



ZONING BOARD of ADJUSTMENT
Town of Hollis
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Minutes of December 28, 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 Members – Rick MacMillan, Drew Mason; Alternate Members – Kat McGhee, Bill Moseley, Meredith West, and Stan Swerchesky.

MEMBERS ABSENT: Regular Member – Cindy Robbins-Tsao.

STAFF PRESENT: 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 B. Major, J. Belanger, R. MacMillan, D. Mason, and S. Swerchesky.

Determination of Regional Impact

By unanimous vote, the Zoning Board of Adjustment (ZBA) found no regional impact for case ZBA2023-009.

ZBA2023-009

The Application of Bennett Chandler Design & Const., for a Special Exception to Section IX; paragraph K, Accessory Dwelling Unit (ADU), of the Zoning Ordinance, to construct a 797.3 square foot ADU, property owned by Keegan McDonnell, located at 10 Worcester Rd., (Map 003, Lot 004) in the Residential/Agricultural Zone.

Applicant: Bennett Chandler, contractor, for the Owner. Stated that the existing home at what had been 8 Worcester Road, also owned by Keegan McDonnell, has been demolished. The house was built in 1961 by the Applicant's grandfather. It was too small to modify for the current owner's modern needs. They presently have a building permit, and are under construction on a new home there. This application is to build a 797.3 square foot ADU over the attached garage portion of the house. He believes they meet all the criteria in the regulations. It has a common wall with the main house, which is heated. The entrance to the ADU cannot be seen from the street; it's way down at the back right side of the house, at the far end of the garage, and goes up stairs to access the unit. They will have a fire alarm system in common with the main house. It will also have a doorway which enters from the ADU into the main residence. There is adequate parking, with a total of eight parking spaces (updated from six in the application). Traffic impact will be minimal, with the one-bedroom ADU. The intent of this is that the owner's husband's parents come to visit for extended periods of time, and this would be a place for them to stay. Otherwise, it will not be in use.

Per a question from B. Major, B. Chandler confirmed that the common heated wall is between the mudroom loft of the main home and a closet area / part of the kitchen area of the ADU.

B. Major asked about the closet on the second floor. B. Chandler responded that when they were originally designing the house, the owners took into consideration that they are big winter sports people. They wanted a big mudroom, and a big closet in which to store gear for the winter sport activities. By putting the closet in the loft area, it makes for a more spacious mudroom. B. Chandler further clarified that it is a vaulted mudroom, with a railing or half-wall across the loft portion.

B. Major pointed out that the Board will have to consider whether or not that closet is in effect part of the ADU; the Applicant is close to 800 square feet as it is. B. Chandler responded that there is a door which is the limit of the ADU. As soon as you step out that door from the ADU, you step onto the loft, and go down the stairs. There is no doorway from that area to the main residence, so the mudroom could never be taken over as part of the ADU. Certainly, if it were to become a rental unit in the future, the owners would not want the renter to have access to that area.

D. Mason asked how you would get from the lower mudroom into the main house; B. Chandler responded that there is an opening directly into the kitchen.

R. MacMillan asked about the heating system; B. Chandler answered that it will be forced hot air for both the main house and the ADU – there will be a mini-split system for the ADU.

J. Belanger asked whether the common door from the main home to the ADU is heated on both sides. B. Chandler confirmed that yes, it is.

S. Swerchesky asked if there will be a separate electrical system for the ADU. B. Chandler stated that no, it will be one system for the entire building.

B. Major asked whether, if the Board were to get stuck on the closet issue, it would be a reasonable condition to require that the closet be removed from the upstairs. B. Chandler said that yes, they would not sacrifice the ADU for the closet.

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

DELIBERATIONS AND DECISION

ZBA2023-009

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The Board was in general agreement that the Applicant did not have to remove the closet. B. Moseley stated that the orientation of the closet is ok.

J. Belanger pointed out the usefulness of the area calculation worksheet included in the application. The Board was in concurrence.

The Board was in agreement that the application is well-planned, and straight forward.

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
S. Swerchesky	Yes	Yes	Yes	3	0

THEREFORE, THE SPECIAL EXCEPTION WAS GRANTED.

OTHER BUSINESS

Update on alternate member interviews with the Select Board

B. Major stated that the interview process was not ideal in terms of format – it was very limited, and they had half an hour. The Select Board was open to B. Major asking questions of the candidates, and he had a short series of questions. Maureen Maisttison had not been able to attend, and will be interviewed at an upcoming meeting of the Select Board. B. Major will also be in attendance at that meeting.

B. Major stated that we don't create problems on this Board, and we never have. We get along.

R. MacMillan stated that if someone were overtly political and brought an agenda to the Board, that would be a different story. B. Major agreed; the last thing that he or anyone else on this Board would want is for someone to bring an agenda. It would just make our lives miserable. If we have the wrong person on this Board, everything falls apart.

R. MacMillan stated that he thinks there is a big contingent of people in Town who want to suppress building, as much as possible. The idea that we want to maintain a rural community is very popular. That is not a political agenda. K. McGhee pointed out that the Board members all live in Town.

D. Mason stated that if there is that agenda, that's fine – the way to do that is to amend the ordinance, not try to stop the Board.

B. Major pointed out that we do not want to get the Town involved in litigation, to try to advance a political agenda with this Board. R. MacMillan added, though, that we should never be afraid to go to court if we feel that we're right. We have to do our duty. B. Major stated that he doesn't want to go to court and have this Board found to be in the wrong.

R. MacMillan stated that he thinks it's important that if divisive issues come up, the Board tries to be unanimous

so that other boards do not overrule us – such as at the State level. If we are not united, absolutely they will vote against us.

M. West pointed out that no one on this Board is anti-rural.

B. Major stated that one thing we have absolutely is concern for the environment. Every member of this Board is going to bend over backwards to protect the environment.

M. West stated that she thinks where we struggle is at the intersection of rurality and the zoning code – which, frankly, can encourage development. If you don't like it, amend it. Not one of us would say that we'd like more giant developments.

K. McGhee asked M. West further about that point; last year M. West had pointed out to her that in some cases people who have large tracts of land in this Town have the downward pressure because of the zoning laws. K. McGhee got the impression that M. West had more information about that in terms of what we should be aware of, regarding not having people feel as if their only way they could manage economically was to sell to developers. We do have continuous use, on the taxes, to help people.

M. West stated that we do a decent job with the planned units. If people want her opinion on how to deal with stuff, she could go on at length. She has thought a lot about ADUs, and J. Belanger's suggestion [special exception vs. variance for setback requirements for non-conforming lots], which she fully supports because it allows this Board flexibility to take the most modest houses and most modest lots, and make sure that they are up to date for current living standards without additional development to this Town.

S. Swerchesky pointed out that people who do own large tracts of land have the right to sell. K. McGhee concurred – people don't seem to understand that these are private land sales; we are not in charge of whether someone sells their land. M. West agreed; people should be able to do what they want to with their property, and developers will build what they are allowed to.

R. MacMillan stated that there is a lot of pressure. He gets offers once every three months for the 30 acres he owns on Worcester Road – all fields, ponds, and forest. B. Major stated that, 20 years from now, that will be built up. When B. Major bought his home, he could only see one other house from his lot; now there are a whole bunch that went in across the street. However, we have to be careful of balancing property rights, which are important, and the rights of the public in regulating development of property in a consistent manner. If we don't follow that balance point very closely, we are going to have a problem. We would have courts fashioning remedies which are a lot more generous than the remedies that we would fashion.

M. West stated that there is one town where she has represented a developer for years; they had a dual system – you literally provided two plans: you have a plan under the standards of divisions of property, and then what is effectively a planned unit development. You submitted both to the town, and it was the town's right to choose. This was in Massachusetts, but it was upheld over and over again. They also had staggered development, which meant that you could only develop five houses per year. They had control, they had open space, they got to develop the number of houses they wanted developed, they had protection of the town, and the town was in control.

D. Mason pointed out that in Hollis, such things go to the Planning Board, and not this Board. S. Swerchesky stated that he thinks the Planning Board does a pretty good job.

B. Major stated that he doesn't want someone to be appointed to the Board and have unreasonable expectations; it takes some time – often a year or longer – to understand the flow of things.

M. West stated that any time this Board or this Town is up on appeal for any kind of contentious project, the sum total of what the appellate is going to say is that ‘You are a bunch of white elitists who just want to kick and keep other people out’. That’s what the argument is. The counter argument to that is always ‘We have done this to promote affordable housing. We have done ADUs. We are working to keep young families staying in, keep the teachers in, keep the firefighters in, and this is exactly how we’re doing it’. Any housing court judge will listen to that.

Potential 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

B. Major asked if any Board members want to touch this issue. In general the Board did not. K. McGhee stated that, per her constituent, she was trying to figure out if there is a start date – because there is an end date. She thought that was a reasonable question.

By unanimous vote, the Board determined not to propose a change to the political sign ordinance in this Town.

2. Special Exception vs. Variance for Setback Requirements for Non-Conforming Lots

J. Belanger would like to recommend that the Planning Board review our suggestion, and come up with some wording. R. MacMillan concurred.

R. MacMillan asked whether we can assign privileges to people who have undersized lots just because they have undersized lots, while others won’t be able to do the same thing. B. Major stated that that is what he is worried about.

B. Major asked whether you could have the concept of an undevelopable lot. Could you have a lot of record that is undevelopable because it is just too small? J. Belanger stated that he’s sure there are lots that people own that have no buildings on them and that can’t be built on. J. Belanger stated that this proposed change is not to allow someone to build on a nonconforming lot; it’s to allow someone an expansion of their existing facility – adding a garage, or adding a porch. R. MacMillan asked if that would be without consideration for the setbacks.

M. West stated that every time we have a Silver Lake lot, or a Flint Pond lot, where these people just want to be able to accommodate their families, we go through gymnastics because we hit the variance. A special exception would give us all more control, protect the Town, and give these people more opportunities to add the garage, to add something that makes this house livable, and livable long-term for these families who are coming in and saying that there’s nothing in this Town for under \$500k. It’s another thing to point to, to be able to say that we are trying.

R. MacMillan pointed out the principle of caveat emptor: if you buy a house, you must understand if it’s an undersized lot. Why should you be assigned rights that someone who has four acres can’t do?

S. Swerchesky stated that it wouldn’t be automatic – let them come before the Board, and we’ll review it for a variance. J. Belanger pointed out that the way the variance rules are written, we often can’t grant them permission. J. Belanger further stated that if a proposal makes sense, but we can’t grant a variance, maybe a special exception would work.

B. Major stated that we have to balance the benefit against the harm. If there’s no harm, and the benefit to the

homeowner is there, they will get the variance.

J. Belanger stated that that's akin to saying that if the speed limit is 50mph, but if you're in a hurry and it makes sense, you can go 70.

R. MacMillan stated that fair-minded people can come to a conclusion as to whether something is right or wrong. We have to keep in mind the rights of everyone. He could not put up a shed ten feet from his property line, and it wouldn't be right to allow someone to do it just because he has an undersized lot.

M. West stated that perimeter vs. volume is all the discretion in the world. We have turned down cases based on one or the other, and we have approved cases based on one or the other. Perimeter vs. volume will always give this Board a way to say no.

J. Belanger stated that there are homes in Town built prior to the two acre zoning which people purchased thinking that they could live there, and do whatever they needed to do to keep living there – but when the zoning change came in it restricted them, and removed those possibilities.

B. Major pointed out that, though he understands the sympathy factor, there are environmental issues that come into play. We have to be cold and calculating, and look at the ordinance.

D. Mason stated that there are some cases we struggle with, which, absent the hardship issue, it's a slam-dunk.

B. Major pointed out that the Board can work with the criteria for a variance; if a case meets the criteria for a special exception, though, they have to grant it – the Board loses its discretion.

Suggested Change:

SECTION XII: NONCONFORMING USES, STRUCTURES AND LOTS

B. NONCONFORMING LOTS

4. 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~~ if the Zoning Board finds that:

- a. Strict adherence to the existing setbacks would detrimentally impact the Historic District and disturb the streetscape; or
- b. Strict adherence to the existing setbacks would cause inconsistency in the massing of buildings; or
- c. Strict adherence to the existing setbacks would be inconsistent with setbacks of existing adjacent buildings; or
- d. If the structure as designed takes into consideration architectural and spatial elements of adjacent buildings an exception may be granted.

~~c. The ZBA will consider (but is not necessarily bound by) the recommendations of the HDC.~~

J. Belanger moved to send the proposed changes to Section XII: Non-Conforming Uses, Structures and Lots to the Planning Board for their consideration.

K. McGhee seconded.

Board Member	Yes	No
B. Major		No

J. Belanger	Yes	
R. MacMillan		No
D. Mason		No
K. McGhee	Yes	
M. West	Yes	
S. Swerchesky		No

Therefore, the Motion failed 3 to 4.

House Bill 1483

K. McGhee stated that this is about the language of a bill that she is proposing at the State level. It isn't really an issue for the Board at this meeting, but it would create a planning and zoning subdivision regulation change around water supply. It requires a water supply study in accordance with local regulations adopted by the governing body. This came up because of a constituent pointing out that, with development, they're finding out that the water supply is affected by putting in another house nearby. Wouldn't it be good if we knew in advance whether there will be adequate water?

R. MacMillan stated that science is not behind a need for this.

K. McGhee stated that there are hydrology experts who testified on this. This is not just for Hollis; it's for the State. There is a way for people to figure this out.

Per a question from D. Mason, B. Moseley stated that the Planning Board process does look at the effect of wells for a new development. The Planning Board requires hydraulic studies, which are supervised by the State.

Review of Minutes

D. Mason moved to approve the minutes of November 16, 2023.

Seconded K. McGhee.

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

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.