



ZONING BOARD of ADJUSTMENT

Town of Hollis

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Minutes of August 27, 2020

Meeting was held via Zoom and 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 Adjustment 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 – Kat McGhee, Bill Moseley, Meredith West and Stan Swerchesky.

Major explained the policies and procedures.

Major said he would not be voting on the cases tonight, but he would be participating. The voting members for this evening's cases are:

ZBA Case 2020-012: Belanger, Tsao, MacMillan, Mason and Swerchesky

ZBA Case 2020-013: Belanger, Tsao, MacMillan, Mason and Swerchesky

Case ZBA 2020-006

The application was tabled at the July 23, 2020 meeting. 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 an email was received from Attorney Thomas Hildreth, representing the Residents Funding the Indoor Range, requesting withdrawal of their application. Major read the email:

"The Residents Funding the Indoor Range have asked me to withdraw their appeal from further consideration.

I don't entirely agree that the law is as clear as Attorney Hollis suggested at the July hearing. As I read the case law, there is a distinction between an appealable action on the one hand, and the time within which an appeal has to be taken, on the other. No one disputes that under the HZO, appeals have to be taken within 30 days. The dispute is application of the discovery rule and when the appealing party knew or should have known that the appealable action had occurred.

Rather than continue to fight on these grounds, the neighbors have elected to conserve their resources to press their concerns in other channels."

No Zoning Board of Adjustment vote was required for the application's withdrawal.

Case ZBA 2020-012

The application was tabled at the July 23, 2020 meeting. The application of Dan and 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.

It was brought to the board's attention that prior references to 35 feet were in error and 17.5 feet is the proper setback requirement.

Peterson said they are submitting the following revised request for a 5 ft. variance to the sideline property setback code for the Mendelssohn Drive PUD which requires a 17.5 ft. side setback. We changed the location and provided additional materials for review as detailed on the included executive summary and attachments. The material changes from the original submission are:

1. The proposed location moved from the property line of 15 Mendelssohn Drive to gain as much buffer as possible with the current conditions.
2. The side setback on the front of the building now conforms with the ordinance. The rear of the building is now 12.5 feet from the property line and requires a variance of 5 feet.

Additional information provided:

1. An updated drawing showing the new proposed location.
2. An official survey of the location of the existing septic system. Craig Wilson, a NH licensed Septic inspector (License # 51) surveyed the septic system and conducted a physical onsite inspection to locate and mark the actual location with stakes. He also marked the state and town required 5 ft. setbacks for building. (see pictures)
3. Photos of existing driveway shed and carport. (see file) One photo illustrates where the proposed garage will go and the existing buildings to be removed. Note the existing buildings are within the 17.5 ft. setback as they do not fall under the same requirements, and the proposed building would increase the buffer between 13 and 15 Mendelssohn Dr.
4. Letters from the owners of 8, 9, 11, 15 and 12 Mendelssohn Dr. expressing their support for this project. In addition, I spoke to every neighbor I could, and all are in favor. I have heard of no one objecting to the proposed project.

In summary, we pride ourselves on being courteous neighbors and have taken every step we can to propose a project that does not negatively impact any of our neighbors and avoids hardships on anyone. We chose a location that makes the most sense logistically, environmentally and esthetically with respect to our neighbors and ourselves.

The variance will not be contrary to the public interest: because the garage is a simple, single-story detached garage that will be constructed to match the style of the existing home on the property and maintain the character of the neighborhood. The garage is for personal use with no commercial traffic. The garage does not detrimentally affect the character of the neighborhood, scenic value, health, safety or general welfare of the public. The owners plan to add landscaping (trees/shrubs) to provide additional privacy for the neighbors. This garage will replace the existing shed and carport improving the aesthetics of the property and neighborhood.

The spirit of the ordinance is observed: because the garage does not detrimentally affect the character, aesthetic value, health, safety or general welfare of the town or neighbors. The location requested has the least impact on the environment and neighbors as it will require the least amount of disturbance to the soil while maintaining the characteristics of the neighborhood.

Substantial justice is done in that the garage will improve the aesthetics of the property and the neighborhood. It will not detrimentally affect the surrounding neighbors or their properties if a variance were to be granted, and it will allow the owners to store personal items inside and out of view of the neighbors.

Surrounding property values are not diminished because the garage is a simple single-story building, and the owners plan to add landscaping around the boundaries of neighboring properties. It will be constructed to match the principle garage on the property as if it were originally built with the home. It is set back approximately 155 ft from the front lot and partially blocked from the view of the neighborhood. In addition, it is replacing a standalone shed approx. 12' by 15' and temporary carport that will result in an improved use and beauty of the property therefore adding potential value to neighbors based on the improved curb appeal and aesthetics of the street.

The property's septic field does not allow for placement in the rear of the property. The remaining land at the rear of the property would require extensive clearing and filling to make usable and detrimentally affect neighboring properties and the property's ecosystem. Extensive sloping makes the terrain unusable. The opposite south side of the home (from the proposed garage) also does not meet clearance requirements. The right of way for the home IS located directly behind our property and would

impact the Dyer residence as the garage would be visible from one front yard and driveway. The placement on the south side would also be visible by traffic and most of the neighbors to the south. The front property of the home houses the well, making a large general portion unusable. Placing the garage on the front of the property would detrimentally affect not only the owners' property value, but also neighboring property values. The only reasonable placement for the garage is the one proposed, placing it elsewhere would result in unnecessary hardship.

The proposed use is reasonable because it is located in an area that does not negatively impact neighboring property values, its position makes it usable from a functional standpoint, and there would be no need to unnecessarily clear and fill land that would negatively impact the surrounding ecosystem and neighboring properties. The garage would be used to store a boat, trailer, lawn equipment and other items. The location was also chosen to minimize the amount of landfill and/or change to the current landscape. It is also not imposing on state and local requirements for septic field setbacks. All other considered locations would create hardship for abutters because the building would be in the neighbors' direct view. All other locations would also require additional fill and/or significant changes to current the driveway by adding more blacktop. Both are less than desirable for a natural landscape and ecosystem that includes wildlife and plant life.

Major asked Peterson to explain his position on how the application meets the hardship requirement. Peterson replied if the garage needed to be moved to meet the setback requirement, the septic system would have to be moved which would require additional fill. MacMillan asked why the garage could not be moved forward to comply with the setback requirements. Peterson replied the garage would be in the middle of the current driveway. MacMillan asked was there a 2-car attached garage currently. Peterson replied yes. Mason asked was there any vegetation between the garage location and the neighbors. Peterson replied overgrowth and vines. There were trees on the neighbor's property, but they have since been removed.

West asked what the total square footage of encroachment was. Major's opinion was roughly 120 square feet. Swerchesky said 16% of the garage would be encroaching into the setback. Moseley asked referring to Driveway #2 picture what were the white stakes referencing. Peterson replied it is the location of the irrigation system and that is why the garage could not go in that location. Moseley said if the garage were moved to the end of the existing pavement Moseley agreed with MacMillan a variance would probably not be required or at least be a minimal intrusion. Peterson said placing the garage there would not be aesthetically pleasing since you would be viewing the garage from the house and it would make exiting the existing garage challenging. In Peterson's opinion if the garage were moved to the end of the pavement a variance would still be required.

Major asked why the garage needs to be 48 feet long instead of a normal size of 24 feet. Peterson replied the length is required for his boat, trailer, lawn equipment and other items. MacMillan said the percentage of intrusion would be 28.5%. Major asked Peterson, if approved, would it be a reasonable condition that no other garages shall be placed within the 17.5 ft. setback. Peterson agreed and added another reason for the placement of the garage is to maintain space between the garages and limit the view from the neighbors. Mason asked where the well location was. Peterson replied in the middle of the front yard.

McGhee said, since the hardship requirement deals with the land, what is the current topography of the land? Peterson replied the front was basically flat and the rear of the property slopes up slightly and there may be wetlands towards the back.

Letters received in favor of the application.

Major listed the names and addresses of letters dated July 23, 2020, in favor of the application.

Mike and Sue Homola, 15 Mendelssohn Dr.
John and Angeline Dyer, 11 Mendelssohn Dr.
Don and Virginia Brooks, 12 Mendelssohn Dr.
Bob and Carol Robey, 9 Mendelssohn Dr.
Shahriar and Mona Movafaghi, 8 Mendelssohn Dr.

Major read one of the received letters and said all the letters were written the same.

"Dear Town of Hollis Zoning Board, I am writing to show my support for approval of the variance ZBA 2020-012 for the Petersen's request to construct a 16' by 48' detached garage per the plan submitted to the Town of Hollis Zoning Board. It is our opinion that this garage will not conflict or harm in any way the essential character of our property, the neighborhood, public health, safety or welfare of us or our neighbors."

Peterson said the property has been evaluated and there have been several attempts to relocate the garage outside of the setback requirements to no avail. The proposed location is the best place for the garage without incurring more expense and limiting the impact on the neighbors.

No one spoke against the application.

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

Case ZBA 2020-013

The application of Michael Souza, property owner for a Variance to Section IX, General Provisions, Paragraph C, Mobile Homes, of the Zoning Ordinance to allow a 3-month extension of the use of a temporary housing trailer, when no further extensions are allowed, located at 55 Blood Road, Map 003, Lot 037 in the Residential/Agricultural Zone.

Souza said the variance is requesting a 3-month extension for a temporary trailer being used as living quarters for his family. The temporary trailer was placed on the lot after spending 3 weeks in a hotel because of a chimney fire on February 11, 2019, which caused substantial damage to the home.

As the process began after the fire happened it took months to get thru the fire investigation, insurance estimates, and then finally getting the repairs started. The repairs began back in April of 2020. Shortly after construction began, I had to renew our permit for our trailer, and it was only able to extend for six more months. We are approaching the end of the extension on August 26, 2020. All the things that have taken place within the past six months due to Covid-19 have caused delays in the construction process. At this point, the construction is still ongoing. We are approaching the finishing stages: siding, interior trim work, finish flooring. We are working as quickly as possible to make up for the unforeseen delays. If we were to estimate time to finish, we would have to assume three months at this point. Although we are hoping for sooner.

Major asked what was left to complete the project. Souza replied electrical outlets and switch covers, minor plumbing, installing kitchen cabinets, installing the remainder of flooring and finish the outside siding. McGhee asked if 3 months was enough time to complete the home. Souza relied his contractor estimated 3 months and added even with the COVID-19 issues with the contractors he has and will be continuing working on any remaining work that you could complete himself just to get the job done. The ZBA was concerned that the requested 3-month extension would not be enough time if unforeseen issues arose.

Spoke in favor of the application

Gregory Czuba, 51 Blood Rd.

Czuba said he was in favor of the application. Souza has been working diligently on the project with his contractor and completing work himself.

Navnet Kachroo, 61 Blood Rd.

Kachroo said he has observed the progress on the house, and Souza has been doing everything in his power to get the project completed during these challenging times. Kachroo was in favor of the application.

No one spoke against the application.

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

DELIBERATIONS

Case ZBA 2020-012

Discussion of the application of Dan and 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.

Mosely said since the garage can be moved forward to further minimize or eliminate the intrusion, there is no hardship. Belanger agreed the proposed garage is a desire, not a hardship. Tsao agreed with Moseley and Belanger. McGhee said the hardship could be that the applicant had explored other locations and if the garage was moved forward the entrance to the current 2 car garage would be awkward. There is no other logical place for the garage. MacMillan said the garage could be moved, there is no valid hardship. McGhee said the ZBA should consider aesthetics and usability of the garage. MacMillan disagreed. Swerchesky said moving the garage creates a hardship. The 5 ft. intrusion is not substantial. The lot is small, and the applicant has readjusted the location to the best of his ability to reduce the setback intrusion. Major agreed the garage could be moved

out of the setback. West said the intrusion is minimal and accessing the current 2 car garage may be something the ZBA could consider.

Mason asked the staff to bring up Google maps for a more realistic view of the property. After viewing the Google map, most of the ZBA members thought the garage could be moved out of the setback.

No further discussion.

Questions - Variance

- Question 1. The variance will not be contrary to the public interest.
 Question 2. The spirit of the ordinance is observed.
 Question 3. Substantial justice is done.
 Question 4. The values of surrounding properties are not diminished.
 Question 5a (1). No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property.
 Question 5a (2). The proposed use is a reasonable one.
 Question 5b. The property cannot be reasonably use in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use.

Board Member	Question #1	Question #2	Question #3	Question #4	Question #5a(1)	Question #5a(2)	Question #5b	Total Yes	Total No
Belanger	Yes	No	No	Yes	Yes	No	No	3	4
Tsao	Yes	No	No	Yes	Yes	No	No	3	4
MacMillan	Yes	Yes	Yes	Yes	Yes	Yes	No	6	1
Mason	Yes	No	No	Yes	Yes	No	No	3	4
Swerchesky	Yes	Yes	Yes	Yes	Yes	Yes	No	6	1

QUESTION 1 - PASSED (5-0)

QUESTION 3 - FAILED (2-3)

QUESTION 5a(1) - PASSED (5-0)

QUESTION 5b - FAILED (0-5)

QUESTION 2 - FAILED (2-3)

QUESTION 4 - PASSED (5-0)

QUESTION 5a(2) - FAILED (2-3)

THEREFORE, THE VARIANCE WAS DENIED.

Case ZBA 2020-013

The discussion on the application of Michael Souza, property owner for a Variance to Section IX, General Provisions, Paragraph C, Mobile Homes, of the Zoning Ordinance to allow a 3-month extension of the use of a temporary housing trailer, when no further extensions are allowed, located at 55 Blood Road, Map 003, Lot 037 in the Residential/Agricultural Zone.

The only concern the ZBA had with the application is the extension time being requested. The ZBA felt 3 months may not be adequate but due to the zoning ordinance, a specific time frame needed to be attached to the variance.

Belanger moves to modify the application allowing a 4-month extension rather than 3 months as applied for.

MacMillan seconded.

Motion unanimously approved.

Major moves for a condition of approval:

The applicant shall submit monthly written progress reports to the Building Inspector during the 4-month extension period.

Swerchesky seconded.

Motion passed 4-1 with Belanger against.

No further discussion.

Questions - Variance

- Question 1. The variance will not be contrary to the public interest.
 Question 2. The spirit of the ordinance is observed.

- Question 3. Substantial justice is done.
Question 4. The values of surrounding properties are not diminished.
Question 5a(1). No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property.
Question 5a(2). The proposed use is a reasonable one.

Board Member	Question #1	Question #2	Question #3	Question #4	Question #5a(1)	Question #5a(2)	Total Yes	Total No
Belanger	Yes	Yes	Yes	Yes	Yes	Yes	5	0
Tsao	Yes	Yes	Yes	Yes	Yes	Yes	5	0
Durham	Yes	Yes	Yes	Yes	Yes	Yes	5	0
McGhee	Yes	Yes	Yes	Yes	Yes	Yes	5	0
Moseley	Yes	Yes	Yes	Yes	Yes	Yes	5	0

THEREFORE, THE VARIANCE WAS GRANTED WITH THE FOLLOWING CONDITION.

- 1. The applicant shall submit monthly written progress reports to the Building Inspector during the 4-month extension period.**

Review of Minutes

Mason moves to approve the minutes of July 23, 2020 as submitted.

Swerchesky seconded.

Motion unanimously approved with Tsao abstaining.

Other Business

Discussion on potentially changing the 30-day appeal time.

Mason said since there may have been a potential problem with the 30-day appeal deadline with the Lone Pine Case: He asked if the ZBA should consider changing the rules and procedures to extend the amount of time given to appeal a decision. West agreed and said if there was bad faith by the applicant, abutters should be able to seek relief under the ordinance. Major said if the appeal timeframe is changed based on one case, future applicants would have to wait until the appeal period ends which may adversely impact projects. Major said he would reach out to Mark Fougere asking him if other towns have had any issues with the appeal timeframe. Setaro said since she was a member of the New Hampshire Building Official Support Staff group, Setaro offered to ask the group members what their rules and procedures were for appeal deadlines.

Meeting adjourned at 9:10 pm.

Respectfully submitted by:

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