

HILLSBOROUGH ZONING BOARD

Meeting Minutes

January 11, 2016

Date Approved: April 11, 2016

Present:

Members: Chairman Roger Racette, Russell Galpin, John Segedy, David Rogers and Nancy Torres

Alternates: Larry Baker

Planning Director: Robyn Payson

Absent:

Members from the Public: Bradley Demo, Brenda Dillon, CEO Michael Borden, Mark Rodier, Ruth Towne and Kevin Gray

Chairman Racette called the meeting to order at 7:00 pm.

Mr. Galpin made a motion to postpone acting on the minutes of the last meeting until later in the meeting and to move on to the cases before the Board. Mrs. Torres seconded the motion. The Board voted all in favor.

PUBLIC HEARING:

Application for a Variance: Submitted by Ruth Town, 31 Melody Lane, Map 14, Lot 422

Chairman Racette read the public notice: "Notice is hereby given in accordance with RSA 676:7 that the Hillsborough Zoning Board of Adjustment will hold a public hearing on an application by Ruth Towne for a Variance from Zoning Ordinance, Table 3 – Setback, Coverage and Building Heights Requirements for property located at 31 Melody Lane (Tax Map 014, Lot 422). The request is to locate a propane tank within the side setback."

Mrs. Torres said in the interest of full disclosure she has dealt with the owner and has extensive knowledge about the case but has not formed an opinion. She feels she can therefore be open minded and form a decision based on the evidence presented tonight. She would however like to ask the applicant if they object to her being a voting member or if the Board feels she should recues herself.

Mrs. Towne didn't object to Mrs. Torres hearing and ruling on this case.

Chairman Racette made a motion to have Mrs. Torres sit as a voting Board member hearing this case. Mr. Galpin seconded the motion. The Board voted all in favor except for Mr. Segedy who abstained.

Chairman Racette asked the applicant to explain the reason for their request for a variance.

Mr. Gray said it was because their propane tank had to be moved and is now situated less than fifteen feet from their property line. They were informed that according to town code it had to be at least fifteen feet away from their property line. They then explored other options for relocating the tank and couldn't find any that wouldn't involve a large amount of money.

Mr. Gray questioned the zoning code definition of a structure.

Mr. Segedy questioned where in the zoning it says a structure cannot be within the setback.

Chairman Racette said the definition of a setback refers only to a building not a structure.

Mr. Borden said he had denied the permit because he was considering the tank a structure and it was placed within the setback according to the Town's ordinance. He would like the Board to take a stance one way or the other so he has a clear understanding of what is allowed.

Mr. Segedy said the Board needs to determine if a variance is necessary and if so whether it even meets the requirements for a variance.

Chairman Racette and Mr. Segedy commented on the need to include structures in the definition of a setback and to clarify the definition of a structure to include utilities (i.e.: fuel tanks, etc.).

Chairman Racette closed the public comment section of the hearing.

Mr. Segedy made a motion that it is the determination of the Board of Adjustment that a variance is not needed in this case for a propane tank to be located within property setback because the Town Zoning Ordinance definition of a setback says it is from a building to the property line and nowhere does it mention that a structure, assuming that a propane tank is a structure, can't be located within a setback. Chairman Racette seconded the motion. The Board voted all in favor.

Mr. Baker said this issue should be brought to the attention of the Planning Board for review.

Mrs. Payson agreed.

Application for a Variance: Submitted by Brenda Dillon, 39 School Street, Map 24, Lot 41

Chairman Racette read the public notice: "Notice is hereby given in accordance with RSA 676:7 that the Hillsborough Zoning Board of Adjustment will hold a public hearing on an application by Brenda Dillon for a Variance from Zoning Ordinance, Table 4 – Chart of Uses for property located at 39 School Street (Tax Map 024, Lot 041). The request is to operate a wellness center which offers an herbal apothecary, massage, natural local products and other alternative wellness services."

Mrs. Payson said the applicant is also asking for a waiver from the requirement that a survey be submitted with the application seeing as the variance is for the use of the building.

Ms. Dillon said she is a pharmacist but is really interested in the herbal side of healing. She bought the house on School Street with the intent of eventually opening a wellness center offering massage, herbal and natural products and other alternative wellness services.

Chairman Racette asked if she would be offering personal services as well as retail.

Ms. Dillon answered yes.

Mr. Segedy asked what part of the building would be used.

Ms. Dillon said when you walk into the front door there are stairs to go upstairs where there will be a small bathroom and a massage room. She said the barn has ample space for yoga on the top and retail on the bottom. She would live in the rest of the house for now and the future would depend on how the business grows.

Chairman Racette asked where this business fits in the Town's chart of uses.

Mrs. Payson said it could be considered personal services with retail as a secondary use.

Mr. Segedy asked if there would be other people working there.

Ms. Dillon answered yes, her sister-in-law as another massage therapist. She said there may be other yoga instructors who could come in to offer classes but not as employees.

Mr. Rogers asked what the hours of operation would be.

Ms. Dillon said that had not been determined it would depend on when people were available, maybe some day and evening hours.

Mr. Rogers asked about parking.

Ms. Dillon said there is public parking across the street and room for six cars in her driveway.

Chairman Racette wanted to clarify that the building is in the village residential zone and is a residence.

Chairman Racette read the following and asked Ms. Dillon to complete each statement:

A. Granting the proposed Variance will not be contrary to the public interest because: "The business is looking to offer the public options in wellness and caring for one's self."

B. Granting of the proposed Variance will observe the spirit of the Hillsborough Zoning Ordinance because: "Located across the street are two small businesses, a chiropractor and funeral home and next door is a child day care."

C. Granting the proposed Variance will do substantial justice because: "The wellness center will be in harmony with businesses around the property."

D. Granting the proposed Variance will not diminish the values of the surrounding properties because: "The small businesses located around the property will benefit from a wellness center in their surroundings."

E. 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: “Located across the street are a chiropractor and funeral home. Next door is a home day care and multi-family home. The small business will flow well with surrounding businesses.”

(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 ordinance, and a variance is therefore necessary to enable a reasonable use of it because: “The wellness center is currently zoned as a single use residence and is surrounded by commercial businesses.”

Mrs. Payson said it is zoned “village residential” and generally “villages” would include small scale businesses. She will be speaking to the Planning Board regarding this.

Chairman Racette closed the public portion of the hearing.

Chairman Racette said he felt this use was in keeping with the character of the neighborhood.

Mr. Baker agreed.

Chairman Racette asked if the Board was ready to vote.

Chairman Racette said on criteria A: Granting the proposed Variance will not be contrary to the public interest. Mr. Rogers – yes, Mrs. Torres – yes, Mr. Segedy – yes, Mr. Galpin - no and Chairman Racette – yes

Chairman Racette said on criteria B: Granting of the proposed Variance will observe the spirit of the Hillsborough Zoning Ordinance. Mr. Rogers – yes, Mrs. Torres – yes, Mr. Galpin – yes, Mr. Segedy - yes and Chairman Racette – yes

Chairman Racette said on criteria C: Granting the proposed Variance will do substantial justice. Mr. Segedy – yes, Mr. Galpin – yes, Mrs. Torres – yes, Mr. Rogers – yes, and Chairman Racette – yes

Chairman Racette said on criteria D: Granting the proposed Variance will not diminish the values of the surrounding properties. Mrs. Torres – yes, Mr. Galpin – yes, Mr. Segedy – yes, Mr. Rogers - yes and Chairman Racette – yes

Chairman Racette said on criteria E: 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. Mr. Rogers – yes, Mrs. Torres – yes, Mr. Segedy – yes, Mr. Galpin - no and Chairman Racette – yes

Mr. Segedy made a motion to grant the variance as proposed. Mrs. Torres seconded the motion. The Board voted all in favor.

OTHER BUSINESS:

Chairman Racette said he had received a letter informing him that the terms for Mr. Segedy and Mrs. Torres end as of Town Meeting 2016.

Mrs. Torres said she would like to be reappointed as did Mr. Segedy.

Chairman Racette asked Mr. Galpin if he still had questions regarding the Loon Pond ordinance and whether he would like to discuss it further.

Mr. Galpin reminded the Chair that the minutes of the last meeting still needed to be approved.

MINUTES:

December 14, 2015:

Mr. Segedy and Mr. Rogers corrected several grammatical and spelling errors.

Chairman Racette commented on an item under Other Business, third paragraph, which says: “Chairman Racette said the special exception criteria dealing with proving hardship should at least be removed, as it is very hard to prove.” He clarified the statement by explaining that it isn’t hard to prove but it’s not necessary to prove hardship in order to obtain a special exception.

Mr. Segedy made a motion to approve the minutes of December 14, 2015 as amended. Mr. Galpin seconded the motion. The Board voted all in favor.

RETURNED TO OTHER BUSINESS:

Chairman Racette turned the discussion back to the Loon Pond issue.

Mrs. Torres said she is still confused as to what the actual question is.

Mr. Galpin said that anything which is within 200’ of the high water mark on Loon Pond has to come under the Loon Pond ordinance not the general zoning ordinance.

Mrs. Torres said if it deals with the outside of the home.

Mr. Galpin said that includes change of use.

Mrs. Torres asked where does the Loon Pond ordinance say that. She said she had read the ordinance and all it mentions is the outside of the building.

Chairman Racette read from Town Code 160-8: M: “If a change in use occurs or an expansion is proposed, the rule requirements must be met. A change in use shall include, but is not limited to,

a change from seasonal to year-round use, higher intensity of campsites, units or domestic farm animals.” He said the change of use can’t violate any of the rules. He added in this case the Board looked at all the rules and the change didn’t violate any of those rules.

Mr. Galpin feels that what each building is used for is pertinent to the quality of the water in Loon Pond and when they change the use of the property, according to the ordinance; they would need to apply for a variance. He said in this case the change of use was submitted as a special exception. He feels that any change of use which affects Loon Pond should be considered a variance not a special exception. He said the change of use recently considered by the Board wasn’t affected by the ordinance but future applications should be submitted as a variance.

ADJOURNMENT:

Mr. Segedy made a motion to adjourn. Mr. Galpin seconded the motion. The Board voted all in favor.

Chairman Racette announced the meeting adjourned at 8:42 p.m.

Respectfully Submitted:

Iris Campbell
Land Use Administrator