



ZONING BOARD of ADJUSTMENT
Town of Hollis
Seven Monument Square
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Minutes of April 22, 2021

The ZBA meeting was held in the Community Room, Hollis Town Hall, and was called to order by Chairman Brian Major at 7:05 pm.

MEMBERS OF ZONING BOARD OF ADJUSTMENT: Brian Major, Chairman; Jim Belanger, Vice Chairman; Regular Member – Cindy Robbins-Tsao, Rick MacMillan; Alternate Members – Bill Moseley, Meredith West and Stan Swerchesky.

Major explained the policies and procedures.

Major said the voting members for case ZBA2021-005: Belanger, Tsao, MacMillan, Moseley and Swerchesky.

The Zoning Board of Adjustment (ZBA) voted unanimously that case ZBA2021-005 has no regional impact.

ZBA2021-005

The application of Raisanen Homes Elite, property owner, for a Special Exception to Section IX, General Provisions, Paragraph K, Accessory Dwelling Units of the Zoning Ordinance to construct a 784 square foot Accessory Dwelling Unit, located at 48 Keyes Hill Rd., Map 029, Lot 001-009 in the Rural Lands Zone.

Chad Branon, Fieldstone Land Consultants, presented case 2021-05 on behalf of the property owner Raisanen Homes Elite. The application is seeking a special exception for a 784 square foot Accessory Dwelling Unit (ADU) located in the basement area of 48 Keyes Hill Rd., Map 029, Lot 001-009.

The construction of the proposed ADU will not impact the character, environment, scenic value, health, safety or general welfare of the Town. The proposed ADU has been designed to meet all of the requirements and limitations as outlined in Section IX (K) of the Hollis Zoning Ordinance. The building has been designed to have the appearance of a single family home. The construction will provide for adequate on-site improvements such as access, parking and a septic design which would support the ADU and principal dwelling.

The construction of an ADU will not materially affect the traffic or physical conditions of the Town roads. The traffic associated with the ADU is minimal and will not be noticeable to the surroundings.

The proposed ADU being 784 square feet is 18% of the total square footage of the structure which is 4,429. The proposed ADU has been designed so the ADU could be reincorporated into the principal dwelling. The ADU has an internal access to the primary dwelling and will share an internal heated living access through a common heated wall. The septic system has been designed, approved and will handle and treat the increased waste volumes generated by the ADU. The property has also been designed to have adequate off street parking.

Belanger asked where the location of the common heated wall was. Branon replied the stairwell is heated and that area would be the common wall. Belanger disagreed the stairwell would not meet the requirement of a common heated wall. Belanger asked was the room adjacent to the ADU which was marked as unfinished on the submitted plan heated. Branon replied yes. MacMillan asked would the unfinished area be heated with ambient heat or would there be a heating system. Branon replied forced hot air system.

Tsao asked when the home was built. Branon replied the home is under construction. Moseley asked was there a sliding door to the outside from the ADU. Branon replied yes. Moseley asked if the ADU had three exit points;

slider to the outside, stairs leading to the primary dwelling and stairs leading to the garage. Branon replied yes. Major voiced his concerns pertaining to the unfished area in the basement being used for the ADU which if that occurred the ADU would be oversized. Major asked what could be done to alleviate the concern. Branon replied a note could be added to the plan which states the 800 square foot maximum requirement. Belanger asked how many emergency exits were there. Branon replied 3 plus an egress window in the bedroom.

Spoke concerning the application not in-favor or against

Art, representing Lund Farm Condominiums, said all the questions he had have been answered.

No further questions from the Board and none from the floor – The hearing portion of the case closed.

DELIBERATIONS AND DECISION

ZBA2021-005

The discussion of the application of Raisanen Homes Elite, property owner, for a Special Exception to Section IX, General Provisions, Paragraph K, Accessory Dwelling Units of the Zoning Ordinance to construct a 784 square foot Accessory Dwelling Unit, located at 48 Keyes Hill Rd., Map 029, Lot 001-009 in the Rural Lands Zone.

Belanger, Moseley, Tsao, West and Swerchesky has no issues with the proposed ADU. MacMillan voiced his concern about the potential expansion of the ADU into the other area in the basement. Other than expansion MacMillan had no other issues. Major agreed there is a danger if someone buys the house in the future and expands the ADU. The two additional rooms would be tempting to make them into additional living space. Belanger said if there was no ADU in the basement and someone bought the property by right they could finish the basement legally.

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
Belanger	Yes	Yes	Yes	3	0
Tsao	Yes	Yes	Yes	3	0
MacMillan	Yes	Yes	Yes	3	0
Moseley	Yes	Yes	Yes	3	0
Swerchesky	Yes	Yes	Yes	3	0

THEREFORE, THE SPECIAL EXCEPTION WAS GRANTED.

Other Business

Major said a discussion of case ZBA2021-003 was added to the agenda because a motion to re-vote the case may occur.

Case ZBA 2021-003

Deliberative session completed on April 6, 2021 - The application of John Halvatzes, Jr., for a Variance to Section XG, Zoning District, Paragraph 4.b, Minimum Frontage on a public road of the Zoning Ordinance to permit the construction of a Single Family Home with 128.51 feet of frontage (required 200 feet) located on Broad Street (Map 026, Lot 048) in the Residential/Agricultural Zone.

Belanger said he has been a member of the board for nineteen years and has never done what he was about to do. It was Belanger's opinion the cases should have never been approved due to the fact of the multiple issues and inconsistencies with the ordinance. However, the Board decided to approve most of the issues by granting a variance for the building box. The only other variance required is road frontage and there are other homes in the area with reduced road frontage.

Belanger moves to reconsider the vote only on case 2021-003.

MacMillan said prior to voting on the motion there are a few things he would like to add which may have a bearing on some of the issues. Major said additional evidence can't be introduced at this point. MacMillan responded he would like to make a comment and the ZBA does not have to take the information as testimony.

Swerchesky said as a point of order, Mason was an original voting member on the case and is not present. Major said MacMillan has been appointed to vote in the absence of Mason. MacMillan has ensured the Board that he has read all of the previous minutes from the March 25, 2021 and April 6, 2021 ZBA meetings. Moseley stated that the Planning Board has a procedure to cover the appointed of another member when an original voting member is absent. Belanger said if someone does not second the motion the process would not continue.

MacMillan asked if he could call a re-vote on case 2021-004, which MacMillan intends to do. Major replied MacMillan could as long as it is done within 30 days.

Discussion

MacMillan said he had read all of the minutes and would like to bring to the Boards attention to some issues which may be pertinent to the case. MacMillan apologized to the Board for not being in attendance during the cases.

If both cases 2021-03 and 2021-04 were granted a building lot would now have a new standard in Hollis. A buildable lot would only require 28% of a building box and 64% of the required frontage. Many examples of unbuildable lots were presented to the ZBA during the original application for a variance for Lot 26-48 that would now be building lots according to the ZBA's new standard. Surely every property owner in Hollis should have the same standards applied to their property. There is nothing remarkable about lot 26-48 other than it is not eligible to be a building lot under the definition of "Building Area" on page 8 of the zoning ordinance. Many such previously unbuildable lots are on record and I'm sure we'll be hearing about some of them soon.

If Lot 26-48 required a variance of 5 or 10 percent of building box, instead of 28%, or the frontage was only short 10, 15 or even 20 feet short instead of 72 feet, these de minimis issues could be easily decided by the Board. To totally disregard the numerous requirements of ordinance to grant these variances should not be the ZBA's objective. The Zoning Ordinance was voted on by the voters. The Ordinance represents the interest of the Town's people. Considering the great pressure to develop existing lands in Hollis I would think that the Board, which represents the Town in these issues, would use great care when deviating from the Ordinance to this degree.

During the course of previous deliberations of the ZBA it's been stated that each case is separate, unique and must be decided upon considering it's particular merits without regard to precedent. During his presentation Attorney Hollis pointed to the fact that the property directly across from the applicant's, Lot 30- Map 20 had less frontage and was a smaller lot. The April 6 (line 80) minutes find that Lot 30-Map 20 was used as a

precedent in finding that a similar lot exists directly across the street with less frontage.

This aforementioned lot was the home of the James Adams family in 1966. Vicky Adams is a close friend of my wife as they both graduated from Hollis High School in 1966. The Adams family lived at this location for a number of years prior to the 1965 zoning ordinance revision. Homes built prior to the 1965 zoning ordinance should not be used as precedent or sighted in findings any more than lots on Flint Pond or Silver Lake should be. It's obvious that precedents are being sighted. Making large deviations from the Ordinance should not be undertaken by the Board it should be left to the voters.

The fact that a driveway and septic system for a barn was approved by the State has nothing to do with the requirements for residential dwellings in Hollis. Applications to the State for the expansion of agriculture uses are granted expeditiously. I needed to expand a pond for irrigation on my property. I called the wetland board and they told me that a permit was not needed as long as the purpose was agriculture. I had to move the location of my home because it violated the wetland setback by 8 feet. The Ordinance should not apply only to those who abide by it.

As far as declaring that this particular property has no use if it cannot be used as a building lot is contrary to the very issues that the Ordinance addresses. What happened to consideration for green space, wildlife habit, wetlands protection, overcrowding, and Rural Character. A barn can be built to board horses, green houses can be constructed, hay stored, fire wood can be processed, etc. Ironically, there is a large sign in front of this lot stating "Welcome to Hollis, An Active Farming Town since 1746".

It seems as if some Board members were unaware that a driveway and septic for a barn were granted for Agricultural purposes, not residential. Obviously, the applicant must have had some agriculture purposes in mind to have applied to the State for a septic system and driveway for a barn. I wouldn't assume that the applicant did so in order to claim that State approval of a septic system and driveway for agriculture purposes would make a variance for a residential dwelling easier to acquire but I would hope the ZBA would recognize the differences.

Making a precedent of a building lot in use before the 1965 Zoning Ordinance, Lot 30- Map 20, in determining a finding, cannot be characterized, in my opinion, as prudent. Although two variances were applied for, five different violations of the ordinance were incorporated in the variances: violation of the setbacks on both sides of the building box, violation of the building box setback into the wetland, 72 feet short of the required road frontage of 200 feet and a requirement that a driveway shall not require a waiver from the building box to the street, which this application needs.

Not having enough property to meet minimum requirements as building lot under the Ordinance is not a hardship. All land owners in Hollis are burdened with the same requirements. I do not believe that the requirements of the Ordinance are "arbitrary" and disregarding the Ordinance to this degree, without extraordinary circumstances, should be left to the voters of this town.

The fact that the Board first denied variance 2021 -003 and then approved 2021-04 does not reflect well on the Board in my opinion. This is analogous to a doctor's patient dying then the doctor goes ahead with an operation anyway.

I think the Board should bear in mind that it was the applicants' family that approached the Town accessor in 1985 requesting that a reduction in taxes be made because the lot that the family created was unbuildable. This reduction was granted as the lot in question did not meet the requirements of the ordinance. Relief is now being sought by the same family that created the lot and since 1985 has knowingly paid taxes on an unbuildable

woodlot. If any aspects of these cases should be revisited, in my opinion, the approval of 2021-004 should be reconsidered.

West said she would be in-favor of the re-vote due to the fact the proposed frontage matches other lots in the area. The reason for the frontage requirement is to insure safety as it pertains to the exit and entrance onto the road. The proposed frontage has approximately 200 feet of site distance in both directions and is on a major road. MacMillan said the lot West refers to across the street was created prior to the zoning ordinance and should not be considered when making a decision. The ordinance states there should be no overcrowding on main roads as well. Major said he would be in-favor of re-voting the case because the lot was created prior to the sub-division regulation and the Town did in fact tax the property at full rate for approximately 25 years. Also, the applicant is under a purchase agreement to meet the two acre requirement and the purpose of the frontage requirement is to promote safety. Even with the reduced frontage the lot would maintain the purpose and intent of the ordinance. MacMillan said the property has had a tax decrease for 35 years. If approved, the character of the ZBA changes it's respects to undersized lots and the rural character of Hollis would change as well. It was McGhee's opinion the case was a tough case to decide even though she was not a voting member. The deliberative session brought up all the issues however, this case was extremely different with extending circumstances. The discussion during the prior meeting made it clear that all non-conforming lots would not be granted if the ZBA approves this case. Major said Town Council confirmed that the case could be re-voted within 30 days if the ZBA decided to do so.

Belanger re-stated the motion.

Belanger moves to reconsider the vote only on case 2021-003.

Major seconded.

Voting results as follows;

Major – Yes Belanger – Yes MacMillan – No Moseley – No West - Yes

Motion passed 3-2 with McMillan and Moseley voting against.

Major said since the re-vote for case 2021-003 passed. The voting members would be; Major, Belanger, MacMillan, Moseley and West.

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 used in strict conformance with the ordinance, and a variance is, therefore, necessary to enable a reasonable use of it.

Board Member	Question #1	Question #2	Question #3	Question #4	Question #5a(1)	Question #5a(2)	Question #5b	Total Yes	Total No
Major	Yes	Yes	Yes	Yes	Yes	Yes	Yes	7	0
Belanger	Yes	No	Yes	Yes	Yes	Yes	Yes	6	1
MacMillan	No	No	No	No	No	No	No	0	7
Moseley	Yes	No	No	Yes	No	Yes	No	3	4
West	Yes	Yes	Yes	Yes	Yes	Yes	Yes	7	0

THEREFORE, THE RE-VOTE OF CASE 2021-003 HAD THE SAME RESULT AS THE PREVIOUS VOTE, THE VARIANCE WAS DENIED WITH THE SAME FINDINGS OF FACT.

ZBA2018-025

Pursuant to the Remand Order of the Hillsborough County Superior Court dated November 20, 2020 in the matter of *John Halvatzes, Trustee vs. Town of Hollis, et. al., Superior Court No. 2019-CV-00228* for the purpose of explaining its findings as to each element for both variances, property located on Broad St., Map 026, Lot048 in the Residential Agricultural Zone.

Major said the ZBA may want to consider reviewing the findings of fact may on the previous (ZBA2021-003 and 004) cases by doing this they findings may be enough to satisfy the Courts request to explain its findings as to each element for both variances. (ZBA2018-025 and 026) Swerchesky asked was the court remand based on the January 2019 meeting? Since that time, the applicant has re-submitted applications with additional requests under better circumstances. Should the remand be answered with the findings of the new cases? The remanded cases do not apply anymore because of the new cases. West replied as long as the cases are under appeal we do need to act regardless of the new applications. Major said the findings should be reviewed for cases 2021-003 and 004 and find out if they are applicable to case 2018-025 and 026. The ZBA members agreed.

Major said the remand case may be moot because the 2021 cases may be appealed as well. Setaro said the court remand order states “the Courts Remands the case to the Board to explain its findings” wouldn’t that be the findings for the 2018 cases? So why would the 2021 cases be relevant? Belanger said the language in the findings for the 2021 cases may be able to be used however, the decision which was made in the 2018 cases should only be addressed. The board discussed the procedure and decided to review the 2021 case findings and determine if those findings would be appropriate. West said case 2021-004 was dealing with the building box which was not part of the remand cases.

MacMillan said the same wording could be used however, the percentage of the areas have to be adjusted. Belanger said the Board needs to further explain the findings made on both cases. Major said he read the court order, as the court wanted additional findings, one for each variance criteria. West agreed. Swerchesky said he agrees with Belanger we only need to explain the findings made in the two case. Tsao said a point should be made on each variance criteria for clarification of the decision made.

The Board discussed the procedure to follow for the remand cases and decided to add additional findings to each case so the court would understand the reasoning behind the decisions made.

Tsao moves to add additional findings to cases ZBA2018-025 and 026.

MacMillan seconded.

Motion passed unanimously.

The Board reviewed the all the findings of fact imposed on ZBA2021-003 since case ZBA2018-025 dealt with a frontage variance and decided to impose, modify or change some of the conditions to case ZBA2018-025 which would further explain the denial of case ZBA2018-025.

Belanger moves to adopt a finding of fact for case ZBA2018-025;

- 1. The Board finds that the permitted uses in this area include single-family residences. Building a house on this lot will not change the character of the neighborhood. There would be no material effect on traffic, as Broad Street is an arterial street. The public interest is served by replacing the approved agricultural driveway permit with a permit for a residential driveway.*

Tsao seconded.

Motion unanimously approved.

Moseley moves to adopt a finding of fact for case ZBA2018-025;

2. *The Board finds that the purposes of the ordinance, per RSA 674:17, include (e) to prevent the overcrowding of land and (f) to avoid undue concentration of population. For unknown reasons, this lot was created as a nonconforming lot in 1964 because of inadequate frontage and lot size. The new frontage is still less than the amount required in 1964, and the minimum in the ordinance has been increased since then. The zoning provisions on frontage exist in part to support this purpose. A variance from this frontage provision to allow a lot that has about 44% too little frontage allows overcrowding and concentration and does not observe the spirit of the ordinance.*

Major said the 44% less frontage is defensible. The ZBA agreed.

MacMillan seconded.

Motion unanimously approved.

McGhee said should the ZBA consider adding a statement that the owner was aware that the lot was considered a non-buildable lot for quite some time. MacMillan said knowing the lot was non-buildable is a serious consideration.

Moseley moves to adopt a finding of fact for case ZBA2018-025;

3. *The evidence introduced during the hearing in the matter established that the applicant, recognizing the un-buildable nature of the lot, applied to the Town Assessor in 1985 for a reduction of taxation of the property, asserting that the parcel was an un-buildable lot.*

MacMillan seconded.

Motion unanimously approved.

West moves to adopt a finding of fact for case ZBA2018-025;

4. *The Board finds that there are several lots in the immediate area that are nonconforming lots for frontage, although the only lot with this little frontage on Broad Street is just across the street at Map 20 Lot 30. That lot does have plenty of frontage on Nutting Lane. Substantial justice is served by allowing a house on this lot similar to others in the area.*

Tsao seconded.

Motion approved 4-1 with Moseley against.

Tsao moves to adopt a finding of fact for case ZBA2018-025;

5. *The Board finds that this is a neighborhood of single-family houses. Allowing another single-family house on this property will not change the character of the neighborhood and will have no material effect on property values.*

MacMillan seconded.

Motion unanimously approved.

McGhee moves to adopt a finding of fact for case ZBA2018-025;

6. *The Board finds that literal enforcement of the provisions of the ordinance would not result in an unnecessary hardship since the lot has been recognized and assessed as a non-buildable lot for many years and other uses for the lot are viable. The lot was created as a nonconforming lot.*

Moseley seconded.

Motion unanimously approved.

ZBA2018-026

Pursuant to the Remand Order of the Hillsborough County Superior Court dated November 20, 2020 in the matter of **John Halvatzes, Trustee vs. Town of Hollis, et. al., Superior Court No. 2019-CV-00228** for the purpose of explaining its findings as to each element for both variances, property located on Broad St., Map 026, Lot048 in the Residential Agricultural Zone.

Major said case 2018-026 dealt with an undersized lot of 1.69 acres. Belanger said case 2018-026 was denied with no findings of fact. Major asked should the Board consider adopting the same findings which were imposed

on case 2018-025. The board decided to explain why the Board denied the variance for an undersized lot and create findings of fact for each point of the variance to further explain the decision which was made.

MacMillan said the applicant applied for a permit for a barn, septic system and a driveway for an agricultural use. The State approved the driveway and the septic system was approved for the barn. Why would the applicant apply and be granted the approvals for the septic system and driveway if there was not any applicable use for the property, other than to say the State approved the driveway.

Moseley moves for a finding of fact;

1. *The Board finds that the purpose of the 2 acre zoning is to prevent overcrowding and insure reasonable placement space for a replacement septic system, well and to maintain the rural character of the Town of Hollis.*

MacMillan seconded.

Motion unanimously approved.

MacMillan moves for a finding of fact;

2. *The Board finds that the proposed 28% reduction in lot size is too substantial a deviation from the ordinance, such that if the variance was granted, would undermine the rural character of the Town of Hollis.*

Moseley seconded.

Motion unanimously approved.

Moseley moves for a finding of fact;

3. *The Board finds that while the subject lot is a lot of record, when the lot was created in 1965 it was an un-buildable lot.*

Tsao seconded.

Motion unanimously approved.

Moseley moves for a finding of fact;

4. *The board finds that the applicant recognized that the lot was an un-buildable lot in 1985 when he applied for and was granted tax relief and the lot has been designated as un-buildable since then.*

MacMillan seconded.

Motion unanimously approved.

Moseley moves to forward the additional findings to Town Council.

MacMillan seconded.

Motion unanimously approved.

Election of Officers

The election of officers were deferred until after the town meeting.

MacMillan said Major has done an excellent job during the COVID pandemic and suggested Major take a year off from the Chair to have a break and have Belanger take the Chair and Major be Vice Chair. Major said a break was not needed.

The ZBA decided not to discuss the election of officers until after the town meeting.

Review of Minutes

Moseley moves to approve the minutes of March 25, 2021 as submitted.

Major seconded.

Motion unanimously approved with Tsao and MacMillan abstaining.

Moseley moves to approve the minutes of April 6, 2021 as submitted.

Belanger seconded.

Motion unanimously approved with Tsao and MacMillan abstaining.

Meeting Adjourned

The ZBA meeting adjourned at 9:35 pm.

Respectfully submitted by,

Donna Lee Setaro, Building and Land Use Coordinator