

HILLSBOROUGH ZONING BOARD

March 21, 2013

Approved Meeting Minutes

Present:

Members: Roger Racette, Chair; James Bailey, III; Larry Baker, Robert Hill, Richard Booth

Kelly Dearborn-Luce, Code Enforcement Officer

John P. Segedy, Recording Secretary;

Brett Cherrington, Chair Conservation Commission

Dave Fullerton, Selectman

Sharon Monahan, Site Succor Design LLC

Linda Megnin, Chuck Megnin,

Mike McEwen

CALL TO ORDER

The meeting was called to order at 7:02 pm by Roger Racette, Chairman.

MINUTES

February 21, 2013

James Bailey moved: *To approve the minutes of February 21, 2013 as presented.*

George Seymour seconded. Motion passed 4-0-1 (Larry Baker abstained).

ELECTION OF OFFICERS

Larry Baker nominated Roger Racette as Chairperson.

James Bailey seconded. Passed 4-0-1 (Roger Racette abstained)

Roger Racette nominated James Bailey, III as Vice Chairperson.

Larry Baker seconded. Passed 5-0.

CONTINUED PUBLIC HEARING - APPLICATION FOR VARIANCE - ZONING

ORDINANCE Section's 160 and 229 Table 3. Charles and Linda Megnin, 138 County Road (Map 5, Lot 135)

Chair Racette opened the Public Hearing at 7:07 PM.

Chair Racette reminded that at the last meeting, the Board had voted that the proposed garage does meet the definition of an appurtenant structure.

Chair Racette noted that one of the things that was to be done between the two meetings was to get clarification from Billy Goss (Town Road Agent) regarding his requested 10 foot setback from the road.

Kelly Dearborn-Luce referred to her Inspection Report of March 5, 2013 and said that Billy Goss is 'OK' with the 6 foot setback.

Chair Racette noted that they had also been waiting for the applicant to secure an after the fact permit from the Department of Environmental Services (DES) for filling done last year.

Linda Megnin said they couldn't do an application by notification for the DES permit because of the fact that there are threatened species (Loons) in the area and because it was retroactive. She said that because of the Loons they had to get approval from the Fish and Game Department. Linda Megnin said that Fish & Game staff have given approval. She submitted a letter to that effect.

Sharon Monahan said that due to the need to be 10 feet away from the septic system they were changing the dimensions of the proposed Garage to 24' x 22'.

She submitted a copy of the septic plan pointing out the parking area was preexisting.

Sharon Monahan said that the application to DES is now 'under technical review' and that they expect a response 30 days from the application date of March 12, 2013.

Chair Racette noted that they could continue the hearing or they could proceed and if they eventually decide to approve the application it could be conditioned upon the DES permit.

Consensus was to proceed.

Chair Racette asked the applicant to address the Loon Pond standards and the variance standards.

Sharon Monahan addressed the Board reading from the application/letter::

Loon Pond Standards

#1

"The existing dwelling was built in 1892 on a grandfathered waterfront lot, and is occupied year round as the Megnin's only residence. The proposed garage is appurtenant to the existing residence and proposed wholly within a level parking area that was permitted by the Town in 2012."

#2

"The proposed garage will not contribute to any pollution of Loon Pond. The existing house does not have a basement or a garage, so a garage is needed to protect vehicles already parked in this area as well as provide additional storage associated with year round use of a home"

Sharon Monahan added that the lot exceeds required amounts of vegetation and non-impervious surface area with only 9% of the area impervious.

#3

"A state of the art septic system was installed and inspected by DES in 2006 to replace the failed system. The septic system is a 'Clean Solution' by 'Wastewater Alternatives' and is inspected and maintained annually by Wastewater Alternatives to insure that it is operating properly and not polluting Loon Pond. The Megnin's have a maintenance agreement that requires this."

Variance Criteria

A Granting the Variance will not be contrary to the public interest because:

"The proposed garage will not harm the public drinking water or be contrary to the public interest because it is wholly within an existing permitted parking area where vehicles are already parked and it will not create additional impervious surface area. The proposed garage will also provide for safe storage of vehicles and recreational equipment otherwise left out in the open. It will not obstruct any views of the pond and the location has safe sighting distance along County Road."

B Granting the Variance will observe the spirit of the Hillsborough Loon Pond zoning ordinance because:

“The intent of the ordinance is to protect the public drinking water supply from sources of contamination and pollutants. The proposed garage will provide a safe structure for an existing use (parking vehicles) and also for storage of recreational equipment. A garage to protect these vehicles will observe the spirit of the ordinance by being a structure that will not create any new disturbance to Loon Pond since it is proposed in an already existing parking area and will not create additional impervious surface area or stormwater impacts”.

C Granting the Variance will do substantial justice because:

“The proposed garage will not contribute to any adverse impacts to the lake or to the general public as it is set as far back as possible from the lake at 55' where the lot width is 75' and still remain in the vicinity of the main grandfathered dwelling as an appurtenant to the dwelling, in the developed area of the lot. It will provide a safe structure for storage and vehicles, and pose no harm to the general public, obstruct any access or views, or pose any harm to Loon Pond. A Variance for the proposed garage to be at the property line setback 6' from the road is also requested. Pictures have been provided of three other houses along County Road that have garages close to the road”.

Sharon Monahan also added that no trees had been removed. She said that regarding the setback from the road, they had to get back as far as they can from the lake and referenced the letter (Report of Kelly Dearborn-Luce) stating that Billy Goss is alright with it for plowing.

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

“1) The property is one of the few waterfront homes occupied year round in the neighborhood, is well maintained, and of higher assessment than many of the surrounding dwellings on the lake which are primarily seasonal cottages. The dwelling is nonconforming/grandfathered, and due to unique characteristics of the lot, cannot conform to the zoning ordinance of the setback from the high water or rear property line.

2) A garage will be more attractive and protect the vehicles already parked here without changing the character of the neighborhood.

3) The garage will increase the assessment value of the property and increase the Town of Hillsborough's tax base”.

E 1

Chair Racette noted that in the written response to this criteria in stating the criteria the phrase “that distinguish it from other properties in the area” was omitted. He said this is asking what are the special conditions of 'this property'.

Roger Racette said that looking at the map, he sees 14 lots that can't meet the setback. He said he was worried that if they accept that hardship is found just by the shape, then that argument would apply to the other 14 properties also with the potential for 14 other garages.

Sharon Monahan answered that the house is non-conforming, 8' from the lake and is very sloped. What is unusual about this lot is that it is about 500' of road and water frontage which is unique about the lot, with the widest part only 105'. She added that it is heavily wooded except for the developed first 100'.

Linda Megnin said most of the rest is wet. She also stated that 6 other properties already have garages, so one can't say that there is potential for 14 more as 6 are already there.

Roger Racette said that if one of these other lot owners came and wanted to build, it would be the same argument and conditions.

Sharon Monahan stated that a special condition is still special even if others have the same condition. She said that this location and sloped part of County Road is unique because the house exists right after a sharp bend.

Roger Racette read from **The Board of Adjustment in New Hampshire**, December 2011 revision, page II-12: *“The restrictions on one parcel are balanced by similar restrictions on other parcels in the same zone. When the hardship so imposed is shared equally by all property owners, no grounds for a variance exist. Only when some characteristic of the particular land in question makes it different from others can unnecessary hardship be claimed.”*

Sharon Monahan said that it is also unique because of the clean septic system, and that other properties aren't used year round. She said that what is unique is not just the land, but also the structures and the use.

Roger Racette said that with the potential for more garages, how can they say no on the next one if they say yes here.

Sharon Monahan said the difference was location, the house, and its use.

Roger Racette read from a letter from the water commissioners talking about the spirit and intent of the ordinance:

“..ideally in the interest in protecting the waters of Loon Pond, the Commission would like to see no new construction within 200 feet of the towns drinking water source.”

Roger Racette said they do acknowledge that there may be some instances where a variance may be needed to prevent a taking of property.

He said he thinks this proposal would be defeating the intent of the ordinance.

Sharon Monahan said that there is no increase in impervious surface and no increase in use so there is no new impact to the lake. No vegetation is being disturbed, so there is no impact to the water quality. She said the parking area already exists, they are not cutting trees and that is unique, where as if others came in and had to excavate, that might be different.

Linda Megnin said that if you look at the map our lot and the one next door are the skiniest lots on the lake, which is unique.

Sharon Monahan said that they aren't increasing the impervious area, they are just putting a cover over their car.

E2

Chair Racette said that there was one more criteria to look at and read it:

“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”.

He noted that here again the applicants in there letter had omitted the phrase “that distinguish it from other properties in the area”.

Chair Racette asked if the argument they are making is that having the garage is a reasonable use. He further asked that since they are using the house now without a garage, how is that unreasonable.

Charles Megnin said that they had bought the house 11 years ago and used it seasonally at first, but then moved here year round.. He said he has a pick up truck like many people do, that most are 21' long. He stated that this has been a hard winter, he has been shoveling a lot and what is reasonable is being able to park under cover. He said he feels he needs the garage to continue living there.

Bob Hill said that every lot is different.

Roger Racette said that none of these lots can meet the requirement.

Sharon Monahan said that the Board can't make a ruling based on (possibly) setting a precedent, that was not the purpose of the hearing.

Brett Cherrington said that the applicant had stated that there was no vegetative impact, but noted that when the parking area was leveled and widened there was fill which likely did have an impact. He said that it is contingent upon the State Permit, so should wait and see before deciding.

James Bailey asked if they were aware of the lake being town water supply when they purchased the property?

Charles Megnin answered yes.

James Bailey said that while he feels for them regarding shoveling, he thinks that a garage is a luxury not a necessity.

Richard Booth said he understood the concern about the other properties, but feels that if any of them were to come to the Board, they would have to do other things like cutting or excavating.

Brett Cherrington said that they haven't received approval for what was previously done.

Charles Megnin said that they can't change the past, they didn't know about it then. He said that he thinks the ordinance is a good thing, and would like to see others follow them. He said the old septic system was a problem that wasn't enforced, but they fixed it. He said he hopes others are held to the same high standards he is.

Chair Racette closed the public input portion of the hearing at 8:14 pm.

Larry Baker asked when the Loon Pond ordinance was enacted.

Jim Bailey checked the code and said March 11, 1980. He said the ordinance basically says nothing is to be constructed within the water setback except for replacing grandfathered structures.

Larry Baker said that then they clearly purchased knowing (the restrictions).

Bob Hill said he was ready to vote.

James Bailey said his questions were answered.

Richard Booth said he is in a similar situation but not on Loon Pond, where he bought knowing he can't build a garage. He said he isn't concerned about a precedent as the other lots would come on their own merits.

Jim Bailey said that he agreed that each lot is looked at individually with a lot of other conditions, so they wouldn't be setting a precedent.

Chair Racette said they could either vote or continue while waiting for other paperwork depending on what the Board wanted.

Larry Baker said that fill was brought in and the area was widened, but now it won't make a difference.

Jim Bailey said that this is establishing a new structure.

Roger Racette said the ordinance says new structure or appurtenance.

Jim Bailey said that there was another part of the definition (of appurtenance) in Blacks Law Dictionary that says an appurtenance was attached to main structure and the deck was attached, where this isn't attached. He said that if the permit doesn't come through that would make a difference.

Consensus was to continue the hearing.

There was discussion of reopening for comment.

Chair Racette said that yes they would be reopening for comment and he would ask that the concerns that have been voiced be addressed.

Richard Booth moved: *To continue the Public Hearing until April 24, 2012 at 7:00 PM.*

James Bailey seconded. Motion passed 5-0.

OTHER BUSINESS

Dave Fullerton asked about possibly getting a variance for a sign.

James Bailey said they couldn't discuss a specific case unless it was brought to the Board.

VACANCIES

Chair Racette said that Mike McEwen had attended tonight as he was interested in being an alternate.

Roger Racette moved: *To recommend Mike McEwen as an alternate on the Board.*

James Bailey seconded. Motion passed 5-0.

CORRESPONDENCE

Roger noted a notice about a training. There was discussion of it.

ADJOURNMENT

Richard Booth moved: *To adjourn.*

Bob Hill seconded. Motion passed 5-0 at 9:48 pm.

Respectfully Submitted:

John P. Segedy
Recording Secretary
Approved April 24, 2013