



**BOARD of ADJUSTMENT**

**Town of Hollis**

Seven Monument Square  
Hollis, New Hampshire 03049  
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**Minutes of January 25, 2018**

Meeting was held in the Community Room, Hollis Town Hall, and was called to order by Chairman Major at 7:00pm.

**MEMBERS OF ZONING BOARD OF ADJUSTMENT:** Brian Major, Chairman; Jim Belanger, Vice Chairman; Regular Members –Cindy Robbins-Tsao; Alternate Members – Drew Mason and Kat McGhee.

Major explained the policies and procedures.

Major appointed Mason and McGhee as a voting members this evening.

**Case ZBA 2018-001**

The application of Alfred Kozloski, property owner, for a Variance to Section XH, Rural Lands, Paragraph 4.c Minimum Front Yard Setback of the Zoning Ordinance to permit the construction of a 30' x 35' single story garage 35 feet from the front yard setback (required 100 feet), located at 63+63A Hayden Road, Map 035, Lot 014, in the Rural Lands Zone.

Alfred Kozloski explained he is requesting relief from the 100 foot scenic road setback to construct a 30' x 35' single story garage on a concrete pad 35 feet from the front property line. The lot is a total of seven acres with approximately 700 feet of frontage and has a beaver pond which resided on ½ of the property. With the constraints of the scenic road setback and the 100 foot buffer from the beaver pond placement of the garage is limited. Major asked what year was the home built. Kozloski replied 1982. Major asked how far the beaver pond was from the road. Kozloski replied approximately 120 feet. Major asked how far the beaver pond from the existing home. Kozloski replied between 60 and 65 feet.

Kozloski stated the variance will not be contrary to the public interest; because the garage will be consistent with other properties located in this neighborhood with respect to the scenic road setback requirements, which includes the existing home site. The spirit of the ordinance is observed; because the proposed garage will maintain a 35 foot setback from Hayden Road. Also, page 51 c. Existing Lots (ii) "*the structure must be set back as far as possible from the delineated edge of the wetland or surface water.*" For this reason the proposed garage will be placed further away from the beaver pond. Substantial justice is done because there will be no alteration of the essential character of the neighborhood, no threat to public health, safety or welfare and no public rights shall be injured. Surrounding properties are not diminished because the proposed garage will be consistent with the current accessory buildings located in the surrounding properties.

McGhee asked if there are trees or a vegetation buffer between the proposed garage and Hayden Road. Kozloski replied yes and noted with the proposed location since there is a clearing in the area, there would be a good buffer maintained.

Kozloski continued on with the variance requirements. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship because 63 Hayden Road is a 7 acres property with 680+ feet of road frontage and a beaver pond that resides on ½ of the lot. The provisions of the ordinance, specifically the 100 foot scenic road setback is a restriction on the reasonable use of the property. Finally, the proposed use is a reasonable one because any accessory building greater than 250 square feet can't be

constructed on the property and be in strict compliance with the zoning restriction of the 100 foot setback from the scenic road. The map submitted with the application shows the locations of the existing home, septic, well and the proposed driveway extension leading to the proposed garage. The red line noted shows the scenic road setback and the blue line indicates the setback buffer from the beaver pond to the road. The setback lines were drawn on the map by Mark Fougere, Hollis Planning Department (PB). Major asked if the house was built prior to the 1982 scenic road setback requirement. Belanger replied 1982 the scenic road requirement was enacted. However, Belanger was unsure when Hayden Road was added.

Tsao asked if there an existing garage attached to the house. Kozloski replied yes a two car attached. Belanger asked would the existing driveway be used to access the garage. Kozloski replied yes. Belanger asked if there were any beavers in the beaver pond. Kozloski replied yes at least one. Belanger asked was the “beaver pond” an official name for the pond. Kozloski replied no it was just a generic description of the pond. Belanger asked how long has the applicant lived at the property. Kozloski replied since October 2001. Belanger asked what types of utilities would the garage will have. Kozloski replied electric and possibly a space heater. Belanger asked does the applicant have any plans to convert the garage into an apartment. Kozloski replied no. Belanger asked what items will be stored in the garage. Kozloski replied cars. Belanger asked if the variance was not granted, where were the vehicles currently stored. Kozloski replied in temporary structures. Belanger asked was the easement or right way shown on the map active. Kozloski replied the easement is no longer attached to the property.

McGhee asked was the prior testimony that more consideration was being made to set the garage further away from the pond than the road. Kozloski replied yes also the placement of the garage would allow for minimal clearing, allowing the buffer to road to remain intact and the placement would allow easy hookup for an electrical service.

Mason asked was there any other wetlands relevant to this application discussion in the area. Kozloski replied no. Mason asked does the current water flow right to left leading into the over flow area marked on the map. Kozloski replied yes. Mason asked does the application require Planning Board review due the wetland buffer. Setaro replied the PB is awaiting the ZBA decision, if the application requires PB approval Setaro ensured the ZBA that the process will be completed.

Belanger asked would the two temporary structures be removed. Kozloski replied one of them will be removed. Major stated the prior testimony was there was an existing attached two car garage. Major questioned why the proposed garage is so far away from the existing home, usually a garage is placed closer to a home. Major stated in his opinion the garage could be placed in a different location such as; closer to the home. The ZBA needs to consider the outcome of this application as it would affect future applications. Kozloski replied the garage could possibly be moved. However, the closer the structure gets to the home it would require a substantial amount of cutting. Major stated if the garage was moved to a different location, the garage would have a lesser impact to the front yard setback and could potentially meet the town wide 50 foot road setback. Major asked staff to check whether or not the applicant requires further approval either from the town or state prior to the construction. Condra stated the regulations are based on the size of the pond, type, major or minor impact. Kozloski agreed the garage could possibly be placed 50 feet from the road however, the structure would encroach more on the pond setback. Major stated the applicant would like the ZBA to consider the property has a double burden due to the 100 foot scenic road setback, ½ of the property is in fact under water and virtually the entire parcel is affected by the wetland setback. Kozloski replied yes.

Belanger asked what types on noise would come from the garage. Kozloski replied the sound of an air compressor at times. Belanger asked if the garage was going to be used for a personal hobby and not to sell cars or start some type of business within the garage. Kozloski replied no.

Major stated if approved, and a condition of approval was to be imposed that the vegetation and tree line be maintained on the west side of the property between the driveway and the road, would the applicant consider the condition reasonable. Kozloski replied yes.

Belanger stated an email was received from Susan Durham, abutter. Durham stated she does not object to the garage across the street but hopes the existing driveway will be used.

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

### **DELIBERATION AND DECISION**

#### **Case ZBA 2018-001**

The discussion of the application of Alfred Kozoski, property owner, for a Variance to Section XH, Rural Lands, Paragraph 4.c Minimum Front Yard Setback of the Zoning Ordinance to permit the construction of a 30' x 35' single story garage 35 feet from the front yard setback (required 100 feet), located at 63+63A Hayden Road, Map 035, Lot 014, in the Rural Lands Zone.

Belanger stated he considers the hardship to the property. The beaver pond, takes most of the properties acreage. Belanger stated he hoped both temporary structures were going to be removed for aesthetics reasons towards the road. The applicant did state on temporary structure was going to be removed and was not sure about the other one. The structure is not going to be used as a business, the structure would only have electricity and no other utilities. Therefore, Belanger stated he has no problem with hardship or the other conditions. Tsao and McGhee agreed. McGhee stated the previous statement on maintaining the vegetation should be included in the approval. Belanger stated he does not support the condition because the condition carries with the property and if the applicant has reason to cut trees in the future he would have to return to the ZBA. Major stated the spirit of the condition is to have green space between the structure and the road because the structure is within 50 feet from the road. Belanger agreed however, the condition should not say specifically what type of vegetation should stay. Mason stated the hardship to the property is the two setback requirements and the applicant did point out from the zoning ordinance *“the structure must be set back as far as possible from the delineated edge of the wetland or surface water.”* In Mason’s opinion the structure should be better further away from the pond and closer to the road. Belanger agreed especially because other structure in the neighborhood are closer to the road. Mason stated a finding of fact should be added if approved that other properties in the area have structures well within the scenic road setback of 100 feet. Major stated he does not necessarily agree with the other members. However, it is Major’s opinion not meeting the 50 foot setback is a concern and the home already has a garage. The desire for a second garage does not support the argument that the applicant lacks a reasonable use of the property. An applicant may not be able to put everything they want on their property. Mason stated the ordinance allows for accessory structures. Major stated the property is truly unique, half of the property is under water the other half is long and thin. The entire property is subject to the 100 foot scenic road setback and it has. McGhee stated it was her original thought to have the applicant meet the 50 foot road setback but seeing there is a clearing in the proposed location there would be less disruption to the existing natural barrier.

*Major moves for the following findings of fact;*

- 1. The applicant’s lot is situated in an area with several other homes and structures set within the 100 foot scenic road setback.*
- 2. The hardship to the property was brought forth by the 100 foot scenic road setback and the 100 foot setback from the beaver pond: nearly all of the applicant’s property is affected by both the scenic road setback and the setback from the beaver pond.*
- 3. The ZBA finds the proposed garage location minimizes the disturbance to the natural vegetation.*

*Belanger moves for a finding of fact;*

- 4. The ZBA finds the proposed garage is a reasonable use of the property.*

*Major moves for the following condition of approval;*

- 1. The applicant shall maintain the natural vegetation between the structure and the road on the west side of the property.*

*Belanger moves to approve the application with the one condition and four findings of fact.*

*Seconded by Tsao*

*Motion unanimously approved.*

**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
Major	Yes	Yes	Yes	Yes	Yes	Yes	6	0
Belanger	Yes	Yes	Yes	Yes	Yes	Yes	6	0
Robbins-Tsao	Yes	Yes	Yes	Yes	Yes	Yes	6	0
Mason	Yes	Yes	Yes	Yes	Yes	Yes	6	0
McGhee	Yes	Yes	Yes	Yes	Yes	Yes	6	0

**THEREFORE THE VARIANCE WAS GRANTED WITH THE FOLLOWING CONDITIONS AND FINDINGS OF FACT;**

**Condition:**

- 1. The applicant shall maintain the existing natural vegetation barrier between the structure and the road on the west side of the property.**

**Findings of Fact:**

- 1. The applicant's lot is situated in an area with several other homes and structures set within the 100 foot scenic road setback.**
- 2. The hardship to the property is brought about by both the 100 foot scenic road setback and the 100 foot wetlands setback due to the presence of the body of water referred to as the Beaver Pond, which occupies nearly one half of the subject lot.**
- 3. The ZBA finds the proposed garage location minimizes the disturbance to the natural vegetation.**
- 4. The ZBA finds the proposed garage is a reasonable use of the property.**

**Volunteer Interest Form**

The ZBA chairman and the members would like to request to the Board of Selectmen to appoint Meredith West as an alternate member of the ZBA.

**Other Business**

The ZBA discussed whether or not the scenic road setbacks should be repealed. Belanger stated he will investigate the issues prior to sending a request to the PB for review.

**Review of Minutes**

*Belanger moves to approve the minutes of November 16, 2017 as written.*

*Seconded by Tsao.*

*Motion unanimously approved*

**Meeting Adjourned**

The ZBA meeting adjourned at 8:10 pm.

Respectfully submitted, Donna L. Setaro, Building and Land Use Coordinator.