

# HILLSBOROUGH ZONING BOARD

November 19, 2012

## Approved Meeting Minutes

Present:

Members: Roger Racette, Chair; James Bailey, III; George Seymour, Robert Hill, Richard Booth, Larry Baker (Alternate)

John P. Segedy, Recording Secretary; Robyn Payson, Planning Director; Kelly Dearborn-Luce, Code Enforcement Officer

Mike McEwen, Ray Dozois, Bob Nash, Pat Nash, Sharon Monahan, Al Beaulieu, Suzy Beaulieu

### **CALL TO ORDER**

The meeting was called to order at 7:00 pm by Roger Racette, Chairman. Roger Racette introduced Robyn Payson, the Towns newly hired Planning Director, and Larry Baker, Alternate Member.

### **MINUTES**

**October 4, 2012**

**Richard Booth moved: *To approve the minutes of October 4, 2012 as submitted.***

**Bob Hill seconded. Motion passed 4-0-1 (George Seymour abstained).**

### **PUBLIC INPUT/ BUSINESS**

**1. PUBLIC HEARING - APPLICATION FOR VARIANCE - ZONING ORDINANCE SECTION 229, Table 3. Michael & Mary McEwen, 14 Lakeview Ct. (Map No. 20, Lot No. 15), Zoning: Rural.**

Chair Racette opened the Public Hearing at 7:10 PM. He asked and Recording Secretary John Segedy confirmed that the Hearing had been properly noticed to the Public and Abutters as listed in the application.

Roger Racette read aloud the description of the request from the applicant's application.

Ray Dozois provided copies of the site plan to the Board members.

Chair Racette explained that the applicant needed to address the five required criteria.

He read:

**A – “Granting the proposed variance will not be contrary to the public interest.”**

Chair Racette also read aloud the written response:

“It will enhance the appearance of the property and at the same time add value to the property.”

Mike McEwen said that “ It will look better”

Ray Dozois showed the Board pictures of the current building and the planned building.

Chair Racette read:

**B. – That granting the proposed variance will observe the spirit of the Hillsborough Zoning Ordinance.**

He also read the written response on the application: “The ordinance allows the use of a residential garage, and even though I cannot meet the setback, it will still not encroach or interfere with the unique setting.”

Roger Racette asked what is the unique setting referred to?

Mike McEwen answered that it was the style of house and it's placement on the lot.

Chair Racette read:

**C. – That granting the proposed variance will do substantial justice.**

He also read the written response:

“It will allow the character of the land and home to remain, as well as the appearance, style and elevation.”

Mike McEwen explained that other houses around him have 2 car garages while his is 1 car. It will be a better fit to the neighborhood.

Chair Racette read:

**D. – That granting the proposed variance will not diminish the values of the surrounding properties.**

He also read the written response: “The garage will enhance neighboring property values as well as increase my tax base.”

Chair Racette read:

**E – Not granting the proposed variance will result in an unnecessary hardship because:**

**(1). Owing to special conditions of the property that distinguish it from other properties in the area: (i) 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; and (ii) The proposed use is a reasonable one because:**

He also read the applicants written response:

“Provisions of the setback limit the proper placement of the garage and it creates unnecessary difficulties attempting to keep the property maintained and without variance, I am unable to build.

Roger Racette inquired about the existing setback being so little. Kelly Dearborn-Luce said that she couldn't find any previous case for the property. The Board discussed the setback.

As a point of order John P. Segedy reminded the Board that prior to the ordinance change about 2005, that properties that had existed prior to about 1978 were grandfathered from the setback regulation.

Chair Racette read E:

**(2): If the criteria in subparagraph E(1), immediately above, are not established, owing to special conditions of the property that distinguish it from other properties in the area, 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 because:**

He also read the written response: “If unable to obtain this variance, or to exercise my right to improve my property, I will not build.”

Mike McEwen said that if he can't build to match the style of the house he will not build and will just keep using the plastic covering he has.

Chair Racette asked if there were any comments from the public.

Bob Nash, abutter, said he was in support of the proposal. He said that Mike (McEwen) has talked to all the abutters and as far as he knows, they are all in support of the project.

Mike McEwen said he had also talked to the 'Walls', the rear abutters who live in Connecticut, and they had no problem with the proposal.

Roger Racette asked for clarification from Mike McEwen if it was the setting on the property that he was saying was unreasonable to not allow?

Mike McEwen answered yes, and that he just wants to have it be in line with the house.

Richard Booth asked about the driveway. Roger Racette asked about the land in front of the garage.

Mike McEwen said there is grass there now. He said he wants to have the driveway with a turn around area there.

Roger Racette asked if the garage was turned to better comply with the setback, would he be able to pull in to it?

Mike McEwen answered no.

Ray Dozois said that if it's turned the driveway would have to go over the well and then it would be a tight turn to get in if at all.

Roger Racette explained that a difficulty is that they usually look to a condition of the property that makes it difficult or impossible to comply, such as the size, terrain, etc.

Mike McEwen said there are boulders on the side.

George Seymour asked about just moving the garage to meet the setback.

Mike McEwen answered that then it wouldn't attach to the house like the current one does.

Roger Racette asked if that change would be unreasonable.

Mike McEwen answered yes.

Chair Racette asked the Board if they had any further questions?

Chair Racette closed the Public Hearing at 7:32 pm.

Chair Racette asked the Board if they wanted to discuss any of the criteria.

Jim Bailey said he understood what they are trying to do to have the garage in line with the house.

Roger Racette asked if it was unreasonable for the garage to be anywhere else.

Jim Bailey said that it could be put unattached.

Roger Racette said the question then becomes – Is it unreasonable to expect them to walk to the garage.

Consensus of the Board was that no further discussion was needed.

Chair Racette called for voting on the required criteria:

1. Passed 5-0
2. Passed 5-0
3. Passed 4-1 (George Seymour - no)
4. Passed 5-0
5. Passed 4-1 (George Seymour - no)

**Jim Bailey moved: *To grant the variance requested.***

**Bob Hill seconded. Motion passed 4-1 (George Seymour – no).**

## **2. PUBLIC HEARING - APPLICATION FOR VARIANCE - ZONING ORDINANCE**

**SECTION 229-35, Table 3. Albert and Susan Beaulieu, 4 Tasker Rd. (Map No. 20, Lot No. 28),**  
Zoning: Rural.

Chair Racette opened the Public Hearing at 7:42 PM. He asked and Recording Secretary John Segedy confirmed that the Hearing had been properly noticed to the Public and Abutters as listed in the application.

Roger Racette read aloud the description of the request from the applicant's application:

“To replace an existing non conforming, 2 bedroom dwelling on Franklin Pierce Lake with an ADA compliant 2 bedroom dwelling with a full walkout basement, and replace an existing septic system with a state approved septic system. The Variance Request is for side (2) and front setbacks.”

Chair Racette explained that the applicant needed to address the five required criteria.

He read the first one:

**A – “Granting the proposed variance will not be contrary to the public interest.”**

He also read the applicant's written response:

1) The proposed replacement dwelling is more conforming with the town of Hillsborough’s zoning ordinance and NH Department of Environmental Services regulations.

2) The proposed dwelling will accommodate Ms. Beaulieu’s disability of Parkinson’s disease for continued reasonable use of the dwelling.

3) Given the special characteristics of the lot, replacement of the existing nonconforming dwelling cannot be reasonably achieved without a variance.

4) State Shoreland and Septic approvals have been obtained.

Al Beaulieu also explained that the front of the building crosses a PSNH high water easement, so they can't replace 'in kind'.

He also said the State requires them to keep as much of the trees as they can.

Roger Racette noted condition number 4 of the Shoreland Permit.

There was discussion of the Shoreland Permit and the Septic system approval.

Chair Racette read the second of the criteria with the written response:

**B. Granting the Variance will observe the spirit of the Hillsborough zoning ordinance because:**

“The intent of the ordinance is to protect the lake and not alter the character of the neighborhood while allowing the Beaulieu’s continued reasonable use of their property and necessary accommodations for a disability. The use is to remain a single family dwelling and the proposed replacement dwelling is more conforming with the zoning ordinance than the existing structure.”

There was discussion of ground level access to the building.

Chair Racette read the remaining criteria along with the applicants written responses:

**C. Granting the Variance will do substantial justice because:**

1) The existing house is L shaped with no walkout basement and all access to the house is by stairs. The interior and deck are also on different levels. A full walkout basement with a rectangular shaped footprint and single level living would accommodate Ms. Beaulieu's disability and pose no harm to the public interest or the lake.

2) The proposal is more conforming in lakeside and side setbacks than the existing dwelling. There is no expansion in use.

3) The front setback has been increased from 27' to 41' to foundation, 33' to overhead deck. The side setbacks have been increased from 9' to 10' and 12' to 13' to ramp/deck and 17' to foundation.

4) The increase in lot coverage is minor. The existing house is 9.6% and the proposed is 16.2%. This is less than 20% lot coverage allowed for this zoning district.

**D. Granting the Variance will not diminish the values of the surrounding properties because:**

1) The improvements will increase the assessment value and increase the town of Hillsborough's tax base.

2) The neighborhood is non conforming lakeside dwellings.

3) Both abutters have state approved septic systems.

4) The Beaulieu's existing septic system is within the neighbor's proposed well radius. Once the variance is granted, both the neighbor and the Beaulieu's will be able to have state approved drinking water wells.

**E. Literal Enforcement of the provisions of the ordinance will result in an "unnecessary hardship" because:**

**(1) Owing to special conditions of the property ... no fair and substantial relationship exists between the public purposes of the ordinance and the specific application of that provision to the property; and the proposed use is a reasonable one because:**

1) The lot is small and narrow (65') and the existing footprint of the structure must be modified to provide reasonable and necessary accommodations for the owner's disability.

2) The existing septic system can only be replaced >75' from the lake and the existing dwelling cannot be replaced in kind in the same footprint because the lakeside front of the house is within PSNH's flowage easement.

3) The existing septic system creates hardship for the neighbor and the Beaulieus, and is more impacting to the water quality of the lake.

4) The proposed front setback from the lake has been increased from 27' to 41' to the foundation which is less impacting to the lake. Side setbacks have also been increased.

**(2) If the criteria in subparagraph E(1), immediately above, are not established, owing to special conditions of the property that distinguish it from other properties in the area, 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 because:**

1) Strict conformance is a building envelope 15' x 40' which is restricted by an existing driveway and where the leach field must be.

2) The slope of the land and the driveway cannot be rerouted.

3) A variance is necessary to reconfigure the footprint so that Mrs. Beaulieu can continue to reasonably access and use the property as her disability advances in the future.

Jim Bailey asked why they couldn't move the house nine feet further back from the water so it would meet the State's fifty foot setback.

Sharon Monahan answered that it would push the septic tank into the driveway area and then they would have a sharp right corner for the driveway if it would fit at all.

Al Beaulieu noted that the rest of the driveway is on the neighbor's property so can't really be changed.

Sharon Monahan further explained that moving the driveway further back would put it in the area where the leach field is.

Roger Racette noted that if it could be changed the they (Al & Suzy Beaulieu) would need to go back to the state to change both the Septic and Shoreland Permits.

Sharon Monahan said she didn't know if the State would even approve a change.

There was discussion of building in the existing footprint, the PSNH easement and the water level.

Roger asked why the State gave permit at 41' instead of 50'.

Sharon said the State's requirement is fifty feet, but they've already approved the Shoreland Permit.

She said she didn't feel they should have to address that, but only the towns seventy five foot setback.

Jim Bailey said he just thinks they could move it back further which would then be less into the setback area. He said he had been to the site and had talked to the State.

Roger Racette suggested that they could have a site visit.

Consensus was in agreement.

There was discussion of possible dates.

**Roger Racette moved: *To continue the Public Hearing until November 26, 2012 at 4:00 PM at 4 Tasker Road and then at the Town Hall at 5:00 PM.***

**George Seymour seconded. Motion passed 5-0 at 8:35 PM.**

## **OTHER BUSINESS**

### **Training – Voting on Criteria**

There was discussion regarding a recent training in which it had been recommended that the Board not vote on each individual criteria. The example had been presented that you could have a situation where each member believed that a different criteria hadn't been met. In the example the vote on each criteria would pass 4-1, yet the final vote could be 0-5 as each had a reason it shouldn't pass.

Consensus of the Board was that it was valuable to have the votes on individual criteria and that the Board should continue it's current practice.

### **Variance Expiration**

Roger Racette explained that a situation had occurred in which someone had asked about a 25 year old variance to build a residence in a commercial zone. Because there was no expiration date, it was determined that it was still valid. He said that in this case it wasn't an issue, it is possible that there could be a situation where the area had changed and the variance was no longer appropriate.

Roger Racette said he and Kelly Dearborn-Luce had brought the issue to the Planning Boards attention and that an amendment might be brought to the voters.

There was discussion of the matter.

**ADJOURNMENT**

**George Seymour moved: *To adjourn.***

**Richard Booth seconded. Motion passed 5-0 at 8:59 pm.**

Respectfully Submitted:

John P. Segedy

Recording Secretary

Approved February 21, 2013