

**Zoning Board of Adjustment
27 School Street
HILLSBOROUGH, NH
May 15, 2017**

DATE APPROVED: 10/23/2017

TIME: 6:58 p.m. – 7:51 p.m.

CHAIRMAN: Roger Racette

VICE CHAIRMAN: David Rogers

MEMBERS: Russell Galpin, Dana Brien and Nancy Torres

PLANNING DIRECTOR: Robyn Payson

ALTERNATES: Larry Baker

ABSENT:

PRESENT: Peter Mellen and Bonita Hadley

CALL to ORDER:

Chairman Racette called the meeting to order at 6:58 p.m.

MINUTES:

Chairman Racette entertained a motion to accept the minutes of April 10, 2017.

Mrs. Brien said on page two, fourth paragraph from the bottom Mr. Rogers name needs an “s” added.

Mrs. Brien made a motion to approve the minutes of April 10, 2017 as corrected. Mr. Rogers seconded the motion. The Board voted all in favor.

PUBLIC HEARING:

Variance:

Map 12; Lot 95 – 95 Old Railroad Drive – Owned by Bonita R. Hadley

Chairman Racette said this is a continuation of the public hearing of April 10, 2017 on a request by Mrs. Hadley for a variance to allow 50’ of frontage on a class five road instead of the required 200’ frontage per building on a commercial lot.

Mr. Mellen said the Board is familiar with the back ground on the property, the creation of the lot, when the house was built and when the lot was rezoned.

Mr. Mellen read from the application:

A. Granting the proposed Variance will not be contrary to the public interest because: for a variance to be contrary to the public interest, it must unduly and to a marked degree violate the basic objectives of the zoning ordinance. The ordinance was enacted "for the purpose of promoting the health, safety and general welfare" of the Town of Hillsborough, and its regulations "give consideration to the character and suitability for particular uses of area in the Town of Hillsborough, the conservation of the value of buildings and the encouragement of the most appropriate use of land throughout" the town.

The granting of this variance would enable the property in question to be utilized for commercial purposes, the "most appropriate use" as determined by the voters of the Town of Hillsborough when the property was rezoned from Rural to Commercial in 2003.

B. Granting of the proposed Variance will observe the spirit of the Hillsborough Zoning Ordinance because: the purpose of the Town of Hillsborough zoning ordinance is to provide for the orderly present and future development of the town by promoting the public health, safety, convenience and welfare of its residents.

The specific purpose of the frontage requirement is to prevent overcrowding by requiring 200 feet of road frontage for each commercial building. Granting this variance will result in the potential future construction of one commercial building on a lot consisting of nine acres, when, if the majority of the lot's frontage was not "Limited Access", said lot could accommodate five such commercial buildings, an outcome clearly not contrary to the spirit of the ordinance.

C. Granting the proposed Variance will do substantial justice because: any loss to an individual which is not outweighed by a gain to the general public is an injustice. Denial of this variance will result in no gain to the general public, as the property will remain commercially zoned but not developable under the ordinance without either the removal of the Hadley home or the construction of a street to create frontage.

Additionally, when Hadley purchased the property and constructed her home the property was zoned rural; six years later, following the construction of the bypass, the town determined that the proper future use of the property was commercial. Granting the variance would permit the commercial development of the majority of the property while allowing Hadley to remain in the home she constructed in conformance with the zoning in existence at that time.

D. Granting the proposed Variance will not diminish the values of the surrounding properties because: commercial use is permitted use under the town's zoning ordinance, and, given the size of the proposed lot, any such commercial development could be designed to ensure substantial buffers between the commercial use and the grandfathered, non-conforming abutting residential uses, thereby protecting the values of surrounding, pre-existing uses.

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: In answer to (i), the purpose of a minimum frontage requirement is to limit the density of development by requiring 200 feet of road frontage for each commercial building on a commercial lot. Reducing that frontage requirement by the issuance of a variance could result in a greater density of development, thereby frustrating the purposes of the ordinance.

In this case, if the frontage along Henniker Street were not “Limited Access”, the nine-acre lot with 1012.83 feet of frontage would be sufficient to support five commercial buildings. What distinguishes this proposed lot from others similarly zoned is that 95 percent of its frontage is unusable for access, leaving it incapable of supporting even one commercial building.

While the general public purpose of the frontage requirement is to prevent overcrowding, applying it to the proposed nine-acre commercial lot unfairly restricts the use of the lot for the purposes for which it is currently zoned.

In answer to (ii), the granting of a variance to permit one commercial building on a nine-acre lot in the commercial district would appear to be a reasonable use of the property. Any proposed commercial use would likely be constructed to face Henniker Street to maximize commercial visibility, with the 50 feet of frontage on Old Railroad Drive providing access only, and all activities associated with the commercial use of the proposed lot would take place within the Commercial District.

Denial of the variance would require that Hadley either remove her home and sell the lot as a single commercial lot, or construct a street and cul-de-sac to town standards from the 50 feet of frontage on Old Railroad Drive into the property sufficient to create the required 200 feet of road frontage. Either alternative would place an unnecessary hardship on Hadley.

Chairman Racette asked if Mr. Mellen had approached the State to ask if the limited access could be changed or lifted.

Mr. Mellen said he had spoken to them and that was not an option.

Chairman Racette asked if there were any other questions.

Mr. Galpin asked if Mrs. Hadley had petitioned the Board of Selectmen for a right-of-way to Contoocook Falls Road.

Mrs. Hadley said she would have to cross state land and they wouldn't let her do that.

Mr. Mellen showed the location of the limited access on the plan.

Mr. Mellen said Mrs. Hadley did receive a variance from the Zoning Board of Adjustment (ZBA) to access her property with the approval of the Department of Transportation on October 13, 2005.

Chairman Racette read the following Board of Adjustment decision: On October 13, 2005, the Hillsborough Zoning Board of Adjustment voted to approve the (continued) public hearing for a variance to allow subdivision of 9+/- acres from the 11+/- acres and permit access to 9+/- acres by way of the 130' frontage along Contoocook Falls Road, pending Department of Transportation approval. Application was made by Bonita Tillson.

Chairman Racette said the access was denied by the Department of Transportation.

Chairman Racette asked if there were any further comments or questions. See none he announced the public hearing will go into recess during which the Board will deliberate and will not take any more public comments but will be free to ask questions of the applicant for the purpose of clarity.

Mrs. Payson explained that each criteria has to be voted on individually and needs three affirmative votes to pass.

Chairman Racette said the Board did a site visit and the proposed 50' entrance to the property is going to be challenging, it's wet, but that is not our issue. That issue will be addressed by the New Hampshire Department of Environmental Services (NHDES) and the Planning Board.

Mr. Galpin said it is important for this Board to consider what is being created. He said if we allow this 50' frontage in that location it is going to be a serious hardship for somebody to ever gain entrance at that point. He pointed out that the lot contains areas of wetland and the area suitable for development is quite a distance from the 50' entrance.

Mrs. Torres asked why the Board is discussing this issue.

Chairman Racette said this issue would have to be addressed by the developer and NHDES.

Mr. Galpin said the Board is creating a hardship because utilizing that entrance is going to be very costly.

Chairman Racette said that the developer would have to decide whether he wants to spend that money or not.

Mrs. Brien said the lot can't be developed right now.

Chairman Racette said right now the lot is 9 acres of unbuildable land which is not in the best interest of the Town.

Mr. Galpin said the hardship was created by the location of Mrs. Hadley's house. He asked what would happen with the next application that comes in with a similar issue, would we approve it.

Chairman Racette said if the conditions of the property warrant it then yes.

Mrs. Payson said if you approve the variance for 50' frontage this doesn't create a lot it just allows the owner the ability to apply to the Planning Board to create a lot.

Chairman Racette asked if the Board was ready to vote.

Chairman Racette closed the public hearing.

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

Chairman Racette said on criteria B: Granting of the proposed Variance will observe the spirit of the Hillsborough Zoning Ordinance: Mrs. Torres – yes, Mr. Galpin – no, Chairman Racette - yes, Mr. Rogers – yes, and Mrs. Brien – yes.

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

Chairman Racette said on criteria D: Granting the proposed Variance will not diminish the values of the surrounding properties: Mr. Galpin – yes, Mrs. Torres – yes, Chairman Racette - yes, Mr. Rogers – yes and Mrs. Brien - no.

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. Brien – yes, Mr. Galpin – no, Mrs. Torres – yes and Chairman Racette – yes.

Mr. Rogers made a motion to approve the variance. Mrs. Brien seconded the motion. The Board voted in favor except for Mr. Galpin who voted no.

OTHER BUSINESS:

Chairman Racette brought up the request from John Segedy to serve as an alternate on this Board. He said he was out of order for saying that he would submit the request to the Board of Selectmen without first discussing it with the members of the Board. He said Mr. Segedy is very reliable and has a knowledge of the law.

Mrs. Torres agreed with him but her concern is that Mr. Segedy has stated publicly and at ZBA meetings that he is against zoning which is the very purpose of this Board. She said this makes her very uncomfortable with him as an alternate and the Selectmen did chose to remove him from this Board.

Mr. Galpin said he had an issue with Mr. Segedy when he served on the school board. He added that in the past he had worked with a Mr. Segedy for many years on this Board. He said Mr. Segedy more likely than not was contrary to the rest of the Board but it made the rest of the Board think and really look at issues in depth as to what was right and what was wrong. He feels Mr. Segedy would do the same thing. He doesn't think it is a bad thing to have a negative attitude on this Board or being against zoning. He added that he doesn't like zoning and when it was first introduced he voted three times against it but when he is on this Board he has to do the job correctly and support zoning as the people voted for it.

Chairman Racette said Board members can't express their opinion about zoning during a hearing or when we are deciding a case. He added that you are entitled to your personal opinion but not during a hearing or meeting.

Mr. Rogers said he doesn't know Mr. Segedy very well but if he is expressing his personal opinions excessively then to any applicant coming before us it is going to appear he has prejudged their petition and that is problematic in terms of law suits and other proceedings before this Board. He has no problem with Mr. Segedy expressing a contrary opinion as long as it's done in the context of the petition and each case is decided on a case by case basis.

Mrs. Brien said she doesn't know Mr. Segedy very well but has found some of his comments at meetings to be very good but his delivery can, at times, be abrasive.

Mr. Rogers asked if there is an alternate already.

Chairman Racette answered yes, Larry Baker. He added that it is important for alternates to attend meetings in order to know what issues and cases the Board is working on.

Mr. Rogers asked if the Board needed to make a recommendation or can an interested person simply apply to the Selectmen.

Mrs. Payson said the Selectmen like to have the recommendation of the Board.

Mrs. Torres said she would hate to bring a name forward because that was our only choice. She would like to see if there are any other interested persons.

Mr. Galpin said that is how two present members were appointed to the Board.

Chairman Racette made the motion to recommend Mr. Segedy as an alternate. Mr. Galpin seconded the motion. The Board voted in favor of the motion - three – yes and two – no.

Mrs. Brien said the Board needs to advertise for alternates.

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ADJOURNMENT:

Chairman Racette adjourned the meeting.

Meeting adjourned at 7:51 p.m.

Respectfully Submitted:

Iris Campbell
Recording Secretary