



ZONING BOARD of ADJUSTMENT
Town of Hollis
Seven Monument Square
Hollis, New Hampshire 03049
Tel: (603) 465-2209 Fax: (603) 465-3701

Minutes of October 22, 2020 Meeting

The 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 used the Zoom platform to conduct this meeting electronically. The public was 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.

MacMillan recused himself from the cases this evening due to technical difficulties.

Major said the voting members for tonight's cases are as follows:

Case ZBA 2020-012 – Belanger, Tsao, Mason, Moseley and Swerchesky.

Cases ZBA 2020-015 and ZBA 2020-016 – Major, Belanger, Tsao, Mason and Moseley

Case ZBA 2020-015

The application of Contractor Storage Solutions LLC, property owner, for a Variance to Section X, Zoning District, Paragraph G.1., Permitted Uses of the Zoning Ordinance to modify conditions from past approvals (Cases ZBA 2018-021 & ZBA 2018-022) to remove Condition #5 prohibiting exterior storage of heavy equipment, to allow outside storage and to modify the hours of operations to allow 24-hour access; located at 143+145 Runnells Bridge Rd. (Map 004, Lot 064) in the Residential & Agricultural Zone.

Case ZBA 2020-016

The application of Contractor Storage Solutions LLC, property owner, for a Variance to Section XI, Overlay Zoning District, Paragraph A.5, Permitted Uses in the Aquifer Protection Overlay Zone of the Zoning Ordinance to modify conditions from past approvals (Cases ZBA 2018-021 & ZBA 2018-022), to remove Condition #5 prohibiting exterior storage of heavy equipment, to allow outside storage and to modify hours of operations to allow 24-hour access; located at 143+145 Runnells Bridge Rd. (Map 004, Lot 064) in the Residential & Agricultural Zone.

Major said the ZBA received the following letter from the applicant dated October 21, 2020, concerning Cases ZBA 2020-015 and ZBA 2020-016. Major read the letter:

We are writing to request that our two applications, Case ZBA 2018-016 and Case ZBA 2020-015, scheduled to be heard on Thursday, October 22, 2020, be tabled until next month's meeting, November 19, 2020. We have received some letters of concerns yesterday and today from our Hollis abutters that we would like more time to address with them personally to continue to maintain our good neighborly relationship. We have also received more harassment from our Massachusetts abutter that we have retained legal counsel to address and would like more time to spend on this as well.

Thank you for your patience and consideration.
Michael Coulombe
Contractor Storage Solutions, LLC

Major said it is the ZBA's practice to table a case when there is a reasonable reason to do so. Mason suggested that if the cases are tabled, the ZBA may still want to determine whether there are regional impact concerns related to the cases. This would allow staff to send the required notifications and give the applicant time to address those concerns prior to the next meeting.

Discussion:

Mason said the Town of Pepperell, MA and several abutters in New Hampshire and Massachusetts have submitted letters voicing their concerns about the applications. The letters show that the cases do have a regional impact, and the stated concerns should be thought through and addressed. The members agreed with Mason.

Mason moves for a finding that Cases ZBA 2020-015 and ZBA 2020-016 do have a regional impact.

Belanger seconded.

Roll call vote:

Mason - Yes

Belanger - Yes

Tsao - Yes

Major - Yes

Moseley - Yes

Motion passed unanimously.

Mason moved to table Cases ZBA 2020-015 and ZBA 2020-016 until the ZBA meeting on November 19, 2020.

Belanger seconded.

Roll call vote:

Belanger - Yes

Tsao - Yes

Mason - Yes

Moseley - Yes

Major - Yes

Motion passed unanimously.

Case ZBA 2020-012

Motion for Rehearing. The application of Dan & Wendy Peterson, for a Variance to Section XX Residential/Agricultural Zone, Paragraph G4.d, Minimum Side Yard Width, of the Zoning Ordinance to construct a 16' x 48' Detached Garage, the front portion complies with the required side setback and the rear portion sits at 12.5 feet from the side property line (required 17.5 feet), located at 13 Mendelssohn Dr., Map 032, Lot 043, in the Residential Agricultural Zone.

Deliberations:

Major said the ZBA received a Motion for Rehearing from the applicants' attorneys. Belanger said based on the motion's brief, he would vote to rehear the case. Mason said the case is not clear cut, and he was unclear on how to vote on the individual variance questions; and he would agree to rehear the case. Major was reluctant to rehear the case since the motion did not provide new or additional information that was not presented during the original hearing.

Belanger asked if the rehearing is approved, should the ZBA send the motion to town counsel and request his opinion before the next meeting. Belanger said the motion suggests the ZBA has been misinterpreting the hardship criteria and should be more lenient with its' decisions. Belanger felt the ZBA was determining hardship correctly, but that town counsel may indicate otherwise. West and Swerchesky agreed. Major had no objections but was concerned that town counsel's opinion may not be helpful.

Mason said the variance application had failed on two grounds - whether the proposed use was a reasonable one given the special conditions of the property and whether the spirit of the ordinance was observed. Major said the motion for the rehearing is incorrect because the ZBA denied the application on three grounds, not two. The third ground of denial was substantial justice.

Major said, upon agreement of the board, the board could ask town counsel:

If the board has a unanimous (5-0) vote under Variance Question 5a(1) that no fair and substantial relationship exists between the general public purposes of the ordinance provisions and the specific application of that provision to the property, does that vote foreclose the hardship question under Question 5b and make the board bound to determine that the use is reasonable?

Mason said the state guidelines treated each variance question individually. Major said the ZBA should have made findings on the case. Mason asked whether the rehearing should be limited to specific questions or if it is a de novo hearing. Major believes that the rehearing should start over from the beginning. The members agreed to rehear the entire case.

The ZBA agreed to send the Motion for Rehearing to town counsel for his opinion on the motion. Major tasked Setaro with providing the required documentation to town counsel.

Tsao moved to rehear Case ZBA 2020-012 on November 19, 2020.

Moseley seconded.

Roll call vote:

Belanger - Yes

Tsao - Yes

Mason - Yes

Moseley - Yes

Swerchesky - Yes

Motion passed unanimously.

Review of Minutes

McGhee moved to approve the minutes of September 24, 2020, as submitted.

Moseley seconded.

The motion was unanimously approved with Swerchesky abstaining.

Other Business

Major said there should be a process for determining regional impact where the town planning and zoning staff make an initial determination of whether an application would have a regional impact. This would allow an applicant to be notified of this determination prior to it making additional notice requirements. The ZBA would still need to make its determination during the public meeting, but an initial determination by town staff would allow the applicant to work with regional entities to address any concerns before proceeding with the public hearing. This process would eliminate tabling most cases to the next regular meeting. The only way a case would be tabled is if the ZBA disagrees with the town staff's initial determination. West asked about the district court case regarding the determination of regional impact, and whether the case had been overturned or if a process had been established in response to the case. Major said, as far as he was aware, the case had not been addressed by the NH Supreme Court. West offered to investigate whether the case had been appealed or if a notification process had been established.

The members agreed the process described by Major should be implemented.

Major asked if anyone on Zoom had questions about the outcomes of the evening's cases. Major reviewed the outcomes of each case. Cases ZBA 2020-015 and ZBA 2020-016 had been tabled to November 19, 2020, and Case ZBA 2020-012 was granted a rehearing and would be reheard on November 19, 2020.

Jeffrey Kalchbrenner, a Massachusetts abutter to the property in Cases ZBA 2015-015 and ZBA 2020-016, asked for clarification of the outcome. Major replied that the applicant requested to table both cases to address the abutters' and Town of Pepperell's concerns. The ZBA determined these cases had a regional impact, and therefore, additional notifications to regional agencies are required. Therefore, the cases would not be heard tonight and both cases were tabled until November 19, 2020. Major asked Kalchbrenner if he understood. Kalchbrenner replied yes.

Meeting adjourned at 7:50 pm.

Respectfully submitted by:

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