



ZONING BOARD of ADJUSTMENT
Town of Hollis
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Minutes of June 23, 2022

The Zoning Board of Adjustment meeting was held in the Community Room, Hollis Town Hall, and was called to order by Chairman Brian Major at 7:00 pm.

MEMBERS OF ZONING BOARD OF ADJUSTMENT PRESENT: Brian Major, Chairman; Jim Belanger, Vice Chairman; Regular Members – Rick MacMillan, Drew Mason; Alternate Members – Bill Moseley, Meredith West.

MEMBERS ABSENT: Regular Members – Cindy Robbins-Tsao; Alternate Members –Kat McGhee, Stan Swerchesky.

STAFF PRESENT: Kevin Anderson, Town Planner and Environmental Coordinator; Donna Setaro, Building and Land Use Coordinator.

J. Belanger led the Pledge of Allegiance.

B. Major explained the policies and procedures.

B. Major stated that the voting members on case ZBA2022-014 at this meeting will be: J. Belanger, R. MacMillan, D. Mason, B. Moseley, and M. West.

By unanimous vote, the Zoning Board of Adjustment (ZBA) found no regional impact for case ZBA2022-014.

ZBA2022-014

The application of Michael Mercier & Lauren Perry, property owners, for an Special Exception to Section XII.B.4 Nonconforming Lots of less than 2 acres in the Historic District, to approve the construction of a 30' x 40' garage where a portion sits 20 feet from the side yard setback and a portion sits 25 feet from the rear yard setback (required 35ft side and rear setback) located at 27 Broad St., (Map 053, Lot 003) in the Agricultural District.

Applicant: Lauren Perry and Michael Mercier, Owners. L. Perry stated that they had been thinking about this plan since they moved into the home; they had been looking for a house with a three-car garage because they usually have two primary vehicles plus a third vehicle. Part of the use of the extra building will be to house vehicles, so that they won't be sitting in the driveway; it will also hold gardening equipment, their lawn tractor, and workshop space. Applicant stated that from the street it looks as if their property is larger than it is – there is a good portion of adjoining space that belongs to the Brookdale Fruit Farm. The driveway to the proposed garage would cross an agricultural drainage ditch; L. Perry stated that they would work with an engineer to design the driveway. They looked at various possibilities for siting the proposed building, and the plan shows the siting that they felt was best from an aesthetic perspective. The garage would be back from the street. There are a number of challenges with other potential locations, such as slopes, and the septic and well areas.

R. MacMillan stated that the intrusion of the proposed garage into the setback is 43% on the westerly side, and 30% on the southerly side.

Per B. Major's question, L. Perry estimated that the total space of the intrusion would be around 200 square feet.

B. Major asked why the Applicants couldn't put the building 15 or 20 feet toward the northeast corner, and closer to the house. M. Mercier answered that the issue in that instance is the agricultural ditch, from which any construction would need to keep a recommended distance. R. MacMillan pointed out, however, that the driveway to the proposed garage will have to be as wide as the opening to the garage, and will itself have to be built over the ditch. M. Mercier responded that remediation of flooding from the ditch would be much simpler with just the driveway in that area, rather than trying to dig out from under a built-upon concrete slab.

R. MacMillan asked the Applicants about making the proposed building smaller, so that it would be compliant. M. Mercier answered that in that case, the garage would not be deep enough for the storage space that they want.

M. Mercier stated that they are considering two options in regard to the ditch: one would involve a culvert constructed of either concrete or corrugated plastic, and the other would be a wooden bridge with bracing underneath it. Whatever they do would be engineer-designed.

R. MacMillan pointed out that the proposed structure would be almost as big as the Applicants' house.

In answer to a question from M. West, M. Mercier clarified that there is no current exact measurement for the recommended building setback from the ditch – the recommendation was from a pre-consultation.

B. Major pointed out that this property is in the Historic District, and that the Applicants will have to go before the Historic District Commission. He asked if the design of the proposed garage would be architecturally consistent with the house. Would it look like a barn? L. Perry answered that their next step would be to have the building designed – they have not done that as yet because they wanted to make sure that the Town would allow the building, first. The goal would be to have the new structure look like a carriage house, or something that would belong with the existing home.

R. MacMillan asked if there are any other houses at a similar angle, on the same street. M. Mercier answered that he does not believe there are; the others are all square to the road. L. Perry added that their aesthetic idea in angling the proposed garage was that it would be parallel to the ditch. Moving the ditch would not be a possibility.

M. West pointed out, though, that the house almost across the street is on a triangular lot; there are certainly a lot of slanted, angled properties in the area.

In answer to a question from B. Major, the Applicants stated that the agricultural drainage ditch does fill up with water in the winter and spring.

K. Anderson mentioned that he did the design for Brookdale, across the street, and there is a significant amount of water that moves through that ditch.

B. Major stated that if the Applicants' property wasn't in the Historic District, they would be in front of the ZBA for a Variance; as it is, they are in front of the ZBA for a Special Exception. He asked if it would be reasonable for the ZBA to put a condition on approval of this application, making it subject to approval by the Historic District Commission and their finding that this Special Exception is necessary to carry out the purposes of their ordinance.

M. Mercier responded that they haven't yet gone to the HDC; they were told to come before the ZBA first. The Applicants do assume that the HDC would be more involved at the point at which they are designing the building, if the Special Exception is granted by the ZBA.

B. Major pointed out that this application would be very difficult to approve under the standards for a Variance.

R. MacMillan asked if construction of the proposed building would involve cutting down the mature tree near the proposed site. L. Perry answered that that question is of some debate in their household. M. Mercier stated that they did have an arborist look at the tree; it is a black cherry tree that is rotting at the bottom, and is not expected to last another 15 years. In building the garage, they would probably take the tree out now. The plan would be to replace it with another large tree, anyway.

D. Setaro pointed out that removal of any trees with such visibility does need Historic District approval.

J. Belanger suggested that the Applicants should not keep going back to the HDC for different things, such as for the replacement of a tree – they should get the entire application approved at one time.

B. Major stated that if the Applicants put in a culvert larger than the one currently under Broad Street, and maintain it, he did not see how it would create a problem.

M. West mentioned that the people who are going to be impacted first, if the drainage is blocked, are the Applicants themselves.

D. Mason pointed out, however, that one hears anecdotally about the Army Corps of Engineers coming to a site and demanding certain stipulations on interior waterways of the United States. M. West agreed; the Applicants want to be sure that they are jurisdictionally outside what a group such as the Army Corps of Engineers would claim responsibility for.

In looking at the conditions of the Special Exception, D. Mason asked whether strict adherence to the existing setbacks would detrimentally impact the Historic District, and disturb the streetscape.

L. Perry responded that they could do this in such a way that the proposed garage would be located where there driveway is right now – that would put the new structure closer to the road than their house is. Their thinking, in this application, is that it would look nicer, and would better preserve the view of the open space and the orchard behind their property, if it were set further away from the road – and lower than the road, as the land slopes down in that area.

D. Mason further asked if strict adherence to the existing setbacks would cause inconsistency in the massing of the buildings; L. Perry answered that it would indeed stick out. The orientation would also be inconsistent.

M. West pointed out that the ordinance states that the Zoning Board of Adjustment may grant a special exception to setback requirements for non-conforming lots of less than two acres in the Historic District under certain conditions, three of which have to do with a negative impact that would occur if strict adherence is maintained – or, in the fourth possible condition, if the building is designed nicely. “If the structure as designed takes into consideration architectural and spatial elements of adjacent buildings an exception may be granted” – just by itself. The proposal might not meet any of the other criteria. M. West further mentioned that this is where we will have to consider recommendations from the HDC. The criteria are stated independent of one another; the language is “or”, not “and”.

It was generally pointed out that Applicants do not have a design as yet, however, so the Board cannot right now grant the Special Exception under that condition.

B. Major stated that in his view this application should have gone to the HDC first.

R. MacMillan agreed that the process is convoluted, but the main reason for that is the Town itself – the views, the agricultural community; we like to see orchards, and so on. Everybody is somewhat protective of this area,

because this is the heart of the Town. This is why people come here. The Board represents the people, as well as applicants.

L. Perry stated that they understand that theirs is indeed a very visible property.

R. MacMillan concurred: very visible, in a very pretty area. The view of the orchards is heading right into Town: they're one of the first things you see, going straight into Town. It's difficult to visualize anything going up in that area, and the whole Town is under pressure from building.

L. Perry mentioned that they understand that going before the HDC will be a high bar.

B. Major pointed out that the ordinance does allow for the ZBA to pass it off, as it were, to some degree, to the HDC – that would be one way to go.

L. Perry stated that one of the reasons they purchased the property is because of the setting; she is very concerned with the way that it looks. Making it something that enhances the Town, and is not a detriment, is important to them – so if there is not a way to do that, it won't be done.

M. West stated that the alternative is that they might have several vehicles parked in their yard. The Applicants added that another possibility is that they would have to rent garage space off-site.

R. MacMillan asked if they would consider a smaller building – it would be fairly easy. A 45-foot by 30-foot barn is quite big. M. Mercier agreed, but stated that he wants to work on his own cars, and install a lift, which needs space – and then L. Perry also wants more space for yard equipment and other things. R. MacMillan stated that he understands that, but other people who have similar structures have them on, for instance, 30 acres. On one acre, with a house there, to add another building almost as big as the house, is another matter. Additionally, it's in the Historic District, and on the main road into Town.

M. Mercier said that they would need a Variance even if they cut their proposed structure down to a two-car garage, and if they did they might not have the space that they want. It would also be more cost-effective to the Applicants to make the building bigger: it would cost only about 20% more to make the building 50% bigger. R. MacMillan pointed out that that is the economics of scale in terms of any building.

B. Major asked whether anything had been received by Staff in the mail, regarding this case; D. Setaro answered that no, nothing had been received either for or against.

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

DELIBERATIONS AND DECISION

ZBA2022-014

The application of Michael Mercier & Lauren Perry, property owners, for an Special Exception to Section XII.B.4 Nonconforming Lots of less than 2 acres in the Historic District, to approve the construction of a 30' x 40' garage where a portion sits 20 feet from the side yard setback and a portion sits 25 feet from the rear yard setback (required 35ft side and rear setback) located at 27 Broad St., (Map 053, Lot 003) in the Agricultural District.

J. Belanger stated that the questions that have been discussed were interesting. He believes that it is a project that should be approved – he understands that the Historic District may have some issues with it, but abutting agricultural property setbacks are not the same thing as being in a residential neighborhood where people could talk to one another by hanging out of the window. He does not see encroachment onto the side yard or rear yard setbacks to be a problem in this situation.

R. MacMillan disagreed, and pointed out that the first criteria under the application for a Special Exception states that it shouldn't affect the scenic value of the Town, and this would obviously do that. His main concern is that it's right on the main road, Broad Street, going right into Town – and it does not meet the first criteria.

B. Moseley concurred – the building would definitely stand out.

R. MacMillan stated that he doesn't see how the application meets any of the points that would allow the ZBA to grant a Special Exception under the ordinance. The answer to every point under Section XII.B.4 is no. How do we say that this is fine in the Historic District and we're going to allow it, regardless of the consequences to the scenic value of the property? The setback is not there, and spatially every property along that road includes a wide area between buildings. None of them encroach on the setbacks. He does not think that this is viable application on that basis.

J. Belanger stated that if Brookdale wanted to build another barn to store their equipment it would change the aesthetics and appearance of the area, and he does not see how this is any different.

R. MacMillan pointed out that this, however, is 15 feet from someone's property line. How many times have we turned down people who had acreage all around their property, and they couldn't build because of the setbacks?

B. Major pointed out that as a matter of right, the Applicants wouldn't have to come before the ZBA at all if they built a similar building within the setbacks – and that would have the same effect upon the streetscape. The HDC might have a problem with it, but they wouldn't have to come before this Board.

M. West stated that the ordinance as written very much envisions that the Applicants would have already gone to the HDC before coming before the ZBA, and conceptually it does not work.

D. Mason added that another difficulty is that, the way it's worded, the ordinance cites issues that "strict adherence" to the setbacks would cause; it doesn't say what problems allowing the Special Exception could or should not cause.

B. Major pointed out that the word "or" in the ordinance is significant.

R. MacMillan stated that this is a 40' x 30' building – it's not a 24' x 24' garage. This is a big barn – and they already have a house on a one-acre lot, and now want to add a barn practically as big as the house. Plus, it's in the Historic District.

D. Mason asked about the possibility of adding a condition that the new structure be only one story high; R. MacMillan agreed that that would assist in his opinion.

B. Major stated that the problem is that this is still a Special Exception: we can put conditions on the Special Exception, but they need to relate.

J. Belanger stated that we're talking about Historic District issues, and we're supposed to be dealing with a setback. The three questions the Board must answer in granting a Special Exception don't talk about aesthetic value.

R. MacMillan pointed out, however, that the first criteria on the application for a Special Exception does state "The use shall not be detrimental to the character, environment, scenic value, health, safety or general welfare of the Town."

D. Mason stated that his understanding of Section XII.B.4 is that if we are satisfied with its impact on the Historic District, the streetscape, the massing, and the setback, then we can supersede the setback issues. But if we're not

satisfied with that, then we don't have to grant the Special Exception.

B. Major asked, though, whether that means that we're imposing our viewpoints on something that is an HDC concern. He stated that his inclination would be, since the property is in the Historic District, and since the HDC generally is more stringent when it comes to zoning regulations and land use, that it would not be completely unwise to defer to them in the first instance.

J. Belanger agreed that Historic District issues are 90% of what the Board has been discussing in terms of this case. B. Moseley and M. West further concurred that they'd be more comfortable with the HDC discussing the application first.

It was noted, however, that the HDC has already stated that they will not take any action on the case until it has ZBA approval.

B. Major asked whether the HDC might hear the case if the ZBA tabled it; D. Setaro responded that, in order to go before the HDC, the plans for any and all construction would have to be full, complete, and exact – which is a substantial cost, especially considering that the HDC might reject the application.

B. Moseley asked how, though, we get around Section XII.B.4(e), "The ZBA will consider (but is not necessarily bound by) the recommendations of the HDC." How do we consider their recommendations when there aren't any, as yet? This condition is not predicated by "or" in the ordinance.

D. Mason pointed out that the only part of what the HDC might recommend that would affect the ZBA is their recommendation regarding setback – that is what we would have to consider, though on appeal we could say that we would allow it anyway.

R. MacMillan stated that there is a criteria for the setbacks on properties of under two acres in the Historic District.

D. Mason stated that he would suggest approving the application, with the condition that the HDC has to approve the plan and specifically address detrimental impact to the Historic District, streetscape, massing of buildings, and setback.

M. West stated that the HDC should be the ones to grant a Special Exception in cases such as this.

D. Mason moved for a condition of approval;

- 1. The Applicant must receive a decision from the Historic District Commission with respect to impact on the Historic District and streetscape, consistency in the massing of buildings, and consistency of the setbacks of existing adjacent Buildings.*

Seconded by R. MacMillan.

Motion unanimously approved.

B. Major moved for the following finding-of-fact;

- 1. The Board finds that due to the structure and lack of clarity of Section XII.B.4 the Board found it difficult to act on the application without a Historic District Commission recommendation.*

Seconded by R. MacMillan.

Motion unanimously approved.

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
MacMillan	Yes	No	Yes	2	1
Mason	Yes	Yes	Yes	3	0
Moseley	Yes	Yes	Yes	3	0
West	Yes	Yes	Yes	3	0

THEREFORE, THE SPECIAL EXCEPTION WAS GRANTED WITH THE FOLLOWING CONDITION AND FINDING OF FACT;

Condition;

1. The Applicant must receive a decision from the Historic District Commission with respect to impact on the Historic District and streetscape, consistency in the massing of buildings, and consistency of the setbacks of existing adjacent buildings.

Finding-of-Fact;

1. The Board finds that due to the structure and lack of clarity of Section XII.B.4, it was difficult for the ZBA to act on the application without a Historic District Commission recommendation.

Review of Minutes

J. Belanger moved to approve the minutes of May 26, 2022.

Seconded by B. Moseley.

Motion unanimously approved with D. Mason abstaining.

Other Business

Non-Public Session under RSA 91-A:3, II (c). Reputation

D. Mason moved that the Board enter Non-Public in accordance with RSA 91-A:3, II (c). Reputation.

Seconded by R. MacMillan.

Motion unanimously approved.

The Board entered a Non-Public Session at 8:25 pm.

Conclusion of Non-Public Session

J. Belanger moved that the Board come out of Non-Public and seal the minutes, in accordance with RSA 91-A:3, II (c). Reputation.

Seconded by R. MacMillan.

Motion unanimously approved.

The ZBA came out of the Non-Public Session at 8:40 pm.

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

Meeting Adjourned

The ZBA meeting adjourned at 8:45 pm.

Respectfully submitted by:

Donna Lee Setaro, Building and Land Use Coordinator,
and Aurelia Perry, Recording Secretary.