**Zoning Board of Adjustment**

**27 School Street**

**HILLSBOROUGH, NH**

**APRIL 8, 2019**

**DATE APPROVED**: May 13, 2019

**TIME:** 7:00 p.m. – 8:30 p.m.

**CHAIRPERSON:** David Rogers

**VICE CHAIRPERSON:** Roger Racette

**MEMBERS:** Russell Galpin Dana Brien and Nancy Torres

**PLANNING DIRECTOR:** Robyn Payson

**ALTERNATES:** Larry Baker and John Segedy

**ABSENT:** Russ Galpin, David Rogers

**Present:** Dana Brien, Nancy Torres, Roger Racette, John Segedy, Larry Baker, Robyn Payson,

Also Present: Scott & Cathy Bennett, Arthur Siciliano, Jr., Paulette & Robert Lamacchia

 **CALL TO ORDER:**

Vice Chairman Racette called the meeting to order at 7:00 p.m. Vice Chairman Racette appointed Mr. Baker and Mr. Segedy to vote since two regular members were absent.

**MEETING MINUTES**

01/14/2019

Mr. Segedy made a motion to delay the minutes until after, seconded by Mrs. Brien. The motion passed unanimously.

**PUBLIC HEARINGS**

**Variance from Setback Requirements**

**Robert & Paulette LaMacchia**

**59 Marina Road (Map 19, Lot 23)**

The LaMacchia’s are requesting that the Board of Adjustment grant a variance from Hillsborough Zoning Ordinance Sections 229 Table 3 and 229-36 in order to permit the demolition of two non-conforming structures and reconstruct one year round home 28’ x 36’ with a 12’ x 28’ deck. Mrs. Payson stated that she received five letters of support from abutters.

Criteria:

2A. Granting the proposed Variance will not be contrary to the public interest because: Mrs. LaMacchia stated both existing structures are non-conforming. The structure closest to the water is 50 feet away and very close to the side property. They would like to raze the two buildings and rebuild further away from the water and side property. Marina Road runs through the middle of the property. They will be 2 or 3 feet short on the side and the deck would be at the 50-foot mark. With the positioning of the septic, well, and topography, the engineers felt the positioning of the proposed building would be best. The State has approved the proposed structure and placement.

2B: Granting of the proposed Variance will observe the spirit of the Hillsborough Zoning Ordinance because: Basically the proposed project would remove an eyesore. The proposed project would make a non-conforming lot more conforming. This lot has more trees than other lots and the new structure will be further away from the water than other homes in the area.

2C: Granting the proposed Variance will do substantial justice because: The proposed project would remove an eyesore. The proposed project would increase property value and it would make a non-conforming lot more conforming.

2D: Granting the proposed Variance will not diminish the values of the surrounding properties because: Several letters were received in support of the project.

2E: Literal enforcement of the provisions of the ordinance will result in an “unnecessary hardship” because: Marina Road passes through the property. There is a shared driveway and right of way for Map 19, Lot 22 and to minimize costs, septic system needs to be located in the proposed location. Relocating septic system on the other side of Marina Road would require clearing additional wooded area, and installation of pump station in addition to impacting travel on Marina Road during installation. Locating the house within 75’ setback would require the septic system to be relocated. The existing structure does not meet 75’ setback requirement.

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: The engineers, in conjunction with Shoreland Protection, have placed the structure and septic system in the optimal location of the property to conform with State guidelines and make a non-conforming lot more conforming. Moving the structure further back would create financial hardship and require unnecessary excavation of wooded area to accommodate new septic system. The deck structure will be 53 feet away from the water with the wall of the house will be almost 70 feet. No one wished to speak against the application.

The Board went into deliberations keeping the public hearing open to allow for questions by the Board. After some discussion the public hearing was closed and the Board was prepared to vote.

2A. Granting the proposed Variance will not be contrary to the public interest. Roll call vote: Mrs. Torres – yes, Mrs. Brien – yes, Mr. Segedy – No, Mr. Baker – yes, and Vice Chairman – yes.

 2B: Granting of the proposed Variance will observe the spirit of the Hillsborough Zoning Ordinance. Roll call vote: Mr. Segedy – No, Mr. Baker – yes, Mrs. Torres – yes, Mrs. Brien – no, Vice Chairman – yes.

2C: Granting the proposed Variance will do substantial justice because: Roll call vote: Mrs. Brien – yes, Mrs. Torres – yes, Mr. Segedy – yes, Mr. Baker - yes, and Vice Chairman – yes.

2D: Granting the proposed Variance will not diminish the values of the surrounding properties. Roll call vote: Mr. Baker – yes, Mr. Segedy – yes, Mrs. Brien – yes, Mrs. Torres – yes, Vice Chairman – yes.

2E: Literal enforcement of the provisions of the ordinance will result in an “unnecessary hardship”. Roll call vote: Mrs. Torres – yes, Mrs. Brien, - no, Mr. Segedy – no, Mrs. Baker – yes, Vice Chairman – yes.

Mrs. Torres made a motion to grant the variance, seconded by the Vice Chairman. The motion passed unanimously.

**Variance from Minimum Lot Size**

**Scott & Kathy Bennett**

**45 & 54 Myrtle Street (Map 23, Lot 14)**

The applicants are requesting a variance from Hillsborough Zoning Ordinance Section III, 229-21 in order to permit the following: To create/subdivide a lot with less area than the requirements listed in Table 2 of the Zoning Ordinance.

Arthur Siciliano spoke on behalf of the applicants.

Criteria

2A: Granting the proposed Variance will not be contrary to the public interest because:

This variance requested allows a reduction of lot area to subdivide land for dwellings to be on their own lot. The public is not affected by this change. This is private property use. No public funds are used for this variance and there is no hazard to the public.

2B: Granting of the proposed Variance will observe the spirit of the Hillsborough Zoning Ordinance because: There are two dwelling units on the one lot, a one unit dwelling and a three-unit dwelling. The spirit of the ordinance is to have each dwelling on its own lot. In this case the area of the existing lot would need to be 38,500 SF, 10,000 SF minimum for the one unit dwelling and 28,500 square feet for the three-unit dwelling. The existing lot is 37,107 SF, short by 1,393 square feet. Granting a variance for that reduction of area, allows a subdivision of the two dwellings. The end result will satisfy the spirit of the ordinance, dwellings on their own lots.

2C: Granting the proposed Variance will do substantial justice because: The two existing dwellings on one lot now will be subdivided onto their own lot. Presently, both dwellings have their own addresses.

2D: Granting the proposed Variance will not diminish the values of the surrounding properties because: This is a residential property in a residential neighborhood. There will be no change in

use here. Similar uses will not diminish values of the surrounding properties.

2E: Literal enforcement of the provisions of the ordinance 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:

We have two dwellings on one lot, hence the special condition. It is reasonable for each dwelling to be on its own lot. A variance to allow the three unit dwelling to exist on a slightly smaller lot than required is reasonable to accomplish this condition.

1. 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:

The Variance would allow a subdivision of the dwellings. They would each be on their own lot. The condition would be eliminated. The owner would like to sell the dwellings separately. It is necessary to grant a variance to enable a reasonable use.

The Board went into deliberations while leaving the public hearing open allowing for questions and answers. After some discussion the public hearing was closed and the Board was prepared to vote.

2A. Granting the proposed Variance will not be contrary to the public interest. Roll call vote: Mrs. Torres – yes, Mrs. Brien – yes, Mr. Segedy – yes, Mr. Baker – yes, Vice Chairman – yes.

2B: Granting of the proposed Variance will observe the spirit of the Hillsborough Zoning Ordinance. Roll call vote: Mr. Segedy – yes, Mr. Baker – yes, Mrs. Torres – yes, Mrs. Brien – yes. Vice Chairman did not record his vote.

2C: Granting the proposed Variance will do substantial justice. On Roll call vote: Mrs. Torres – yes, Mrs. Brien – yes, Mr. Baker – yes, Mr. Segedy – yes, Vice Chairman – yes.

2D: Granting the proposed Variance will not diminish the values of the surrounding properties. Roll call vote: Mr. Baker – yes, Mrs. Torres – yes, Mrs. Brien – yes, Mr. Segedy – yes, Vice Chairman – yes.

2E: Literal enforcement of the provisions of the ordinance will result in an “unnecessary hardship”. Roll call vote: Mr. Segedy – yes, Mr. Baker – yes, Mrs. Torres – yes, Mrs. Brien – yes, Vice Chairman – yes.

Mr. Segedy made a motion to accept the Variance, seconded by Mrs. Torres. The motion passed unanimously.

**MINUTES**

**January 14, 2019**

Mrs. Payson stated that because there was no opportunity to approve the minutes until now, the minutes were submitted as part of the court record. Mr. Segedy brought up a number of items he would like changed or added to the minutes. Mrs. Payson suggested Mr. Segedy submit all his changes in writing to add as an addendum.

Members of the Board asked questions regarding the lawsuit. Mrs. Payson stated that the Board is not to discuss this subject.

Mr. Segedy made a motion to amend the minutes to include his changes. The motion was not seconded. Mrs. Brien made a motion to table the approval of the minutes until the next meeting. Mrs. Torres seconded the motion. The motion passed with four yays and one nay.

Having no further business, the meeting was adjourned at 8:30.

Respectfully Submitted,

Dianne Rutherford

Administration/Land Use Secretary