved site should have been incorporated on the building permit. RFTIR was acting in good faith and had a meeting with LPHC after the issuance of the C/O and LPHC never acknowledged the C/O was issued. Mason asked when RFTIR became aware the C/O was issued and when was the appeal filed. Hildreth replied RFTIR became aware on February 18, 2020 and filed the appeal on March 17, 2020. The appeal was filed in a reasonable amount of time, and both parties knew the building was not built in accordance to the approved plan. The building has not changed since the failed sound test of April 20, 2019. All RFTIR wants is the building to be constructed as approved.

Bruce McClure, 23 Hannah Dr.

McClure said Ken Grey of LPHC and RFTIR had several meetings after the issuance of the C/O. Ken Grey needed funds to correct the problem, and McClure offered to pay for the services. McClure asked LPHC to voluntarily withdraw the C/O until the engineering firm could assess the problem since there was limited time for the appeal. LPHC left RFTIR no choice but to file the appeal.

Attorney Morgan Hollis, 39 East Pearl St., Nashua representing LPHC

Hollis said there has been a lot of discussions tonight about the disagreements of the parties, compliance with the agreements, construction and funding. The story is interesting; however, there is no relevancy to the issuance of the C/O. LPHC disagrees they are in violation with the definitive agreement, and this is why the case should not be heard by the ZBA. The building was complete, LPHC asked for the final draw of money and RFTIR refused. The conversations implying the building was not completed are inaccurate. Hildreth brought up the January 31 letter from Hollis to RFTIR asking for permission to shoot. You could not ask permission to shoot in a building that was not completed or ask to shoot without first obtaining a C/O. No mention was made that LPHC had a C/O or not however, January 31, 2020 RFTIR should have clearly been aware of the C/O. In April 2019, a sound test was conducted, you would not have had the structure tested unless the building was completed. There were discussions throughout the year, and RFTIR knew the status of the building. RFTIR received the January letter stating LPHC wanted to try out the building. There was a disagreement about whether or not the sound standards were met. LPHC states they met the sound standards.

Hollis cited *Daniel v. B&J Realty, 134 N.H. 174 (1991)* in which the Town of Henniker ZBA allowed the plaintiffs to proceed with an appeal 15 days after the appeal timeframe had expired. The case went before the NH Supreme Court, which stated that an appeal from an administrative decision shall be in a timely and definitive basis. There is no way around the 30 day

requirement. The Hollis ZBA rules and procedures state the appeal must be filed within 30 days. Major asked what standards are in place when an applicant was unaware of the decision. Hollis replied not knowing is immaterial, and the Supreme Court states there is a 30 day time frame for an appeal. Any ZBA has the ability to adopt a regulation within the rules and procedures to waive the 30 day appeal time for good cause.

In the *Tausanovitch* case, the town did not have any standards, and that case was decided pursuant to the state statute which provides for a reasonable time period. In the *Daniels* case, the 30 day time frame is clear with no exceptions.

Hollis also cited *47 Residents of Deering v. Town of Deering, 151 N.H. 795 (2005)* in which the plaintiff contended the ZBA improperly waived the 30 day filing requirement. This, in Hollis's opinion, is what RFTIR is asking the ZBA to do. The NH Supreme Court ruled that the Deering ZBA's rules and procedures contain almost identical language as the *Daniels* case, and thus the ZBA must apply the 30 days filing deadline literally and hold the residents to the 30 day appeal time frame.

RFTIR could have asked the town for a status update on the project at any time. If the ZBA had such a provision to waive the 30 day timeframe for good cause, then and only then the ZBA would be able to decide if the appeal was sought in a reasonable time frame. The Hollis ZBA does not have such a provision, and the ZBA has to deny the application as untimely as a matter of law.

Major asked Hollis for name of the case he was referring to. Hollis replied *47 Residents of Deering v. Town of Deering.* Major asked Hollis if it was his opinion, since the Hollis ZBA does not have a waiver provision, that the application cannot be heard. Hollis replied yes, a 2007 Superior Court case *Kelsey v. Town of Hanover* decided by Judge Vaughn, states *"the timely filing of an appeal with the ZBA is mandatory and jurisdictional, unless the ZBA has been authorized to waive its own rules."* Major asked would that be the same if there was deception. Hollis replied yes, it does not matter what the conduct was between the parties, 30 days is 30 days. That may be the reason some towns have waivers, but the town of Hollis does not. Major asked whether a lot of towns have waiver provisions. Hollis replied not a lot, but there are a number who do for the same reasons that PB can waive some of their provisions.

Major asked if the case will be continued with the Superior Court or the forum of the settlement agreement. Hollis said the basic issue is that the definitive agreement states that any dispute over the agreement must go to the mediator. It is important to let the ZBA know what the law is concerning the 30 day appeal timeframe. It was Hollis's opinion any decision made by the ZBA in this case would clearly be overturned by the courts. The Hollis ZBA has a time frame for appeals without a waiver provision. Hollis did not want to get into the merits of the case there since this was not the correct forum to do so.

West asked whether LPHC agrees that the building failed the April 2019 sound test . Hollis said there is ongoing dispute between the parties on the standards and what those standards mean. The test clearly did not meet the standards in the eyes of RFTIR, but there are elements of the test the LPHC believed they met and were supposed to do. The test would not have happened if LPHC thought the construction was not completed. There is no leeway of the 30 day appeal time frame.

Spoke in favor of LPHC

Peggy Gilmour, 126 Depot Rd.

Gilmore said she has been a member of LPHC for several years walking on the trails, skiing and kayaking on the water. During COVID-19 when the Hollis trails were closed, LPHC was a place for the residents to go to reduce stress, and LPHC is a blessing to the town.

Larry Moore, President of LPHC

Moore said the ZBA should not hear the appeal because of the arguments and case law Hollis presented.

Rebuttal

Hildreth said in light of the testimony Hollis presented. Hildreth requested the ZBA table the case for consideration so that he could review the case law presented. If the case law is accurate and clear as Hollis states, the appeal would be withdrawn. If not, a legal brief will be sent to the ZBA which takes issue with the legal opinion of Hollis. A decision tonight would force further appeals in the matter. Major asked was it Hildreth's proposal to table the case tonight taking into consideration that all of the testimony this evening would be incorporated if the hearing proceeds or be withdrawn entirely. Hildreth replied yes.

Hollis said he believes the ZBA is at the point of determining the issue of timeliness. Hollis is under the understanding that Hildreth wants the case tabled to verify the case law presented and either agree or disagree. It is entirely possible Hildreth will disagree and will ask the board to make a decision. If a decision is made on the issue of timeliness, Hollis wants to reserve the right to present his case on timelessness in its entirety.

Major said for confirmation, the request is to table the case until the next meeting and one of two things would happen - either the case is withdrawn or there would be more testimony on the issue of timeliness.

Major moves to table Case 2020-006 to the August 27, 2020 ZBA meeting at the applicant's request and the ZBA has heard that the case will be withdrawn at the time or the ZBA would hear further testimony at that time on the issue of timeliness.

Mason said it should be made clear that the hearing does not start from the beginning. Major said the testimony would be a continuation of the meeting. West said the meeting would allow Hollis to speak and provide further rebuttals. The ZBA members agreed.

MacMillan seconded.
Motion unanimously approved.

Case ZBA 2020-007
The application was tabled at 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 withdraw case 2020-007 without prejudice.

The ZBA accepted the withdrawal of case 2020-007.

Case ZBA 2020-011
The application of Bennett Chandler Design & Construction, for a Special Exception to Section IX, General Provisions, Paragraph K, Accessory Dwelling Unit, of the Zoning Ordinance to construct a 796 square foot Accessory Dwelling Unit, property owned by Eric & Tanya Schifone, located at 51 Woodmont Dr., Map 036, Lot 004-011 in the Residential/Agricultural Zone.

The ZBA determined by a unanimous vote, case 2020-011 has no regional impact.

Bennett Chandler, Bennett Chandler Design & Construction, presented the application on behalf of the property owners, Eric and Tanya Schifone. Chandler explained the property owners are requesting approval for the construction of a 796 square foot Accessory Dwelling Unit (ADU) with a new home located at 51 Woodmont Drive. Major asked where the internal heated wall was. Chandler replied between the mud room of the ADU and the breakfast area of the primary dwelling. Major asked how would the ADU be re-incorporated into the principal dwelling unit if the ADU was no longer being used. Chandler replied the wall and door would be removed between the units, the ADU kitchen would be converted into a wet bar and other 2 areas would be used as a family room and a guest bedroom. Moseley asked if there was an approved septic design. Chandler replied yes that the septic system was approved by the town and State for the primary dwelling and ADU.

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

Case ZBA 2020-012
The application of Dan & Wendy Peterson, for a Variance to Section XG Residential/Agricultural Zone, Paragraph G4.d, Minimum Side Yard Width, of the Zoning Ordinance to construct a 16' x 48' Detached Garage 15.5 feet (front corner) and 7.75 feet (rear corner) from the side property line (required 35 feet), located at 13 Mendelssohn Dr., Map 032, Lot 043, in the Residential Agricultural Zone.

The ZBA determined by a unanimous vote, case 2020-012 has no regional impact.

Dan Peterson explained the application is requesting a variance from the side yard setback to construct a 16' x 48' detached garage. The garage would be used for the storage of lawn equipment, a trailer and other items. The new structure would replace

the existing shed and carport, which would improve the aesthetics of the property and neighborhood.

Peterson stated the property's septic field does not allow for the placement of the structure at the rear of the property. The remaining land at the rear of the property would require extensive clearing and filling to make that area usable. The opposite side of the home does not meet the setback requirements, and it also abuts the driveway for the home behind them. The front of the property contains the well, and placing the structure there would be detrimental to the property value and the neighborhood.

The proposed use is reasonable in that the structure will be placed in an area that does not negatively impact neighboring property values, and its location makes it usable from a functional stand point. Placing the structure elsewhere would result in an unnecessary hardship.

Major asked if there was an existing 2 car garage. Peterson replied yes attached to the home. Major asked if the new structure could be attached to the existing garage. Peterson replied the proposed location is aesthetically pleasing. Major said looking at the plan submitted, the garage could be relocated to meet the required setback. Peterson replied yes however the proposed location is where he wants the garage. Belanger asked how large was the property. Peterson replied 1.26 acres.

Evan Clemens, Assistant Planner, determined the actual side setback for this lot is 17.5 feet since the subdivision was a Planned Unit Development (PUD). The current zoning ordinance states; "*for those residential subdivisions that were approved by the Planning Board under the former PUD ordinance (pre 1993), building setback requirements shall adhere to the building setbacks provisions outlined in Section XX Hollis Open Space Planned Development, (HOSPD) Section 5e building setbacks*(17.5 feet required.)

In light of the 17.5 feet side setback requirement, the ZBA agreed the garage could be placed in a different location or reduced in size to conform to the required setback, and thus a hardship to the property would be difficult to prove with the current submitted application. The board asked Peterson if he would like to table the application until the August 27th ZBA meeting so Peterson could re-think the location and/or size of the garage which may meet the 17.5 foot setback requirement and not need a variance at all. If the variance is not required, the application could be withdrawn. Peterson agreed.

MacMillan moves to table Case 2020-012 to the August 27, 2020 ZBA meeting at the applicant's request.
Major seconded.
Motion approved 4 to 1 with Belanger in opposition.

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

DELIBERATIONS

Case ZBA 2020-011
The application of Bennett Chandler Design & Construction, for a Special Exception to Section IX, General Provisions, Paragraph K, Accessory Dwelling Unit, of the Zoning Ordinance to construct a 796 square foot Accessory Dwelling Unit, property owned by Eric & Tanya Schifone, located at 51 Woodmont Dr., Map 036, Lot 004-011 in the Residential Agricultural Zone.

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
MacMillan	Yes	Yes	Yes	3	0
Mason	Yes	Yes	Yes	3	0
Moseley	Yes	Yes	Yes	3	0

THEREFORE, THE SPECIAL EXCEPTION WAS GRANTED.

Review of Minutes

Belanger moves to approve the minutes of June 25, 2020.
MacMillan seconded.
Motion unanimously approved.

Meeting adjourned at 9:50 pm.

Respectfully submitted by:

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