



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

Minutes of November 19, 2020 Meeting

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

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 was tabled at the September 24, 2020 meeting - **Regional Impact Determined** - 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 (ZBA2018-021 & 022), to remove condition #5 no exterior storage of heavy equipment, to allow outside storage, modify hours of operations to allow 24hr access, located at 143+145 Runnells Bridge Rd. (Map 004, Lot 064) in the Residential Agricultural Zone.

Case ZBA 2020-016

The application was tabled at the September 24, 2020 meeting - **Regional Impact Determined** - 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 (ZBA2018-021 & 022), to remove condition #5 no exterior storage of heavy equipment, to allow outside storage, modify hours of operations to allow 24hr access, located at 143+145 Runnells Bridge Rd. (Map 004, Lot 064) in the Residential Agricultural Zone.

Major said the ZBA received a request to table cases ZBA 2020-015 and ZBA 2020-016.

Attorney Andrew Prolman, Prunier & Prolman, Nashua, NH representing Contractors Storage Solutions. Prolman said he was recently contact by Michela Coulombe to assist with the pending applications. Prolman met with Coulombe on site yesterday. Prolman requested both cases be continued until the December 17, 2020 as Prolman was getting familiar with the cases.

*Belanger moves to table cases ZBA 2020-015 and ZBA 2020-016 until the December 17, 2020 ZBA Meeting
MacMillan seconded.*

Roll call vote:

Major - Yes

Belanger - Yes

Tsao - Yes

Mason - Yes

Moseley - Yes

Motion passed unanimously.

Case ZBA 2020-012

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.

Jeffrey Christensen, Esq. representing Daniel and Wendy Peterson who were also on the zoom meeting. Christensen explained this is a re-hearing of a prior application. The property consists of a 1.26-acre parcel of land with a single-family home, located at 13 Mendelssohn Dr. Currently on the north side of the property is a temporary car port and a shed which the Petersons would like to replace with a single garage. Pictures included in the application are as follows; current shed, temporary car port, depiction of the proposed garage and proposed location of the new garage. (see file) The shed and carport are not large enough, and as a result, some yard equipment is often stored out in the open. Secondly, for medical reasons Mr. Peterson has been instructed to refrain from heavy lifting and therefore, can't use the basement of the home to store yard equipment. The Applicants also own a boat and trailer which are often stored out in the open. Moreover, the carport and shed do not match the home and property and are otherwise aesthetically and visually undesirable.

The location of the proposed garage allows the Petersons to take advantage of the vegetative screening around the area which will prevent any adverse visual impact to the neighbors. The location of the garage would accommodate more screening if required. The proposed garage will reduce the non-conformity of the property because the shed and carport are entirely within the setback. The garage will be moved away from the property line and the neighbors increasing the distance between the property lines. The property requires a 17.5 foot building setback. The proposed garage does infringe on the setback slightly by approximately 5 feet only at the northern back corner.

The hardest criteria in granting a variance is hardship. Due to the current configuration of the property, including, without limitation, the location of the septic system and leach field, and the configuration of the driveway and access to the residence, there is only one practical location for the garage. Any other location would impose a significant hardship on the applicants such as for example, having to clear land and relocate the septic system or reconfigure the driveway and significantly impair access to the home on the property. The garage cannot feasibly be constructed in the rear of the property itself, or the eastern side, due to the slope of the terrain and the extensive tree clearing that would be necessary. Constructing the garage on the south side of the property would impair the use of the abutting property at 11 Mendelssohn Drive, as the access for 11 Mendelssohn Drive runs right along that property line and the utilities for that lot actually run through the property itself pursuant to a utility easement. Finally, the garage could not be placed on the west side of the property, which is essentially the front yard. The well and other utilities for the property render much of that area unusable and, the remaining area could not be used without impairing the applicants' use of the front yard and would be aesthetically displeasing for the neighborhood. The north side of the property is the only feasible location.

There are no alternative locations on the north side of the property either which would not encroach on the required setback. The driveway, landscaping, and septic system make any other locations unreasonable. (see file exhibit 3 for hypothetical alternative locations) Moving the garage north or east would simply increase the nonconformity. Moving the garage farther south (see file red location on exhibit 3) would encroach on the leach field and the required 5 foot setback. Moving the garage far enough south to be compliant with the setback would eliminate that required leach field setback entirely and place the garage directly against the leach field. This would not only create a financial burden and unreasonable hardship on the applicants by forcing them to relocate the leach field, but would likely require clearing land, impairing the aesthetic quality of the property and adversely impacting both the applicants and the neighborhood. If the garage is moved south and west, it can be moved out of the side yard setback but imposes additional unnecessary hardships on the applicants. A southwesterly adjustment up to the driveway (see file blue location on exhibit 3) still encroaches on the leach field and the required five-foot setback, creating the same problems discussed above. This location also eliminates space currently used for snow storage in the winter, impairing the safe use of the driveway. Moreover, this location would interfere with existing landscaping and brick walkway that provides access to the applicants' backyard. (see file exhibit 4) Accordingly, even if the septic system did not render this location unfeasible, this location would nevertheless impose a hardship on the applicants by impairing access to their backyard.

Finally, if the garage is moved far enough to avoid the leach field, (see file as depicted in green on Exhibit 3) this would not only interfere with snow storage, landscaping, and access to the backyard even more than discussed above, but would also interfere with the driveway itself. Most significantly, the turn-around area would be eliminated, impairing access to the home and forcing the Applicants to unsafely back out onto the road. This location would therefore create a hardship by forcing the applicants to reconfigure the driveway and, likely, would still impair access to the existing home and attached garage. The necessary reconfiguration of the driveway would likely have a cascade of additional burdens, such as requiring a

reconfiguration of the walkway on the property and encroaching on the well located in the front yard.

The garage has been located slightly different from the original application. The garage has been tilted and moved slightly so the encroachment into the side yard setback is kept to a minimum. Major asked what was the current side-yard, as opposed to the previous application. Christensen replied the intrusion is 5 feet a difference of ½ foot. The adjustment is small but it shows an effort to reduce the intrusion. The proposed location of the garage actually maintains a 38.5-foot distance between the garage and the buildings on the adjacent lot, more than twice the length of the required setback. The proposed location is therefore less impactful on the neighbors. The spirit of the ordinance is maintained. Also, included in the application are letters from neighbors supporting the application. (see file)

As a matter of law, the garage is presumptively reasonable because garages are a permitted in the zone. The zoning ordinance is interfering with the reasonable use because of the conditions of the property such as; topography, layout and the septic location. Granting the variance maintains spirit of the ordinance, maintains the purpose of the ordinance and improves the aesthetics of the property for both the applicant and the neighbors. The proposal also reduces the non-conformity, it benefits the applicant, neighbors and the general public without harming or impacting anyone.

Swerchesky asked does the utilities easement on the south side supply the applicant or the neighbors. Christensen replied easement on the south side supplies the abutting property. Swerchesky asked was the easement attached to the lot when purchased and what was the setback if any. Peterson replied there is a utility box which houses electric, phone and cable the neighbors have the right to access the box from our property.

Mason asked how certain are the boundaries from the leach field. Christensen replied the plan was created by a licensed surveyor and septic expert who staked out the location of the septic and leach field. Peterson added the septic company actually dug up the yard to confirm the actual location of the septic and leach field. Mason questioned if the special conditions of the property were the topography and the location of the septic. Christensen replied yes also the vegetation on the east side, utility easement on the south side, well location, septic location, driveway location and the size and shape of the lot. The configuration and layout of the property makes it impossible to place the garage anywhere else on the property.

Major stated the garage sits on the north side of the house. Major felt the garage could be placed 5 or 6 feet to the west adjacent to the driveway hammerhead, which would eliminate the need for a variance or at least further minimize the side setback intrusion. Christensen replied any alternate location shown to move the garage outside of the setback would either infringe on the driveway, driveway turnaround, access to the backyard, snow storage area, landscaping or the garage would further infringe on the 5 foot leach field setback. The surveyor confirmed there is no other location for the garage. Peterson said the garage has been placed in an area with the least amount of impact to the setbacks as well as the impact to the neighbors.

Tsao said referring to exhibit 3 (see file) the difference between the blue box and the proposed location was what measurement and why couldn't the garage be placed on an angle which would keep the garage out of the setback. Christensen replied the garage would still infringe on the 17.5 setback and the garage would actually be closer to the property line impacting the neighbors more. The proposed location increases the space between building the closer you move the garage to the west decrease the space between building.

West asked the board if the variance was approved could a condition be imposed that the town engineer reviews the information provided, at the owners' expense, to confirm, in fact, the proposed location is the only location to place the garage. Major replied a discussion during deliberation could address a condition.

MacMillan asked does the garage have to be 48 feet long. If the garage was shorter it would comply with the setback requirements. Christensen replied the size is required to fit the boat, trailer and all of the other yard equipment. As mentioned prior, Peterson has been instructed by his doctors to limit heavy lifting and the items located in the basement must be moved to the garage.

Legally, the question before the board is not whether the variance or whether the ordinance prohibits any reasonable use of the property. The only element before the board is whether the proposed use is reasonable. If the garage is a reasonable use, does the ordinance prohibit the construction of the garage because of the special conditions of the land, a garage is permitted and is presumed reasonable within the district. MacMillan stated he drove around Mendelssohn Dr. development and there are no 48 foot long garages adjacent to property lines. MacMillan asked what size is the boat. Peterson replied with the trailer the length is 30 feet. MacMillan disagreed the boat length is 30 feet. Christensen said the length of the boat or what is being stored in the garage has no bearing on the granting of a variance request. The only question of the variance concerning hardship for example is whether a garage of this size is a reasonable use. There is no reason that a garage is not a reasonable

use. The zoning ordinance interferes with the use due to the setbacks and the other noted special conditions of the property. MacMillan asked if Christenson thought the other properties in the development were under the same burden as the applicants as it pertains to setback requirements. Christenson replied the 17.5 setback applies to all of the properties however, the topography of this lot is not common to the other lots in the development. This lot also has a utilities easement and the abutters' driveway along one side of the property thus the septic system needed to be placed on the other side of the lot so the easement would be kept clear.

Major stated the town has setback requirements, if the arguments made dealing with reasonable use are accepted, could the ZBA ever refuse to grant a variance against a side yard setback. Christensen replied each case needs to be determined individually based on the special conditions of the property and circumstances. If those special conditions do not apply the variance should not be granted. This application has many special conditions dealing with the property and Christenson felt a variance should be granted in this case.

Major stated the applicant bought into a PUD which has smaller lots and a reduced setback. Major asked what is the spirit and intent of the side yard setback. Christensen replied to prevent overcrowding and maintain privacy. The proposed application does not have any of those things there is vegetation for screening and room to plant more if required maintaining the privacy between lots. The proposal also reduces the current overcrowding of structures by the removal of the shed and carport which sit entirely within the setback. The placement of the garage actually increases the distance between structures.

West said she shares Major's concern. Let's just say you have an undersized lot and a house is too close to the side yard setback and you wanted to put up a garage which is a permitted use and is a presumed reasonable use. Does that mean you disregard the setback requirements? Christenson said the purpose in having variances is to allow an applicant to use their property reasonably. The applicant must prove there are special conditions with their property which distinguish it from other properties in the area and that the zoning restriction interferes with the reasonable use of the property due to the special conditions.

McGhee felt the ZBA needs to take in consideration the totality of the evidence on whether or not a variance should be allowed. The evidence presented reflects there is no other place to put the garage and the letters sent in by the neighbors were all in favor of the application. The request is reasonable, granting the variance would lessen overcrowding with the removal of the other two structures and the spirit and intent of the ordinance is still maintained in this case. Christenson said the infringement to the setback is minor only a small rear portion of the structure sits within the setback a vast majority of the structure sits outside of the setback and is less than what currently sits within the setback such as the shed and car port. Again the proposal reduces the non-conformity of the zoning ordinance, reduces the overcrowding of the property and reduces the negativity to the neighbors.

Major asked what the total square footage of the intrusion is. Belanger replied 43 square feet.

Spoke in favor of the application

Susan Homola, 15 Mendelssohn Dr.

Homola said she was the direct neighbor and is totally in-favor of the application. The garage has been placed in an area with the least amount of impact. The applicant has already hired professionals to evaluate and make recommendation on where the garage can be placed with the least amount of impact to the abutters and setback requirements.

Tsao asked was there a buffer currently between the properties. Homola replied yes and the Peterson's even said they would plant more if required. MacMillan asked would one structure be more appealing than what is on site currently. Homola replied yes the structure would enhance the property and would have less of an impact to her property.

Dan Moffroid, 5 Mendelssohn Dr.

Moffroid said he was in favor of the application. There are several items over flowing into the driveway, the new garage would enhance the neighborhood and the Peterson's property.

Don Brooks, 12 Mendelssohn Dr.

Brooks said he was in favor of the application. He would see the garage the most since he lives directly across the street from the Petersons. Brooks said he would rather see the garage straight and not on an angle. Brooks said he also submitted a letter in favor of the application. (see file)

Ginny Brooks, 5 Mendelssohn Dr.

Brooks was in favor of the application and said she much rather see a garage than the current tent storage structure.

Ronald Ace, 6 Mendelssohn Dr.

Ace was in favor of the application. The garage will be a vast improvement to the Peterson's property and the neighborhood. Ace felt there was no reason not to grant the variance. The proposal infringes on no one even Homola, direct abutter, is in favor.

Joe Garruba, 28 Winchester Dr.

Garruba apologized for zooming in late and missed Attorney Christenson presentation. Garruba asked the board to address the special condition of this property which distinguishes it from other properties in the area. Referring to a map the properties on Mendelssohn Dr. appear to be similar. A criteria for a variance is that this particular property has some special conditions that is a hardship which is unique from the properties around it. The property must be burdened by the zoning restriction in a manner that is distinct from other similar properties. It was Garruba's opinion the application does not meet that requirement.

Major asked if the person on zoom showing the name David's iPhone wished to speak in favor or against the application. No response received.

MacMillan asked Peterson if the garage was a single story structure. Peterson replied yes. MacMillan asked what the overall height of the garage was. Peterson replied 16 feet.

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

Deliberations

Discussion of 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.

Belanger said I have voted on this case in the past and opposed the construction of this garage because it did not meet the "hardship" criteria as we have ruled on it in the past. We always considered the issue of hardship to imply simply that the project did not meet setback requirements in the ordinance and there was nothing unique with the property. After reading the NH Supreme Court case of Grey Rocks Land Trust vs Hebron, I am convinced that we have gone too far in our requirements. I also agree with the NH Supreme Court's findings in the Simplex Technologies vs Town of Newington when Justice Horton said; and I quote "our rulings on the hardship criteria has become too restrictive in light of the constitutional protections by which it must be tempered". When a use of the property is a permitted use, like a garage, and the neighborhood, value of surrounding property, and enjoyment of life at your residence are meeting the spirit of the ordinance, the issue of hardship becomes simply that one cannot enjoy life if a minor encroachment on the specific and possibly arbitrary conditions in an ordinance, then the hardship criteria has been met.

In light of the fact that the Hollis Planning Board is supporting a change to the side setback requirement as a special exception and if the proposal is within 20% with options to modify them and is sending this proposal to the Legislative Body for approval at the next town meeting, I believe the following findings are appropriate.

Therefore, I urge the Board to find the hardship issue has been met due to the fact that the applicant cannot enjoy a standard of life on the residential property in question due to a specific criteria in the ordinance that could arbitrarily be changed without harm to the community.

Supreme Court decision in Simplex Techs, Inc. v. Town of Newington, 145 NH 731 relaxed the unnecessary hardship standard to require only that the zoning restriction interfere with the applicant's "reasonable use of the property, considering the unique setting of the property in its environment".

This says an applicant is not required to show that the proposed use is necessary, only that it is reasonable. A proposed use is presumed to be reasonable if it is a permitted use under the Town's Ordinance. Malachy Glen Assocs., Inc. V Town of Chichester, 155 NH 102, 107 (2007). An area variance, such as a setback, may not be denied based on the permitted use.

MacMillan said if the use is reasonable that negates the setback because you need not worry about the setback anymore as long as the use is reasonable. MacMillan asked was this the correct interpretation. Belanger agreed however, the encroachment must be reasonable as well. MacMillan asked should the board anticipate what the voters will vote on concerning the proposed change before the planning board. The proposed change also includes a 20% clause which this application does not meet. This application is over the 20% requirement. MacMillan understands the applicant wants the garage and the abutters would rather have items located in the yard to be put into a single garage. MacMillan said the board should not negate the setback requirements for any reasonable use. Belanger agreed however, a tax payer should be able to use their property as they wish under certain circumstances.

McGhee said the applications must be determined individually and by the circumstances of each property. It was McGhee's opinion the burden of hardship in this case has been met. Major asked was the board convinced that the garage could not be moved to the west and be brought out of the setback entirely, where a variance would not be needed. Mason, Tsao and Swerchesky were convinced. MacMillan was not.

It was Major's opinion the garage could be moved forward while still preserving the hammerhead decreasing the encroachment further. West said the plans are hand drawn and may not depict the actual location. Major agreed. Mason said there is a brick walkway that goes from the hammer head to the back door and patio. Major said it may be inconvenient to re-landscape or re-locate some bricks. Belanger said that would be a hardship. MacMillan said hardship cannot be financial. McGhee said a decision must be made on the application presented, the board is not tasked with deciding a better location. Swerchesky agreed.

Moseley asked Condra if there was any leeway on the 5 foot leach field setback. Condra replied the design criteria for a septic system requires a 5 foot setback for the leach field. McGhee said as Belanger stated the setback amount is an arbitrary number each application needs to be decided on its own merits. West said the board may want to set a condition where the town engineer goes out to evaluate the conditions of the property. West felt the applicant has presented an overwhelming amount of evidence stating the garage could not be placed anywhere else on the property without affecting some type of setback requirement. Mason said he would grant the variance based on the evidence presented. Tsao agreed. Moseley said he thinks the garage could be moved towards the driveway. Major agreed however, he would be more comfortable if the board had a finding that the encroachment is de minimis since the encroachment is only 43 square feet.

Major said there are valid reasons for setbacks, the ordinances passed and it protects future generations. The setbacks preserve spacing between building, fire safety and he was also leery with granting variances keeping in mind the board needs to treat applications equally. The board needs to be aware there may be administrative gloss with issuing decisions like this one. Major reluctantly would agree to the variance just because the intrusion is so small like the board has done before. MacMillan said the public interest is expressed by the zoning ordinance. MacMillan understood why the neighbors want the garage, the property could use improvement.

Swerchesky moves to questions

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). And, 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
MacMillan	Yes	Yes	Yes	Yes	Yes	Yes	5	0
Mason	Yes	Yes	Yes	Yes	Yes	Yes	5	0
Swerchesky	Yes	Yes	Yes	Yes	Yes	Yes	5	0

THEREFORE, THE VARIANCE WAS GRANTED WITH THE BELOW CONDITONS AND FINDINGS-OF-FACT

Belanger read his proposed findings-of-fact;

1. The board finds the application to be an area variance request and not a use variance and the two are substantially different.
2. The Board finds an area variance is needed to enable the applicant's proposed use of the property, which is a permitted and usual use which cannot be achieved by some other reasonable method due to the special conditions of the property.
3. The Board finds the hardship issue has been met due to the fact that the applicant cannot enjoy a standard of life on the residential property in question due to a specific criteria in the ordinance that could arbitrarily be changed without harm to the community.

Major felt the findings should go up for a discussion. Major felt the applicant could enjoy his property without an additional garage. MacMillan agreed with finding #1 but disagrees with finding #2 and 3. West suggested a finding of fact the special conditions of the property are as follows; the rear grading, septic location, 5 feet setback from the leach field and there is an existing buffer between the applicant and the abutter. Major said the board should consider a finding of fact the proposed intrusion of the side yard setback is de minimis. The board agrees.

Discussion

Mason said there is no difference in law between a “use” and “area”. Belanger replied NH Supreme Court cases keeps bringing up area and use variances, area variances are more apt to be varied then a use variance. The Supreme Court has recognized the differences and the board should as well. Major suggested the application is an area variance and not a use variance. Mason said recent Supreme Court cases say the variances are the same and there in no distinction. Belanger said the research the town counsel did and the research Belanger had completed shows there is a difference. MacMillan agreed. Mason said the law changed in 2010. West agreed.

Belanger moves for a finding-of- fact;

1. *The board finds the application to be an area variance request and not a use variance and the two are substantially different.*

MacMillan seconded.

Roll call vote:

Belanger - Yes Tsao - Yes MacMillan - Yes Mason - No Swerchesky - Yes

Motion passed 4 to 1 with Mason voting against.

Belanger moves for a finding-of- fact;

2. *The Board finds an area variance is needed to enable the applicant's proposed use of the property, which is a permitted and usual use which cannot be achieved by some other reasonable method due to the special conditions of the property.*

MacMillan seconded.

Roll call vote:

Belanger - Yes Tsao - Yes MacMillan - Yes Mason - Yes Swerchesky - Yes

Motion passed unanimously.

West moves for a finding-of-fact;

3. *The Boards finds a hardship exists with respect to the property, due to the properties unique features including; topography, presence of a utility easement, and location of the septic system and the associated septic setbacks.*

MacMillan seconded.

Roll call vote:

Belanger - Yes Tsao - Yes MacMillan - Yes Mason - Yes Swerchesky - Yes

Motion passed unanimously.

Major moves for a finding-of-fact;

4. *The Boards finds the proposed side yard setback violation of approximately 40 square feet is de minimis in view of the special conditions of the property.*

MacMillan seconded.

Roll call vote:

Belanger - Yes Tsao - Yes MacMillan - Yes Mason - Yes Swerchesky - Yes

Motion passed unanimously.

Major moves for a condition of approval;

1. *The applicant shall maintain the existing vegetative buffer between 13 and 15 Mendelssohn Dr.*

MacMillan seconded.

Roll call vote:

Belanger - Yes Tsao - Yes MacMillan - Yes Mason - Yes Swerchesky - Yes

Motion passed unanimously.

MacMillan moves for a condition of approval;

2. *The structure shall not exceed the dimensions as specified in the application.*

West seconded.

Roll call vote:

Belanger - Yes Tsao - Yes MacMillan - Yes Mason - Yes Swerchesky - Yes

Motion passed unanimously.

The variance was granted 5-0 with the with the following conditions and findings of fact;

Conditions;

1. **The applicant shall maintain the existing vegetative buffer between 13 and 15 Mendelssohn Dr.**
2. **The structure shall not exceed the dimensions as specified in the application.**

Findings of fact;

1. **The board finds the application to be an area variance request and not a use variance and the two are substantially different.**
2. **The Board finds an area variance is needed to enable the applicant's proposed use of the property, which is a permitted and usual use which cannot be achieved by some other reasonable method due to the special conditions of the property.**
3. **The Boards finds a hardship exists with respect to the property, due to the properties unique features including; topography, presence of a utility easement, and location of the septic system and the associated septic setbacks.**
4. **The Boards finds the proposed side yard setback violation of approximately 40 square feet is de minimis in view of the special conditions of the property.**

Review of Minutes

Belanger moved to approve the minutes of October 22, 2020, as submitted.

Tsao seconded.

The motion was unanimously approved.

Other Business

Discussion of the Determination of regional impact

During the October ZBA meeting is was requested to implement a procedure to determine regional impact prior to a meeting.

The PB responded by saying the intent of this procedure would be to invite applicable stakeholders to the initial public meeting to streamline the process. The review of DRI are outlined in RSA 36:54 through :58.

It is stated multiple times throughout the statute that it is the responsibility of the local land use board with jurisdiction to determine that a proposal is a DRI. The intent of this procedure is not allowed within the confines of the RSA due to the fact that it would be impossible to properly notify applicable stakeholders prior to the meeting because the meeting minutes are required as part of the notice. It would also cause an undue burden on the applicant who would be responsible for the costs to send the certified mailings and provide plan sets to the NRPC before the determination would be made.

West said she has done some research and it was in her opinion the Building Inspector could determine regional impact. Major asked if West could gather the information and provide it to the members for a future conversation. West agreed.

Discussion on proposed zoning change

The Planning Board (PB) has requested the Zoning Board of Adjustment (ZBA) review the proposed zoning change concerning the side yard setback which was submitted by the ZBA and reviewed by the PB at their last meeting.

The submitted change was as follows;

AMENDMENT (2) ARE YOU IN FAVOR OF ADOPTION OF AMENDMENT (2) AS PROPOSED BY THE PLANNING BOARD FOR THE TOWN OF HOLLIS ZONING ORDINANCE AS FOLLOWS:

Amend Section XI: General Provisions, by adding the following new Section S. Residential Uses: Side Yard Setback Encroachment: Residential uses may be allowed to encroach into Minimum Side Yard requirements as required in the Agriculture and Business Zone, Recreation Zone, Residential and Agriculture Zone, Rural Lands Zone and the Town Center Zone, provided a Special Exception is obtained as outlined in Section VI Zoning Board of Adjustment (ZBA) , paragraph B, as well as adherence to the following criteria as determined by the Zoning Board of Adjustment:

- a. Written permission from the abutter who is being encroached upon.
- b. Proper screening, as determined by the ZBA, is provided.
- c. Encroachment shall not exceed 20% of the Minimum Side Yard requirement.
- d. Any decisions (ZBA approval letter) allowing encroachment shall be recorded for both the subject property and the affected abutter.
- e. Applicant must prove that the ZBA approval letter has been property recorded prior to the issuance of any building permit.

The ZBA discussed the proposed changed and decided to remove item “a”. The ZBA thought this may be accomplished by the applicant intimidating the abutter. The ZBA also added to item “d” “, unless prohibited by law or registry practices.” There was also a minor typo in item “e” changed property to properly.

The new proposed change read as follows;

AMENDMENT (2) ARE YOU IN FAVOR OF ADOPTION OF AMENDMENT (2) AS PROPOSED BY THE PLANNING BOARD FOR THE TOWN OF HOLLIS ZONING ORDINANCE AS FOLLOWS:

Amend Section XI: General Provisions, by adding the following new Section S. Residential Uses: Side Yard Setback Encroachment: Residential uses may be allowed to encroach into Minimum Side Yard requirements as required in the Agriculture and Business Zone, Recreation Zone, Residential and Agriculture Zone, Rural Lands Zone and the Town Center Zone, provided a Special Exception is obtained as outlined in Section VI Zoning Board of Adjustment (ZBA) , paragraph B, as well as adherence to the following criteria as determined by the Zoning Board of Adjustment:

- a. Proper screening, as determined by the ZBA, is provided.
- b. Encroachment shall not exceed 20% of the Minimum Side Yard requirement.
- c. Any decisions (ZBA approval letter) allowing encroachment shall be recorded for both the subject property and the affected abutter, unless prohibited by law or registry practices.
- d. Applicant must prove that the ZBA approval letter has been property recorded prior to the issuance of any building permit.

The modified zoning change will be sent to the PB for further review and approval.

Meeting adjourned at 9:15 pm.

Respectfully submitted by:

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