



ZONING BOARD of ADJUSTMENT
Town of Hollis
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Minutes of August 24, 2023

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 Member – Rick MacMillan; Alternate Members – Kat McGhee, Bill Moseley, Meredith West and Stan Swerchesky.

MEMBERS ABSENT: Regular Members – Cindy Robbins-Tsao and Drew Mason.

STAFF PRESENT: Kevin Anderson, Town Planner & 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 at this meeting will be J. Belanger, Rick MacMillan, Bill Moseley, Meredith West, and Stan Swerchesky.

Determination of Regional Impact

By unanimous vote, the Zoning Board of Adjustment (ZBA) found no regional impact for case ZBA2023-004.

ZBA2023-004

The application of Scott & Robin Galvin, property owners, for a Variance to Section XG; paragraph 5.c, Minimum Front Yard Depth, of the Zoning Ordinance, to construct a 24' x 40' garage, 42'3" from the front property line (required 50 feet), located at 71 Irene Dr., (Map 006, Lot 032) in the Residential/Agricultural District.

Dan Barowski, Fieldstone Land Consultants, presented the case on behalf of the Applicant. Stated that they are before the Board seeking a front yard setback variance for a proposed garage. The proposed garage would encroach approximately eight feet into the setback. They are proposing this location for the garage because it is the most reasonable place for the structure, allowing the best utilization. Strict adherence to the front setback requirement would pose a hardship for Mr. Galvin. They believe that granting the variance would not be contrary to public interest, because all of the abutting lots in the subdivision are three to five acres in size, with ample spacing between buildings – they feel that the addition of this garage would not change the character of the neighborhood. They believe that their proposal is in the spirit of the ordinance because an eight-foot encroachment is very small and does not defeat the purpose of buffering buildings from the road. There is a natural tree line that will also help to visually buffer the proposed structure from Irene Drive. They believe that their proposal would do substantial justice because it would allow for a very reasonable use of the property. There is an existing driveway that goes up a steep incline to get to the primary structure, and placing the building where they suggest would allow for continued use of the driveway while also allowing access to the rear of the lot. Much of the north of the lot is wetlands, toward which the lot slopes down. Traveling around that side of the lot is impractical, and largely

encumbered by the 100-foot wetland buffer. Granting the variance would not diminish the value of the surrounding properties because the proposed location of the garage avoids steep slopes and ledge outcrops, and utilizes the natural terrain and vegetated buffer to keep the structure out of sight. They believe that literal enforcement of the provisions would cause an unnecessary hardship because the lot's natural topography includes steep slopes and wetlands, which dictate where this building needs to be placed. It would make most sense to put the building where the Applicant is proposing since it would maintain access to the back yard for the septic leach field and landscaping; it utilizes the natural buffer of the slopes and the trees; it minimizes the view of the driveway; it avoids the wetlands, the wetland buffers, and the additional utilities for the house including the propane tank and well head.

B. Moseley asked about the distance between the southwest corner of the house and the north corner of the proposed garage. Based on the scale of the plan, D. Barowski estimated the distance to be between 20 and 30 feet. B. Moseley stated that the Applicants are saying that they are going to use that distance to get equipment into the back yard – could they not tighten that distance eight feet, to be in compliance with the setback?

It was debated whether that distance was really 20-30 feet.

Scott Galvin, 71 Irene Drive, Owner. Stated that the distance as he has measured it, based on the prepared plan, was actually about 13 feet between the two buildings. At the corner of the existing garage, next to which the proposed garage is to be built, there is also an existing gutter system which takes up an additional three feet of space. The proposed location of the new structure is to leave about ten feet of space away from the gutter's downspout, in order to get equipment into the back yard.

B. Moseley asked why the three-foot downspout couldn't be rerouted along the side of the building, to reduce encroachment into the setback. S. Galvin stated that he doesn't know where they could reroute it; water would either be dumped onto a walkway, in one direction, or right onto the driveway.

B. Major explained that part of what the Board does is academic, in that they need to generate a consistent body of decisions that they apply uniformly. He asked the Applicant to explain in more detail what the hardship is, per this application.

D. Barowski replied that the wetland buffer really narrows where a garage could be located. B. Major pointed out, however, that they have two acres of dry land on an almost six-acre lot. D. Barowski stated that that area is not outside of the buffer; the buffer line goes almost up to the driveway, making that entire side of the lot unbuildable.

Per a question from M. West, D. Barowski explained the location of a right of way that accesses Beaver Brook property in the back.

B. Major stated that a mitigating factor in consideration of this variance is that it's really the side yard more than the front yard, and they have a considerable amount of dense vegetation on the side. Additionally, because of the steep slopes, the ground floor of the proposed garage would be about 16 feet above Irene Drive. It would be a one-story garage with a crawl space above it; there would not be a second floor.

Per a question from S. Swerchesky, S. Galvin showed that the nearest abutting dwelling is across Irene Drive. The subdivision is very spaced out. Particularly with the dense vegetation, they can't really see any of their neighbors and their neighbors can't really see them.

B. Moseley asked why they couldn't slide the proposed garage toward the northwest. S. Galvin replied that, with the steep slopes, the turn radius to get into the garage would be too tight.

B. Major asked whether any trees would be cut in order to build the garage; S. Galvin answered that he doesn't believe any would need to be cut.

R. MacMillan asked how much of the existing pavement (turning area) will be taken out to build the proposed structure. S. Galvin stated that a small wedge would be cut off; they intend to put the garage at the end of the existing pavement. R. MacMillan asked how long was the turning area pavement. S. Galvin replied 20 feet long. And added; steep slopes in the wetland buffer prevent the possibility of driving around to a different area of the lot. The proposed location of the new structure is the flattest location on the property while still leaving access to the backyard.

R. MacMillan asked whether the Applicant feels that it would be a hardship to move the proposed garage ahead, to comply with the ordinance. S. Galvin replied that if they moved it ahead, it would have a negative impact, aesthetically, on the neighborhood. Because of the tree lines, and the sight-line up their driveway, the garage would be much more visible.

Per a question from S. Swerchesky, S. Galvin stated that, with the existing garage, the proposed new structure would give them five garage bays, total. S. Swerchesky asked if they intend to run any business out of the new, proposed garage. S. Galvin answered no.

J. Belanger stated that he thinks applicants should be able to do anything they want with their property, within reason – but we have ordinances that we have to follow. Is the reasoning for a variance justified? Why do they need this garage? S. Galvin replied that they have an existing three-bay garage which is fine for their family as it is, but his parents have recently retired and will be moving in with them probably next spring. They need the additional bays for his parents' cars. In addition, his father's big dream in retirement has always been to do woodworking and to work on the old cars that he has. One bay of the new proposed garage would be a woodworking shop. The new garage would give them space for the mechanics and woodworking tools, the workshop, the vehicles, the property-maintenance equipment they need.

J. Belanger asked if they couldn't do what they propose with a 24 x 30 foot garage, instead of a 24 x 40 foot garage. S. Galvin said that he didn't think that would change their encroachment of the setback. J. Belanger stated that if the garage was shorter, they might be able to move it in further. S. Galvin stated that in that case they would still be choking off the back yard access. He stated that they don't have a lot of money to spend on this garage, so they tried to size it just big enough to fit everything they're trying to fit into it.

J. Belanger asked what hardship they would have if they couldn't build a garage. S. Galvin responded that if they couldn't build a garage, they would be parking vehicles outside in the same area, and have yard maintenance equipment stored outside. J. Belanger asked where their yard equipment is stored now; S. Galvin answered that it's in one bay of the existing garage.

R. MacMillan asked whether the Applicant would rather move the proposed garage eight feet forward and have the structure, if they had to, or not have the structure and park additional vehicles outside. S. Galvin replied that they have the septic and leach field in the back yard, and he feels that they have to maintain access for those things.

R. MacMillan stated that in his view of the property, it does look as if it would be possible to go around back of the building instead of using the proposed location. He realizes that it would be convenient to put the proposed new garage right at the end of the existing pavement, but it's not within the ordinance, and they could move it forward. He agrees with J. Belanger that people should be able to do what they want with their land, but there is an ordinance. Other applicants have had the same issue, with their proposal being outside of the ordinance a few feet one way or the other; they could move it to be in compliance, but they didn't want to, for aesthetic reasons or whatever. In making a decision, the Board needs to consider the ordinance.

S. Galvin stated that safety, rather than aesthetics, is their main reason for the location of the proposed structure: if they moved it forward, he doesn't think it would be safe to access the back yard, with the tree line and the steep drop-off. It doesn't even feel safe walking on it, to him, because ground feels super soft. He would not be comfortable having heavy vehicles drive back there to access the septic and leach field, from a liability standpoint.

K. Anderson pointed out that the Applicant has an open building permit for this lot, for a 24 x 40 foot garage, that was submitted as meeting the setbacks. He asked if this was the same proposal – was something found to be in error? S. Galvin answered that yes, the original site plan that was submitted turned out to be inaccurate, once they got the property surveyed. They originally thought that they would not be violating the setback.

B. Moseley asked, in reference to the three-foot gutter system, why they couldn't pipe it underground, toward the drop off. They would be having excavation taking place already, in the building of the garage, and that way they could gain three feet out of the setback. S. Galvin said that that was a possibility they hadn't thought of.

B. Major stated that if the Applicant wants to do that, he may amend the application, asking for a variance for four feet rather than eight, and the Board can consider that at this meeting – or he may ask to table the application and come back with a new plan at a future meeting. B. Major pointed out that proving hardship is still a burden to overcome. There is a balance to consider, between the integrity of the ordinance and the practical need for a variance. The Board has to be consistent. A four-foot request is different than an eight-foot request. If they go forward in considering the eight-foot request at this meeting, and the Board denies it, to come back before the Board the Applicant would have to pay another application fee.

S. Galvin pointed out that it would probably be a five-foot encroachment rather than an eight-foot encroachment, if they are removing only three feet.

M. West asked why the Applicants couldn't make the proposed structure an addition to the existing garage, double-baying. S. Galvin answered that he believes that would encroach on the leach field.

In answer to B. Major, S. Galvin asked to amend the application to now request a four-foot setback variance.

Per a question from S. Swerchesky, it was clarified that the Applicants would maintain the vegetative buffer between their buildings and Irene Drive as a condition of approval. They would also keep the proposed new structure to one story, as a condition.

K. Anderson asked whether Declarations of Covenants have any bearing on this Board; B. Major responded that they're interesting, though they don't control the Board. He asked what the Declaration was, and K. Anderson stated that no structure is supposed to encroach within 50 feet of the front yard setback. B. Major pointed out that a Declaration of Covenants is not the Board's matter to enforce, but that the Applicant might have a problem with their neighborhood association.

S. Galvin responded that his understanding is that there isn't an association. He asked around, to neighbors who have been there a long time, and it sounds as if there might have been something at first but it doesn't exist any more. K. Anderson stated that it's part of the deed, so it exists.

B. Major stated that the Board doesn't use Covenants in deciding a case; they use the Town's ordinance.

It was generally discussed that the Covenants are basically between neighbors. B. Major stated that a potential argument could be devaluation of property. Per a question from B. Moseley, it was confirmed that the Board is insulated from those issues – the Board does not give relief from Covenants.

Spoke in favor of the application:

Michael Askenaizer, 57 Irene Drive. Stated that his home is to the east of the subject property. Stated that he agrees that people should be able to do whatever they want to with their property. Stated that because we have the procedure that we're following today, which is seeking a variance, it means that the zoning ordinance, while important, is essentially a baseline for the entire Town. It is intended that there will be circumstances in which

something does not make sense to apply – and he would say that this is one of those cases. In this case, it doesn't make sense to slavishly stick to the 50 foot setback requirement simply because the way Irene Drive is laid out, and the way the properties are laid out, once this garage is built there is not a single neighbor who will see it from their home. The only way you're going to see it is if you're passing by and strain to look up, or if you actually go up the Applicant's driveway. The only people who might see it are those who use the right of way to Beaver Brook, and park in front. The proposal does nothing to impair the character of the neighborhood, which will stay exactly the same particularly because of the dense vegetation fronting Irene Drive. He doesn't see it doing anything other than enhancing the value of the properties on Irene Drive. He likes to see that people have nice houses with nice structures. The recent reassessment reflects the fact that Irene Drive is a nice neighborhood, and he thinks that this will enhance it. Particularly from an aesthetic standpoint, he recommends that the Board approve this requested variance.

R. MacMillan asked M. Askenaizer whether, if the Applicant sold their property and a new owner cut down the vegetation, that would make a difference to the neighborhood. M. Askenaizer answered that he didn't think so, since the proposed new structure is up on a slope. He assumes that the new structure would be consistent with those that are already there, and he doesn't see it detracting from the neighborhood. No one is going to see it, regardless.

No one spoke against the application.

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

DELIBERATIONS AND DECISION

ZBA2023-004

The application of Scott & Robin Galvin, property owners, for a Variance to Section XG; paragraph 5.c, Minimum Front Yard Depth, of the Zoning Ordinance, to construct a 24' x 40' garage, 42'3" from the front property line (required 50 feet), located at 71 Irene Dr., (Map 006, Lot 032) in the Residential/Agricultural District.

K. Anderson stated that the life of Covenants is 50 years, or 2035 from the date it was signed in 1985.

B. Major reiterated that the application was amended to a four-foot encroachment into the setback.

R. MacMillan stated that he thinks that it is de minimis. B. Moseley concurred. K. McGhee and M. West agreed that it is a reasonable compromise. B. Moseley added that, with the reorientation of the three-foot gutter system, the Applicant will be doing all that he can.

J. Belanger stated that he often considers ten percent, on cases; this application had been over ten percent, and now it's under.

S. Swerchesky stated that this is going to increase the value of the Applicant's property, which will also increase the values of property in the neighborhood.

B. Major moved for the following conditions;

- 1. The Applicant shall maintain the existing vegetative buffer or similar buffer between the back of the proposed garage and Irene Drive.*
- 2. The proposed garage shall not exceed one (1) story.*

Seconded by B. Moseley.

Motion unanimously approved.

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

1. *The Applicant amended the application during the hearing and requested a four (4) foot front yard setback variance and that the garage would be placed 46 feet from the front property line on Irene Drive.*

Seconded by R. MacMillan.

Motion unanimously approved.

M. West moved for the following finding-of-fact;

2. *The Board recognized the steep topography of the property limits the placement of the proposed garage.*

Seconded by B. Moseley.

Motion unanimously approved.

Questions – Variance

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| 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)	Total Yes	Total No
J. Belanger	Yes	Yes	Yes	Yes	Yes	Yes	6	0
R. MacMillan	Yes	Yes	Yes	Yes	Yes	Yes	6	0
B. Moseley	Yes	Yes	Yes	Yes	Yes	Yes	6	0
M. West	Yes	Yes	Yes	Yes	Yes	Yes	6	0
S. Swerchesky	Yes	Yes	Yes	Yes	Yes	Yes	6	0

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

Conditions:

1. **The applicant shall maintain the existing vegetative buffer or similar buffer between the back of the proposed garage and Irene Drive.**
2. **The proposed garage shall not exceed one (1) story.**

Findings-of-Fact:

1. **The applicant amended the application during the hearing and requested a four (4) foot front yard setback variance and that the garage would be placed 46 feet from the front property line on Irene Drive.**
2. **The Board recognized the steep topography of the property limits the placement of the proposed garage.**

Review of Minutes

J. Belanger moved to approve the minutes of June 22, 2023.

Seconded by B. Moseley.

Motion unanimously approved with R. MacMillan and Stan Swerchesky abstaining.

Other Business

Zoning Ordinance Changes

B. Moseley stated it was that time of the year to submit any potential zoning ordinance changes to the Planning Board for consideration. B. Moseley asked if a discussion could be added to the next ZBA meeting. The Board agreed.

Outcome of the alternate member appointment

B. Major stated that on August 14 he appeared at the Select Board's meeting with the applicant that the ZBA had recommended for their current vacant seat. The Select Board simply voted on the ZBA's recommendation. He was disappointed to note that the vote failed, three to two. Susan Benz and Tom Whalen were in favor; Mark Le Doux, Joe Garruba, and David Petry were opposed. Concerns were expressed regarding the qualifications of the person who had been recommended, and the sense that, somehow, appointments were getting political. B. Major stated that he doesn't know where this is coming from. David Petry stated that he would be willing to reconsider his vote if the Select Board had the opportunity to interview the candidates, and suggested that the ZBA forward the names and resumes to the Select Board for another interview process. Maureen Maisttison has agreed to go through that process if the ZBA supports it.

B. Major stated that he was horrified. This was his responsibility, to get this done, and he feels personally horrible about it. He has weighed, over the past couple of days, whether to step down from the ZBA because of this. He is angry, dispirited, and offended. In a broader sense, this represents, basically, a statement to the ZBA that we are not trusted to do our work. He liked the previous system of doing things; if it has to change, that's fine – but he was personally offended that the suggestion was made that he would think about bringing a divisive person onto this Board. In fact, it's just the opposite. It is bizarre to ignore this Board's recommendation, and the whole situation has been messed up from the start. He never envisioned that this Board would nominate someone, after interviewing them and talking with them, after going through two additional steps of interviews, privately and publicly, and have this much difficulty in getting, in his opinion, a highly qualified person appointed to this Board, in light of the fact that we are trying to provide for continuity. This Board has remained remarkably out of the fray in regard to a lot of things. We just do our job every month. It's important for us to be impartial, as jurors, and it's important for us to have a Board where we mutually respect each other and listen to each other. He would hate to see this Board turn into something else. He fears that, going forward in future, it is going to be a mess.

K. McGhee stated that she doesn't think this Board has ever been political – and most of our Boards in Town are not political. The question she would have is, on what basis is there an accusation that there is anything political to do with this situation? Every person in Town has their own personal politics, but that isn't, can't be, the way that we select people. It has to be about whether they're qualified, whether we think they can do the job, and whether they bring the right frame of mind. In the interview process, B. Major asked the candidates if they understand that we have to apply the ordinance – and that we cannot put our own personal politics into this, because we are responsible for making sure that the Town isn't sued for not applying the ordinances appropriately. The answer we got from one candidate was that maybe we should be sued more. So, we are not making political decisions; we're making competency decisions.

J. Belanger stated that he hates to use the word political, as it connotes Republicans and Democrats. To him, 'political' means Town politics – not party-oriented.

K. McGhee stated that she doesn't understand how politics was injected into this at all.

B. Major stated that it's not even Republican and Democrat, because we could all deal with that – who cares, frankly? If we were debating abolishing the death penalty in New Hampshire, or what New Hampshire is going to

do about abortion rights, we might have something to argue about – but regarding the purview of the ZBA, its members are all on the same page; the members are all on the same team. He thinks that this situation, rather, is almost an infectious distrust of the institutions that we have in Town. It's a cancer. And he doesn't know if that is creeping into this situation, or what. He does not understand it.

B. Major stated that the ZBA, in good faith, under the previous rules, noticed that they had a vacancy, asked for applications, made a decision as a Board, and made a recommendation – and the rules changed after that. It's terrible; if you need volunteers to come forward in a town, don't treat them like crap. It's humiliating. He can deal with the humiliation personally, but can't deal with that person being so offended by the process. He feels very badly about that, and doesn't know how to make that right. He was thinking very strongly of resigning, last week. If this Board is going to become political, if we're going to be controlled by outside forces – his attitude is that we get the job done. We've gotten the job done for many years, and have cost this Town far fewer problems than any other Zoning Board of which he knows. We make well-reasoned decisions, we treat people with respect, we've always done that, and every single ZBA member has always tried to be fair.

B. Major's recommendation at this time is that they submit the resumes they have to the Select Board, and request that they interview the applicant with himself and J. Belanger participating in the interview process.

J. Belanger and R. MacMillan suggested that the ZBA not be involved in the interview process, now.

R. MacMillan stated that the Select Board are the elected officials; by the new rules, it is now their responsibility to fill these positions.

B. Major stated that what worries him is if someone comes in who has been appointed for political reasons, and has an agenda. He worries that the ZBA is going to be given people who are not going to be team players and not going to want to work with the other members. He does not want someone coming in with a preconceived agenda; the meetings would be miserable, they would end up getting the Town in trouble, and they would not get the job done.

R. MacMillan stated that we don't know that that is what is going to happen.

K. McGhee stated that the process was changed midway, and the ZBA was asked to do public interviews, which they did. We conformed, and now the process has been changed again. We went through the hoops, putting the candidates and ourselves through that process, getting the information publicly and making a decision, and it still didn't matter.

B. Major stated that he still would like someone from the ZBA to be involved in the selection process. R. MacMillan stated that we should put the responsibility for this fully on the Select Board.

M. West agreed with B. Major, stating that not only do we not want someone coming in with a political agenda, but we've talked about considering age, considering sex, we've talked about having this Board represent the Town and continue to represent the Town in the future.

It was clarified that there has been no accusation against the candidate whom the ZBA put forth – and that is the point. There was no reason for holding up this process.

B. Major pointed out that, decades ago, when the Select Board made appointments, the appointments often ended up skipping meetings and then resigning – and the ZBA had then wasted a year in dealing with someone who didn't have the commitment. He's never gotten any extra business out of this, and certainly not any prestige. He could find better ways to spend a Thursday. Why would someone do this? For one thing, we get together, and we do it for each other. It's a shared responsibility.

R. MacMillan stated that he thinks B. Major has done an outstanding job, and he does not believe that he needs to

take what has been happening personally. M. West concurred.

B. Major added that another reason that we do this work is that we need to have the respect of this Town and to show them that we are doing the job. It comes down to respect.

J. Belanger stated that this is getting us nowhere.

B. Major stated that he wants to know what the other members of the ZBA want him to do.

B. Moseley stated that he thinks B. Major should ask to be part of the process: he is more familiar with what goes on at the ZBA than the Select Board is.

B. Major agreed that the Select Board, and potential candidates, need to know that one can't take a public stance on issues in Town.

M. West agreed that it's important for us to be involved because we need to give feedback and guidance on what the priorities are.

J. Belanger pointed out that a possible negative outcome of B. Major being involved is that he could go through the interview process with the Select Board, recommend someone, have the Select Board appoint someone else, and then, therefore, have someone sitting on the ZBA who had not been wanted by its own Chair. He would not choose to be Chairman with someone sitting on his Board that he voted against. M. West stated that this has already effectively happened, as the Select Board turned down the ZBA's recommendation. J. Belanger stated that that's in the past; going forward, he does not think it's a good idea for a ZBA member to sit in on the interviews.

R. MacMillan agreed that one wouldn't want to sit on the ZBA for years with someone they'd voted against. No one would forget that. He suggested letting the Select Board work it out. It's their responsibility, now.

J. Belanger stated that right now, with this appointment, the ZBA has done everything they can. It's up to the Select Board, now.

It was determined that the resumes the ZBA has will be forwarded to the Select Board.

Meeting Adjourned

The ZBA meeting adjourned at 8:20 pm.

Respectfully submitted by:

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