**Zoning Board of Adjustment**

**27 School Street**

**HILLSBOROUGH, NH**

**August 14, 2017**

**DATE APPROVED**:

**TIME:** 6:58 p.m. – 8:45 p.m.

**CHAIRMAN:** Roger Racette

**VICE CHAIRMAN:** David Rogers

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

**PLANNING DIRECTOR:** Robyn Payson

**ALTERNATES:** Larry Baker and John Segedy

**ABSENT:** David Rogers Larry Baker

**PRESENT:** Water and Sewer Commissioner Christopher Sieg, Linda Maddox, Alan Maddox, Thomas Carr from Meridian Land Service, Inc.

**CALL to ORDER:**

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

**MINUTES:**

Chairman Racette made a motion to table the approval of the minutes of May 15, 2017 until the next meeting. Mr. Galpin seconded the motion. The Board voted all in favor.

**PUBLIC HEARING:**

**Variance/Change of Use:**

**Map 5; Lot 131 – 78 County Road – Owned by Corajane Jennings Adams & Frances B. Jennings Living Trust**

Chairman Racette appointed Mr. Segedy to sit as a voting member in place of Mr. Rogers.

Chairman Racette said this is a public hearing on an application submitted by Linda Maddox on behalf of the Frances B. Jennings Living Trust and Corajane Jennings Adams at 78 County Road, Map 5, Lot 131, for a variance from Chapter 160-8 (m) to change the use of the property from seasonal to full time.

Thomas Carr from Meridian Land Service, Inc. will be presenting the application for the owners and applicant. He said part of the request is to install a new septic system as far from the lake as possible which is 157’ from the water which is less than the 200’ required and to convert the cottage from seasonal to full time occupancy.

Chairman Racette asked for the definition of seasonal.

Mr. Carr said seasonal is a restricted use for a period of nine months with limited stays during the other three months.

Mr. Carr went on to explain the project and the submitted plans.

Chairman Racette asked Christopher Sieg if the Water and Sewer Commissioners had comments on this project.

Mr. Sieg distributed a letter from the Commissioners to the Board outlining their concerns with this project.

Chairman Racette said according to our rules because of the late receipt of this letter the Board has the option to continue this hearing or go forward tonight. The Board wished to move forward with this application

Mr. Sieg said there were basically three criteria that need to addressed and approved in order to grant the variance. He went on to explain that the Commissioners are opposed to the granting of the change of use variance because Chapter 160-8 (M).

Mr. Segedy said the chapter states that all the rules must be met. He went on to say Chapter 160-7 contains the criteria which have to be met in order to for a variance request to be considered.

Mr. Carr said the new septic system should alleviate the concerns regarding the year round use.

Chairman Racette asked Mr. Carr to go over the criteria as they appear in the application.

Mr. Carr read from the application:

The undersigned hereby requests that the Board of Adjustment grant a variance from Hillsborough Zoning Ordinance Sections(s) 160-8 J (2) in order to permit the following: to repair/replace a septic system with 200 ft. of Loon Pond. The proposed replacement septic leach field is placed as far from the lake as possible given the existing conditions of the property and unique circumstances of the lot.

A. Granting the proposed Variance will not be contrary to the public interest because: Granting the waiver allows a failing septic system to be replaced as far from the lake as possible. The existing septic system is approximately 75 feet from the lake and the proposed leach field is greater than 150 feet from the lake. A pre-treatment processor is also being installed as part of the other variance request for this property. It is the best solution that can be proposed for the lot.

B. Granting of the proposed Variance will observe the spirit of the Hillsborough Zoning Ordinance because: The proposal maximizes the distance to the lake from the leach field. It is located in the best possible location given the circumstances of the lot.

C. Granting the proposed Variance will do substantial justice because: The existing system is far less conforming than that which is proposed. The existing system type is unknown and may be a cesspool. The replacement system is state of the art with a conventionally sized leach field and a Septi-Tech pre-treatment processor. A 75% reduction is leach field size is allowed when using this type of pre-treatment however, this proposal does not include the reduction.

D. Granting the proposed Variance will not diminish the values of the surrounding properties because: This is a substantial upgrade to the property. There will be some grading changes adjacent to County Road but all on private property. Once the system is constructed and the surface is returned to a natural state, there will be no adverse impacts to the subject property or to those abutting the property.

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: The special conditions of the property are such that the lot is not deep enough from the lake to the road to meet the setback. The proposed system meets the setback to the best extent possible and the applicant has chosen to go one step further to protect the watershed by adding a pre-treatment system to the septic design. These two aspects to the proposal substantiate a reasonable use.
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 reasonable used in strict conformance with ordinance, and a variance is therefore necessary to enable a reasonable use of it because: Due to the unique nature of the lot, a variance is required. Other full time and seasonal properties on the lake have similar septic related issues due to the existing unique nature of the properties. The Septi-Tech Processor is an added component (voluntary) to reduce the concerns of the leach field’s proximity to the lake. The proposed septic system for this property is state of the art and is the best possible solution for the lot and watershed.

Mr. Carr addressed the three variance criteria listed in Chapter 160-7:

1. The proposed building or structure is to replace a building or structure existing on March 11, 1980, or is appurtenant to said existing building or structure: there is no intent to change the building and it existed in 1980.
2. The proposed construction will not cause or contribute to actual or potential pollution of the waters of Loon Pond; and again we are proposing the most advance septic system available.
3. Any existing waste disposal system, however same may be described or referred to, on the premise subject to petitioned construction or a proposed waste disposal system shall have been examined and found not to cause or contribute to actual or potential pollution of the waters of Loon Pond: they suspect the existing system is a cesspool in the ground and could be a pollution issue. The existing system will be going away.

The Board discussed whether the second variance regarding the change of use was even necessary.

Mrs. Brien made the point that if the first request is approved and then go back to the first three questions number three then applies. She added so when the new septic system is installed the existing waste disposal system would be found not to cause potential or actual pollution to the pond. She said as long as this system is installed then they would meet all of the criteria listed in Chapter 160-7.

Chairman Racette said if the variance is approved then the change of use needs to meet all the criteria in Chapter 160-7

Mr. Carr read from the application:

The undersigned hereby requests that the Board of Adjustment grant a variance from Hillsborough Zoning Ordinance Sections(s) 160-8 M in order to permit the following: Change of use from seasonal to full time occupancy.

A. Granting the proposed Variance will not be contrary to the public interest because: As part of this request, the applicant agrees to install a new septic system as far as possible from the lake (157 feet). Additionally, the septic system will be equipped with a Septic- Tech Pre-Treatment Processor, which aerates the effluent prior to pumping liquid to the conventionally sized leach field. A 75% reduction in leach field size is not proposed as further preventive measures.

B. Granting of the proposed Variance will observe the spirit of the Hillsborough Zoning Ordinance because: The proposed septic system is the most advanced with respect to pre- treatment and leach field type/size. The pre-treatment system is not required for replacement of a failed system but is part of this request to go above and beyond the minimum requirements. The Septic-Tech Pre-Treatment system alone is approximately an $8,000 upgrade offered by the applicant.

C. Granting the proposed Variance will do substantial justice because: The existing septic system is undocumented as to type and may be a cesspool. It is located approximately 75 feet from Loon Pond. This system will be abandoned and replaced with the most advanced system available approximately 80 feet further from the pond.

D. Granting the proposed Variance will not diminish the values of the surrounding properties because: This is a substantial upgrade to the property. There will be some grading changes adjacent to Count Road but all on private property. Once the system is constructed and the surface is return to a natural state, there will be n adverse impact to the subject property or to those abutting the property.

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: The special conditions of the property are such that it is not deep enough from the lake to the road to meet the 200 foot setback. The proposed system meets the setback to the best extent possible and the applicant has chosen to go one step further to protect the watershed by adding a pre-treatment system to the septic design These two aspects of the proposal substantiate a reasonable use.
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 reasonable used in strict conformance with ordinance, and a variance is therefore necessary to enable a reasonable use of it because: Due to the unique nature of the lot, a variance is required. Other full time occupancy homes exist on the pond and they have the same septic related issues of non-conformity due to the nature of the lot. The Septic-Tech processor is an added component (voluntary) to further reduce the concerns of conversion to full time occupancy. Note that seasonal use is restricted to not more than nine months of continuous occupancy but the remaining months are open to visitation. The change in use is not substantial particularly in consideration of the pre-treated septic effluent which would not be a requirement in replacing a failed seasonal use system.

Chairman Racette asked Mr. Carr to address the three variance criteria listed in Chapter 160-7 as it pertains to this variance request.

Mr. Carr addressed the three variance criteria listed in Chapter 160-7:

1. The proposed building or structure is to replace a building or structure existing on March 11, 1980, or is appurtenant to said existing building or structure: there is no intent to change the building as it existed in 1980. The only change will be to install the new septic system and a well so they can discontinue pumping from the pond.
2. The proposed construction will not cause or contribute to actual or potential pollution of the waters of Loon Pond; and again we are proposing the most advance septic system available. Someone only using the house seasonally will probably not go through the expense of upgrading the septic system.
3. Any existing waste disposal system, however same may be described or referred to, on the premise subject to petitioned construction or a proposed waste disposal system shall have been examined and found not to cause or contribute to actual or potential pollution of the waters of Loon Pond: they suspect the existing system is a cesspool in the ground and could be a pollution issue. The existing system will be going away.

Mr. Sieg said the change of use from seasonal to full time will significantly impact Loon Pond.

Chairman Racette agreed there would be an impact but it is being offset by the installation of the new septic system.

Mr. Segedy said one of the rules is if they can’t meet all the criteria than they can apply for a variance.

Mr. Sieg said when you change the use you are resetting the rules. He added this building could

not be built today because the of the 200 foot setback requirement. He said the Commissioner’s opinion is that Section 160-8 M makes no provision for a variance if a change of use is proposed – including conversion from seasonal to year-round use – on a non-conforming lot.

Mr. Galpin said the Water and Sewer Commissioners had no problem with another change of use this Board heard and granted just a little while ago.

Chairman Racette feels that the State looks favorably on property changes which improves the property more conforming then it was before.

Chairman Racette recessed the proceedings in order for the Board to begin deliberation and would not take any further public comment unless the Board requested clarification.

After a short discussion Chairman Racette closed the public portion of the hearing and moved on to the vote on the variance to Chapter 160-8 J for the installation of a new septic system.

Chairman Racette said on criteria A: Granting the proposed Variance will not be contrary to the public interest. Mrs. Brien – yes, Mrs. Torres – yes, Chairman Racette – yes, Mr. Galpin – yes and Mr. Segedy – yes.

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

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

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

Chairman Racette said seeing that criteria E-1 was voted in the affirmative then part 2 is not required to be addressed.

Chairman Racette read the criteria as found in Chapter 160-7 of the Loon Pond Ordinance:

1. The proposed building or structure is to replace a building or structure existing on March 11, 1980, or is appurtenant to said existing building or structure: Mrs. Brien – yes, Mrs. Torres – yes, Chairman Racette – yes, Mr. Galpin – yes and Mr. Segedy – yes.
2. The proposed construction will not cause or contribute to actual or potential pollution of the waters of Loon Pond: Mrs. Brien – yes, Mrs. Torres – yes, Chairman Racette – yes, Mr. Galpin – yes and Mr. Segedy – yes.
3. Any existing waste disposal system, however same may be described or referred to, on the premise subject to petitioned construction or a proposed waste disposal system shall have been examined and found not to cause or contribute to actual or potential pollution of the waters of Loon Pond: Mrs. Brien – yes, Mrs. Torres – yes, Chairman Racette – yes, Mr. Galpin – yes and Mr. Segedy – yes.

Chairman Racette said it appears the variance has passed.

The Board discussed the merits of considering the variance for the change of use.

Mrs. Payson said that by saying the new septic system meets the criteria in Chapter 160-7 then a variance for a change of use is unnecessary.

Mr. Segedy said this means that anyone can do a change of use as long as the criteria of Chapter 160-7 are met.

Mrs. Payson said yes, because there is no requirement for a variance on a change of use in the ordinance.

Mrs. Brian made a motion to dismiss the request for a variance from Loon Pond Ordinance 160-8 (M) because no variance is necessary to allow a “change of use”. A change of use is allowed in 160-8 (M) provided the standards of 160-8 (J) are met.

Mr. Galpin said shouldn’t we vote on the septic system variance first because the approval of that variance means the change of use variance is not needed.

Mr. Galpin made a motion to grant the variance for the new septic system as applied for. Mrs. Torres seconded the motion. The Board voted in favor.

Mrs. Torres seconded Mrs. Brien’s motion.

Mr. Galpin disagrees with the motion. He said the Board should consider and vote on the change of use variance and ordinance criteria. He feels any change of use needs a variance.

Mrs. Payson said a variance isn’t needed for a change of use if all the criteria in Chapter 160-7 are met.

Mr. Galpin said the Board just granted a variance for an in home business.

Mrs. Payson corrected that saying it was for a special exception because home businesses are not allowed in that zone.

Chairman Racette asked for a vote on the motion. The Board voted all in favor except for Mr. Galpin who voted – no.

Chairman Racette announced that the motion passed by a vote of four to one.

**ADJOURNMENT:**

Chairman Racette made a motion to adjourn the meeting. Mrs. Torres seconded the motion. Board voted all in favor.

Meeting adjourned at 8:45 p.m.

Respectfully Submitted:

Iris Campbell

Recording Secretary