



ZONING BOARD of ADJUSTMENT
Town of Hollis
Seven Monument Square
Hollis, New Hampshire 03049
Tel. (603) 465-2209 FAX (603) 465-3701

Minutes of October 26, 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; Drew Mason, Alternate Members – Kat McGhee, Bill Moseley, Meredith West and Stan Swerchesky.

MEMBERS ABSENT: Regular Member – Cindy Robbins-Tsao.

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

J. Belanger led the Pledge of Allegiance.

J. Belanger requested a moment of silence in remembrance of the people lost in Lewistown, ME.

B. Major explained the policies and procedures.

B. Major stated that the voting members at this meeting will be B. Major, J. Belanger, R. MacMillan, D. Mason, and K. McGhee.

Determination of Regional Impact

By unanimous vote, the Zoning Board of Adjustment (ZBA) found no regional impact for case ZBA2023-006.

ZBA2023-006

The application of Chris Cahill, Christopher Cahill Construction, for a Special Exception to Section IX; paragraph K Accessory Dwelling Unit (ADU), of the Zoning Ordinance, to construct a 768 square foot ADU addition, property owner by Kelvin Poon, located at 101 Richardson Rd., (Map 014, Lot 028) in the Residential/Agricultural Zone.

Applicant: Kelvin Poon. Stated that he moved in about two years ago, and that the ADU would be for his parents, who will be moving to Town. As far as he is aware, his proposal fits the requirements. It is under the size limit, would be attached to the main building, and would be in a style that is very similar to the existing structure. The proposal also fits the setback requirements. The common heated wall is indicated on the plan, and there is also a separate entrance. He clarified that the playroom indicated on the plan would not be part of the ADU. There is sufficient parking on the premises.

Per a question from S. Swerchesky, K. Poon stated that there is a typo on the plan – on page two where 36 x 24 is indicated, it should be 32 x 24.

J. Belanger asked about the double French doors on the plan; K. Poon explained that right now that area is a wall, and that the doors will be added. The doors will be glass.

D. Mason asked about the setback from Richardson Road. K. Poon responded that they are quite far back from the road, more than 300 feet. There is a long driveway, and that the proposal won't have any impact on traffic.

J. Belanger asked if the ADU would be heated by the same system that heats the house. K. Poon stated that no, they are adding a new heating unit specifically for the ADU. He is not sure what kind of unit it is to be, or how the main house is heated currently. There is a basement that will be under the ADU; J. Belanger asked how the basement is accessed – is it from the main house, only? K. Poon responded that there should be access from the main house and from the ADU. J. Belanger stated that he is trying to make sure that the basement is not included in the ADU, to which K. Poon responded that he actually isn't quite sure if there is access to the basement from the ADU. B. Major pointed out that such access would probably not be allowed. There is no access from the ADU to the basement indicated on the plan, and K. Poon confirmed that the ADU would be constructed in accordance with the plan, so indeed there will not be access to the basement from the ADU. It was asked why there would be a basement under the ADU, and K. Poon answered that Chris Cahill had wanted to put some additional machinery there. It would be a mechanical room, but not accessed by or part of the ADU. The Board discussed the fact that there is no requirement that a mechanical room for an ADU has to be contained within the ADU. The plans indicated that there is already a basement bump-out beyond the limits of the existing house itself.

S. Swerchesky asked if they intend to finish the basement. K. Poon replied that it is just going to be a basement. It is currently unfinished.

Per a question from B. Major, K. Poon confirmed that if the Board put a condition on the application that there be no access to the basement from the ADU, that would be reasonable.

Per a question from D. Mason, K. Poon confirmed that the ADU would be all new construction.

B. Major asked about the septic design for the premises; K. Poon stated that he came by with a plan a few weeks ago. He is not an expert in these things, but there is a plan. K. Anderson stated that there is a plan, prepared by Meridan, that addresses the septic. Currently it is a four-bedroom house; it is going to be transitioned into a three-bedroom house, with a two-bedroom ADU. There will be a properly sized septic system. The plan does not need to be constructed, but just needs to be on file per State regulations.

Spoke in favor of or against the application

Steve Piper, 53 Richardson Rd. He is an abutter. He stated that he came to the meeting because he didn't totally understand the project, and just wanted to understand it better. He sees that it is not an infringement onto his property. He has no issues with the project, and is in favor of it.

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

DELIBERATIONS AND DECISION

ZBA2023-006

The application of Chris Cahill, Christopher Cahill Construction, for a Special Exception to Section IX; paragraph K Accessory Dwelling Unit (ADU), of the Zoning Ordinance, to construct a 768 square foot ADU addition, property owner by Kelvin Poon, located at 101 Richardson Rd., (Map 014, Lot 028) in the Residential/Agricultural Zone.

The Board in general had no issues with the application.

D. Mason agreed with B. Major's point that a condition should be that there be no access to the basement from the ADU.

D. Mason moved for the following condition;

- 1. There shall be no direct access from the Accessory Dwelling Unit (ADU) to the basement.*

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
B. Major	Yes	Yes	Yes	3	0
J. Belanger	Yes	Yes	Yes	3	0
R. MacMillan	Yes	Yes	Yes	3	0
D. Mason	Yes	Yes	Yes	3	0
K. McGhee	Yes	Yes	Yes	3	0

THEREFORE, THE SPECIAL EXCEPTION WAS GRANTED WITH THE FOLLOWING CONDITION;

- 1. THERE SHALL BE NO DIRECT ACCESS FROM THE ACCESSORY DWELLING UNIT (ADU) TO THE BASEMENT.**

Review of Minutes

J. Belanger moved to approve the minutes of September 28, 2023.

Seconded D. Mason.

Motion unanimously approved with B. Major, R. MacMillan, and M. West abstaining.

Other Business

Zoning Ordinance Changes

B. Moseley stated that because of his position on the Planning Board, he is recusing himself from this discussion.

1. Political signs.

K. McGhee stated that she had a constituent in Hollis ask about the political sign ordinance, which refers to the

State regulation 664:17 whereby signs need to be taken down within two weeks of the election (unless it's a primary and you're also on the ballot for the general), but there is no timing before the election stated in the statute. The constituent asked about putting a regulation in place that there be no political signs until two months before an election, thereby giving people eight weeks before an election to advertise. The constituent stated that people started in September to post signs for the January elections in neighborhoods, on public lands.

K. McGhee thought that we could potentially do a warrant article, to allow residents to vote on the issue.

K. McGhee pointed out that on private land you can put up signs whenever you want. Hollis's general sign ordinance does not cover political signs.

J. Belanger stated that he has been in Town for 52 years, and does not see this as a problem. The same constituent approached him, as well. J. Belanger and R. MacMillan stated that such a change is not something that they could support.

B. Major stated that there are so many things upon which we would impinge by doing this.

K. McGhee stated that the timeframe for removing signs after an election is established; all the constituent is asking is whether there could be a timeframe for installing political signs – instead of signs being displayed on public land 12 months out of the year.

D. Mason pointed out that political signs have to be on private property: you cannot put political signs on public land. If political signs are being placed on public land, they are not allowed. K. Anderson confirmed that the RSA is clear about that point.

D. Mason stated that he could support something along these lines; he certainly doesn't want to see political advertising for the 2028 election starting the day after the 2024 election.

M. West asked to clarify: if she has to take down a political sign on her own private property 14 days after an election, per the State, but can then put it back up again because it's her own private property, why does she have to take it in?

K. McGhee stated that she believes that is the constituent's point – there should be some timeframe before the election, so that it's a cycle.

Per a question from K. Anderson, about the State regulating when political signs are to be taken down, while this suggestion is that there be a regulation by the Town about when they may be put up, K. McGhee stated that the person on the municipal government committee with whom she spoke about the issue said that it would be appropriate for us to adopt it in our local Town ordinance.

S. Swerchesky moved to table discussion on this potential zoning ordinance change.

Seconded by J. Belanger.

Motion unanimously approved with D. Mason abstaining.

2. ADUs.

M. West suggested that ADUs should not have to come before the ZBA for a special exception, unless the Building Department has an issue with an ADU proposal. Having the ZBA grant special exceptions for every ADU is duplicative and a waste of time. 95% of ADU plans will go through the Building Department and be fine. In those cases in which there is an issue with a plan, or questions, or it's a close call, the ZBA would be

acting as an appeal board rather than a permitting agency.

S. Swerchesky asked about cases such as the one heard by the Board at this meeting, to which the Board decided a condition needed to be attached. How would the Building Department know to attach conditions?

K. Anderson stated that the Town would not have authority to place a condition on a plan. The Building Department would simply state that the ADU will be constructed according to the plan. J. Belanger suggested that in that case, the applicant could add features after the fact. The Board in general stated that an applicant can do that now, as there is no enforcement.

M. West stated that 95% of ADU cases are from applicants who want to move their parents in: elderly parents, disabled parents, parents to help with child care. We are putting them through a process that the ZBA signs off on 90% of the time. Not having the ZBA hear ADU cases would save applicants time and money, and would streamline the process.

B. Major stated that the downside would be that ADUs would be built purely for rental income. M. West asked why that would be a problem. That would provide additional housing and affordable housing in Town. Are we harmed by the fact that an ADU would be a rental? We can't control that at any point, now. This would not be additional development in Town.

R. MacMillan stated that coming before the ZBA provides additional review by Board members with years of experience. There may be something that the Building Department misses – they don't have all day to go over every application with a fine-toothed comb. Coming before the ZBA adds only around 10% of the cost of the building permit itself. M. West argued that coming before the ZBA adds a 30-day waiting period, plus another 30 days for appeal – although it was pointed out that no one waits though the appeal period to start building. Legally, though, it adds 60 days to an applicant's construction time. This is an opportunity to streamline. This would allow us to say that we do have affordable and available housing in Town, and that we are not exclusionary.

R. MacMillan stated that he does see how having oversight is being exclusionary. M. West agreed that it is not, but that we can show that we have made it easier to provide housing in Town.

B. Major stated that the Building Department is probably in a very good position to judge whether an application meets the spirit of the ordinance. He can recall maybe two or three ADUs that the ZBA has turned down in the past decade, if that. R. MacMillan concurred, but pointed out that almost every ADU application has had some kind of contingency attached to it by the ZBA.

K. McGhee noted that, per D. Setaro, one of the benefits derived from the ADU applications coming through to the ZBA is that the abutters all get notified. Would there still be a notification process if such applications don't come to the ZBA?

M. West responded that the ADUs either comply, or they don't. There is no gray. If someone is opposed to an ADU that complies, it's simply unfortunate.

D. Mason asked whether the Building Department, in reviewing an ADU application, has the ability to impose conditions. The answer was no. M. West suggested that the Building Department would notice anything questionable, and the plans would be changed as a result, prior to a building permit being issued.

B. Major stated that we have not always had complete review of applications with problems in the Building Department.

J. Belanger moved that the ZBA recommend this zoning ordinance change to the Planning Board.

Seconded by K. McGhee.

Motion unanimously approved.

3. Special Exception vs. Variance for Setback Requirements.

J. Belanger stated that he thinks the Planning Board should look into the area of non-conforming lots, lots that were built before the zoning ordinance was in place – those lots should have the ability to waive the setbacks as a special exception. The ZBA would be looking at the applications anyway, but currently often finds that the non-conformance of the lot is the hardship. To him, that seems to be pushing the ordinance. He does not think that the ordinance is clear that the ZBA can find hardship that easily.

R. MacMillan stated that, then, if you have a non-conforming lot, you have a special ability to circumvent the zoning ordinance that nobody else has.

J. Belanger replied that the applications should still come to the ZBA, because we want to make sure they don't impact neighbors, or do something that may not be acceptable, but consider every home on Silver Lake Road, or Flint Pond Drive, for example: right now there is no way that they can do anything to their lot unless they have a variance.

R. MacMillan pointed out, however, that we allowed a fifth house to be built on a four-acre lot out by Silver Lake. To him, that's ridiculous. No one else can do that.

J. Belanger stated that this is just asking the Planning Board to look into it.

M. West stated that the ZBA so often considers approving an application because it is 'the right thing to do', but they struggle with a supportable hardship. We talk about precedent each time, but have to work the hardship.

S. Swerchesky pointed out that, with the smaller lots, the ZBA has in fact made the determination several times that that is the hardship. J. Belanger asked if that is really a hardship.

J. Belanger asked whether, if you own a home, and someone has lived there for 15 or 20 years, and you never had a shed, is it a hardship to have to build a shed? A hardship can't be related to money. When the ZBA grants an application because of a medical hardship, when the medical hardship is over the provisions made for it need to be removed.

B. Major stated that the ZBA has used the HOSPD setback requirements several times as an analogy to undersized lots. If you have a quarter-acre lot, you can't do anything with the property. R. MacMillan asked whether people know that when they buy the lot. B. Major stated that things change; no one originally envisioned the Silver Lake houses as being year-round homes.

M. West pointed out that if we're looking at these applications from a special exception standpoint, we can still deny them. B. Major stated, though, that if the ZBA is discussing a special exception, they do not have the ability to consider the spirit of the ordinance. We're losing the ability to consider all of those other protections. S. Swerchesky concurred. J. Belanger stated that we're not losing them for everyone, however – we're only losing them for those lots we know couldn't comply anyway.

K. McGhee stated that the ZBA has gone back and forth, over time, in terms of what the legal interpretation of hardship is. It does seem to be in the mind of the beholder, and we end up having the same conversations over and over again.

B. Major stated that it helps to consider it as a balance – we’re balancing the public and the private rights. If something doesn’t impact the public rights, it’s kind-of nominal.

R. MacMillan stated that people who have two-acre lots have to abide by the zoning ordinance. People who don’t have two-acre lots, who have undersized lots, can get a variance. Just because they have undersized lots, the proposal is that they don’t have to abide by the zoning ordinance? How is that fair? B. Major stated that it does make sense in a situation in which you have one undersized lot surrounded by bigger lots. R. MacMillan agreed, and said that those instances should be reviewed as variances. The whole point of this Board is to grant some relief. But just because you have an undersized lot doesn’t entitle you to certain redress in regard to the ordinance.

B. Major stated that the trouble is that if you meet the qualifications for a special exception, you are entitled to the relief. If we have the power of a variance, we can look much more deeply at the public harms and weigh those against the private. R. MacMillan agreed.

M. West stated that there is a fair amount of discretion that can be written into a special exception.

R. MacMillan stated that we don’t want to set up two classes of citizens, one who has to obey every ordinance that we have in Town because they have a regular lot, and one that doesn’t because they have a small lot. B. Major added that, in areas with numerous small lots, the impact to neighbors is even greater. M. West stated that a condition of a special exception can be that an application is allowed as long as it is not unduly imposing on abutters.

D. Mason stated that he isn’t sure where he comes down on this issue. There are cases in which we can’t find or make up a hardship, and so we have to deny the application even though we wish we could grant it. He is uncomfortable with those cases. There are also those cases, however, in which the applicant clearly does not have a hardship.

M. West agreed that it is not cut and dried.

B. Major stated that he doesn’t know what would happen next, should such a zoning amendment pass. J. Belanger responded that it depends on how the amendment is worded. He is just suggesting asking the Planning Board to look at it. If they agree that it is a problem, they will come up with the appropriate language. B. Major stated that in the past the Planning Board has requested language from the ZBA. We have to have some specific criteria for the special exception.

J. Belanger stated that we don’t need to worry about specifics right now. The intent is to have something in the ordinance that says that the requirements set up for two-acre-minimum lots apply to all future building.

K. Anderson stated that one thing he struggles with in terms of applying our regulations is that we have a wetland overlay, and the requirement for a 100-foot buffer, which applies to everything after 1997. If you’re pre-1997, you’re grandfathered in. He draws an analogy to an undersized lot, created before the two acre minimum was mandated – that is also grandfathered in. He struggles with the comparison, because the language is clear when it comes to the wetland setback. You’re getting relief for something created before a certain date. What would the date be, for smaller lots? J. Belanger stated that it would only be for setback requirements.

M. West stated that the ZBA needs to give the Planning Board something to work with, if we’re forwarding this to them. The ZBA is the expert on this issue.

D. Mason suggested “For non-conforming lots, created before 1997, issues of setback can be handled by

special exception rather than variance”.

B. Major stated that the trouble with that is that we have to have criteria for the special exception. J. Belanger stated that the special exception criteria is already there, already defined. B. Major asked what you’re entitled to get, then. Does that mean that there would be no setbacks? J. Belanger answered that the ZBA would determine whether what an applicant proposes makes sense or not. B. Major stated that an applicant has to meet very specific requirements for a special exception, and if they meet those requirements then they are entitled to relief – they get whatever they’re requesting. If they don’t meet those requirements, they are not entitled to it. We’re left without a figure to work with. How many feet intrusion into the setback, for instance? We have to have some specific requirements. If we wanted to propose that for undersized lots created before 1997, the HOSPD setback requirements would be enforced, that would be specific. R. MacMillan pointed out that we could work with ratios, too. B. Major stated that the HOSPD setbacks – 17.5 feet, instead of 35 – would be a standard that we could meet.

K. McGhee stated that if we went with ratios, the setback for a quarter-acre lot would be one-eighth of that for a two-acre lot. R. MacMillan added that in such a case, the lots are getting the same treatment. K. McGhee stated that at least that would be a formula that would be consistent. R. MacMillan pointed out that another measure Board members have applied, when discussing a variance, is 10%.

S. Swerchesky agreed with B. Major’s suggestion of the HOSPD requirements. B. Major stated that that would be cleaner. S. Swerchesky added that for anything less than 17.5 feet, they would have to come before the ZBA for a variance.

It was recommended that Board members prepare specific language, so that at the next meeting the ZBA may vote to forward the proposed zoning ordinance change to the Planning Board.

K. Anderson will look into what year the two-acre minimum was enacted – that year will be used as the reference point.

D. Mason asked what the front setback requirements are for a HOSPD lot, if it is on a designated scenic road. B. Major stated that scenic roads are an overlay, so they supersede everything else.

*B. Major moved to table this proposed zoning ordinance change until the next ZBA meeting, November 16.
Seconded by D. Mason.
Motion unanimously approved.*

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.