



ZONING BOARD of ADJUSTMENT

Town of Hollis

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Minutes of October 27, 2022

The Hollis Zoning Board of Adjustment meeting was held in the Community Room, Hollis Town Hall, and was called to order by Chairman Brian Major at 7:07pm.

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 – Bill Moseley, and Stan Swerchesky.

MEMBERS ABSENT: Kat McGhee and Meredith West, Alternate Members.

STAFF PRESENT: Kevin Anderson, Town Planner & Environmental Coordinator; Bill Condra, Inspector/Code Enforcement; Donna Setaro, Building and Land Use Coordinator.

B. Major stated that he will not be voting at this meeting; Alternate members B. Moseley and S. Swerchesky will be voting, along with the other present Regular members.

J. Belanger led the Pledge of Allegiance.

Before starting the business of the meeting, B. Major offered a moment of silence for Attorney Gerald Prunier, who passed away last week. B. Major stated that G. Prunier had been before this Board many times over the years. He was a resident in Town, and a friend to all of us. When he came before the Board, he told it straight. He acknowledged if there were difficulties in his case. He was always straight with this Board, and very frank. He will be missed.

B. Major explained the policies and procedures.

Determination of Regional Impact

By unanimous vote, the Zoning Board of Adjustment (ZBA) found no regional impact for case ZBA2022-019.

ZBA2022-019

This application was tabled at the September 22, 2022 meeting – The application of William Keller, property owner, for a Special Exception to Section IX; General Provisions, paragraph K; Accessory Dwelling Unit, of the Zoning Ordinance, to approve a pre-existing 772 square foot Accessory Dwelling Unit, located at 105+105A Nartoff Rd., (Map 032, Lot 057) in the Residential/Agricultural District.

Applicant: William Keller, 105 Nartoff Road. Stated that he and his partner, Jessica Sinatra, bought a house at 105 Nartoff, in Hollis, about a year and half ago, in May of 2021. They were told that the ADU in the basement was legal, fully permitted, and ready to go. After they moved in, they found out that there was a permit in 2008 for the ADU, but that that permit was for the main floor while the existing, finished ADU is in the basement. They are now trying to get that ADU permitted, after the fact, so that they can rent it out to a long-term tenant.

B. Major stated that the Board has to consider the plan for the ADU, now, as if it had never been built, and asked the

Applicant to go through the requirements.

W. Keller stated that the ADU is less than 800 square feet, so it meets the space requirement, and there is a shared heated wall between the primary living space and the ADU. He pulled an electrical permit and put in electric, heated baseboards himself.

B. Major asked if the Applicant had sufficient parking for an ADU; W. Keller answered yes – there is a three-car garage and a large driveway.

D. Mason asked if the Applicant knew what year the house was built. W. Keller stated that the old part of the house, where the ADU is located, was built in the early 1970s. A large addition was built in 2001, which doubled the size of the house. D. Mason then asked if the Applicant knew what year the ADU was built. W. Keller stated that they did not know. The previous owners claimed, in a letter to the Applicant's lawyers, that the whole thing was there before they bought the house – but actually there used to be a one-car garage there, so at some point the previous owners doubled the size of what they say was an existing ADU, adding a room. The only other history that he knows is that at some point in 2018 the Inspector from the Hollis Fire Department said that she had been there a few years previously and that the house used to be a duplex – so the house is split into two sides. The side with the ADU was finished on the top and finished in the basement, and then that was sectioned off from the new addition.

B. Major asked if either B. Condra or K. Anderson had any more information regarding the history of the home. K. Anderson stated that he spent some time reviewing the registry of deeds related to this property, going back to the 1950s and 60s, trying to understand how the parcel was subdivided, and when it might have first been constructed. He stated that in terms of additions and alterations to the building, our files are pretty limited. B. Major then asked if it was safe to assume that none of this work was done by virtue of permit; K. Anderson said that that was correct. B. Condra added that there was a permit issued for a first floor ADU in 2008, but perhaps someone built it in the basement instead.

R. MacMillan asked B. Condra what objections he has to the ADU as it stands now; B. Condra answered that he has no objections.

S. Swerchesky asked if the entrance to the ADU is in the back of the building. W. Keller answered that the direct entrance to the ADU is in the back of the building, and that there is another entrance from the primary living space into the ADU, in the front of the building. That entrance goes from the primary living space through the mudroom, and into the three-car garage. S. Swerchesky asked if there was intent for a resident of the ADU to also use the three-car garage; W. Keller indicated that that was a possibility, if it would be allowed. They would work it out with the tenant.

B. Major asked if the intent of the application, right now, is to argue that the area outlined on the plan in red and purple constitutes the entirety of the ADU, and that the laminated floor portion in the mudroom and hall are shared by both the ADU and the main housing unit. W. Keller stated that the first part is correct; the mudroom is accessible to the ADU, but when they rent it out that door will probably be locked. The second means of egress to the ADU is a window in bedroom 1 of the ADU.

B. Major further asked if it was the Applicant's testimony that the door off the kitchen of the ADU is not to be a door normally used by residents of the ADU. W. Keller answered probably not – his question would be whether or not that was allowed.

B. Major stated that the Board is going to have to wrestle with the heated wall concept. They will have to look at whether, functionally, the whole area is going to be utilized as an ADU, notwithstanding that the Applicant may have put a wall in somewhere and designated it as part of the ADU. W. Keller responded that he did not put a wall in himself, but that there is that wall there. His intention is for the ADU to just be within the portion outlined on the plan.

D. Mason asked to confirm that if the Applicant had a family member living in the ADU, the door to the garage would be unlocked and would be used. W. Keller stated that was probably correct; his family would be primarily living in the main living space. If they had someone they knew, such as family, living in the ADU, then yes, they would probably go in and out. D. Mason asked to clarify that they would only be locking that door if they rented the ADU to someone they did not otherwise know. W. Keller said that that's probably correct. He added that they could install a door to the mudroom – the intention is not for the mudroom to be part of the ADU. The mudroom is where they go when they park their car in the garage, and enter their main dwelling area.

B. Major asked how the ADU could be re-incorporated into the main unit in the future, if it is no longer used as an ADU. W. Keller answered that they would just remove the door at the bottom of the stairs, that goes into the ADU.

B. Major asked whether, the Board felt it necessary, that Applicant would agree that there be no door from the kitchen to the designated mudroom area – that there would be no access at all. W. Keller stated that in that case, the ADU would be a sectioned-off space for which the only entrance would be in the back of the house. He stated that if that is what's needed, then they would consider it. B. Condra pointed out, however, that the Code requires the door. The door currently in place needs to exist. The door does not have to be locked, but can be.

Regarding the shared heated wall, W. Keller stated that in the mudroom in the primary living space he installed two electric baseboard heaters. On the other side of the wall, in the area of the ADU, it is heated via water-heated baseboards.

R. MacMillan asked where the boiler is located; W. Keller answered that it is in a utility room in the mudroom. He confirmed that the mudroom is now heated by electric baseboard heaters, which it previously had not been.

K. Anderson added that there is a new septic system design on file for the property, for five bedrooms – the existing one was for less than five bedrooms. As far as the septic system goes, therefore, the property is meeting requirements.

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

DELIBERATIONS AND DECISION

ZBA2022-019

The discussion of the application of William Keller, property owners, for a Special Exception to Section IX; General Provisions, paragraph K; Accessory Dwelling Unit, of the Zoning Ordinance, to approve a pre-existing 772 square foot Accessory Dwelling Unit, located at 105+105A Nartoff Rd., (Map 032, Lot 057) in the Residential/Agricultural District.

J. Belanger stated that he has no questions, and no problem with the application.

The other members of the Board concurred that they have no problems with the application. S. Swerchesky stated that he thinks it meets all of the requirements.

R. MacMillan moves for the following finding-of-fact;

- 1. The Board finds the applicant has complied with all of the requirements of the ordinance.*

Seconded by J. Belanger.

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
J. Belanger	Yes	Yes	Yes	3	0
R. MacMillan	Yes	Yes	Yes	3	0
D. Mason	Yes	Yes	Yes	3	0
B. Moseley	Yes	Yes	Yes	3	0
S. Swerchesky	Yes	Yes	Yes	3	0

THEREFORE, THE SPECIAL EXCEPTION WAS GRANTED WITH THE FOLLOWING FINDINGS-OF-FACT;

- 1. The Board finds that the Applicant has complied with all of the requirements of the Ordinance.**

Review Minutes

D. Mason moved to approved the minutes of September 22, 2022.

Seconded by B. Moseley.

Motion unanimously approved with C. Robbins-Tsao and R. MacMillan abstaining.

Other Business

B. Major stated that the Select Board has tabled, and tabled again, the ZBA's nomination for a new member, and he is not sure when it will be untabled. He is disappointed, and asked for direction from the ZBA as to whether he should go and meet with the Select Board regarding the issue, after the upcoming election.

R. MacMillan stated that he agrees with B. Moseley and S. Swerchesky in voting against the ZBA candidate that was nominated. He thinks that Mike Bishop would have been a better applicant. He also thinks that with a couple of Regular ZBA members unable to attend the meeting at which candidates were heard, voting on an applicant should have been postponed until all members were able to attend.

J. Belanger stated that he gets the feeling that the tabling of the applicant by the Select Board is the same as a denial, especially if they don't take it off the table. He is sorry that it was not clear that the Select Board denied the ZBA's recommendation, and asked the ZBA to come up with a second option – but they did not do that. If we assume that the tabling means a denial then the ZBA should recommend another candidate, but he does not see that that direction is clear.

B. Major stated that he does not agree that a tabling is the same as a denial.

B. Moseley recommended trying to get the ZBA nomination for a new member on the Select Board agenda for their November 14th meeting. S. Swerchesky concurred that we should try to push the issue.

D. Mason stated that clarity from the Select Board would make things easier. Suppose we lose another Regular member? Or an Alternate? We have already made a recommendation, and they are sitting on it.

C. Robbins-Tsao asked if the Select Board gave a reason for tabling the issue; the answer was no.

J. Belanger and R. MacMillan stated that a lot of people from the public have contacted the Select Board regarding the ZBA nomination, so the Select Board evidently decided to not make a decision about it.

D. Mason stated that he is of the opinion that if the Select Board does not like the ZBA's recommendation, it is up to

the Select Board to find the ZBA's next member. B. Major concurred.

B. Major stated that the ZBA was told for 20+ years to come up with their own replacement members, to develop them themselves, and that is what they did. He stated that it is pointless to have this two-stage process, which doesn't make any sense – it puts the ZBA in a horrible light, and it creates conflict where we don't need to have conflict.

J. Belanger pointed out that the question right now is whether B. Major should go to the Select Board about it at a public meeting – he doesn't know if he believes that is a good idea, but he does not have a better one at this point.

D. Mason stated that rather than confront the Select Board regarding an applicant, what we need is clarity as to what they are going to do.

J. Belanger suggested that the ZBA send a notice to the Select Board, to ask them what they expect the ZBA to do next.

R. MacMillan stated that we should ask the Select Board what the criteria for a candidate is.

B. Major stated that he thought the ZBA had developed criteria themselves. We want someone who is going to come in unbiased, who is willing to commit their time, willing to consider things and come to the Board with a reasonable record of attendance, and to listen to things objectively and conduct themselves like a juror on a court case in terms of impartiality. He never thought that a criteria should be whether someone is a Democrat, a Republican, a conservative, a liberal. It was always a good thing on this Board that we have people who haven't thought alike. This Board should not be political.

R. MacMillan stated that candidates for the ZBA should be chosen by the Select Board. That way there would not have to be disagreement among ZBA members regarding a candidate. The Select Board is elected by the people, and should make the choice.

D. Mason stated that the Town needs to have a written policy on how members are appointed.

J. Belanger stated that the best thing for the ZBA to do now is to wait. D. Mason responded, however, that if this is a pocket veto by the Select Board, then the ZBA would be stuck in that limbo.

It was suggested to wait another month.

B. Moseley stated that his biggest concerns are that they are letting it just sit, they didn't make a decision, and they haven't given the Boards a clear procedure as to how to bring a new member on board.

R. MacMillan suggested that B. Major as Chair draft a letter to the Select Board, the content of which all the members of the ZBA will agree upon and sign. It was generally agreed that that would be a good idea.

Meeting Adjourned

The ZBA meeting adjourned at 7:50 pm.

Respectfully submitted by:
Donna Lee Setaro, Building and Land Use Coordinator,
and Aurelia Perry, Recording Secretary.